

# Repertoire *of the* Practice *of the* Security Council

SUPPLEMENT 2000-2003

VOLUME II



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**United Nations**

**Department of Political Affairs**

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of the Security Council**

**Supplement 2000-2003**

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of the Security Council**

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## Introduction

The present publication, in two volumes, constitutes the fourteenth supplement to the *Repertoire of the Practice of the Security Council, 1946-1951*, which was issued in 1954. It covers the proceedings of the Security Council from the 4087th meeting, on 10 January 2000, to the 4891st meeting, on 22 December 2003.

The *Repertoire* was mandated by the General Assembly in its resolution 686 (VII) of 5 December 1952, entitled “Ways and means for making the evidence of customary international law more readily available”. It is a guide to the proceedings of the Council and sets forth in a readily accessible form the practices and procedures to which the Council has had recourse. The *Repertoire* is not intended as a substitute for the records of the Council, which constitute the only comprehensive and authoritative account of its deliberations.

The categories employed to arrange the material are not intended to suggest the existence of procedures or practices that have not been clearly or demonstrably established by the Council itself. The Council is at all times, within the framework of the Charter of the United Nations, its own provisional rules of procedure, and practice established through notes by the President of the Security Council, master of its own procedure.

In recording the Council’s practice, the headings under which the practices and procedures of the Council were presented in the original publication have been largely retained. Where necessary, however, adjustments have been made to better reflect the Council’s practice. For ease of reference, the studies contained in chapter VIII are organized according to region or thematic issues. This introduction contains a table indicating the membership of the Security Council during the period under review.

The agenda items considered by the Council during 2000-2003, and the meetings at which they were considered, are presented in a table hereunder in the order in which the items were initially taken up during the period.\*

\* \* \*

Symbols of United Nations documents are composed of letters combined with figures. Security Council documents are indicated by a symbol such as S/2000/537. References to the verbatim records of meetings of the Council are given in the form S/PV.4886, meetings being numbered consecutively, starting with the first meeting in 1946. As in previous recent supplements, reference is made in this Supplement only to the provisional verbatim records of Security Council meetings, as the practice of publishing the meeting records in the *Official Records* has been discontinued.

The resolutions adopted by the Security Council and most of the statements by the President are published in the yearly volumes of *Resolutions and Decisions of the Security Council*. Resolutions are identified by a number followed by the year of adoption in parentheses, for example, resolution 1324 (2000). Statements

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\* For the table, see volume I, introduction.

by the President not included in the yearly volumes are recorded in the relevant verbatim records.

Readers who wish to consult the full record of a meeting or the text of a Security Council document referred to in the *Repertoire* may do so on the official United Nations Documentation Centre website, [www.un.org/en/documents/](http://www.un.org/en/documents/). Security Council documents can be accessed on the website by selecting “Official Document System (ODS)” or one of the direct links to specific categories of documents. The volumes of resolutions and decisions may be accessed by symbol (S/INF/56, for 2000; S/INF/57, for 2001/02; S/INF/58, for 2002/03; and S/INF/59, for 2003/04). The original *Repertoire* and the other supplements may be consulted at [www.un.org/en/sc/repertoire](http://www.un.org/en/sc/repertoire).

### Members of the Security Council, 2000-2003

<i>Member</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Angola				•
Argentina	•			
Bangladesh	•	•		
Bulgaria			•	•
Cameroon			•	•
Canada	•			
Chile				•
China (permanent member)	•	•	•	•
Colombia		•	•	
France (permanent member)	•	•	•	•
Germany				•
Guinea			•	•
Ireland		•	•	
Jamaica	•	•		
Malaysia	•			
Mali	•	•		
Mauritius		•	•	
Mexico			•	•
Namibia	•			
Netherlands	•			
Norway		•	•	
Pakistan				•
Russian Federation (permanent member)	•	•	•	•
Singapore		•	•	

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<i>Member</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Spain				•
Syrian Arab Republic			•	•
Tunisia	•	•		
Ukraine	•	•		
United Kingdom of Great Britain and Northern Ireland (permanent member)	•	•	•	•
United States of America (permanent member)	•	•	•	•

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## **Chapter VIII (continued)**

### **Consideration of questions under the responsibility of the Security Council for the maintenance of international peace and security**

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## Introductory note

Chapter VIII of the *Repertoire* focuses on the substance of each of the questions included in the agenda of the Security Council that relate to its responsibility for the maintenance of international peace and security. Examining the entire chain of proceedings of the Council on each agenda item gives an overall sense of their political context.<sup>1</sup> The range of items covers broadly those that may be deemed to fall under Chapters VI and VII of the Charter.

The overview of the proceedings of the Council provided in chapter VIII of the *Repertoire* constitutes a framework within which the procedural developments recorded in chapters I to VII and the legal and constitutional discussions recorded in chapters X to XII may be considered. Chapter VIII also examines the substantive aspects of the Council's practice that are not covered in other chapters of the *Repertoire*.

The agenda items are grouped by region, for ease of reference, with an additional category of thematic issues. Within each region, items are listed in the order in which they were first included in the list of items of which the Council is seized.

Generally, individual sections cover all proceedings relating to a specific item. In exceptional cases, in order to improve the coherence of the text, related items have been grouped together under the heading "Items relating to ...".

The material included in chapter VIII is drawn from the formal meetings of the Council, and includes summaries of the statements made in the Council and of all Council documents, including reports and letters, that were referred to during the meetings.<sup>2</sup> The chapter also includes summaries of all of the decisions that were adopted at those formal Council meetings.<sup>3</sup>

Each section is organized around the decisions taken by the Council on a specific item. All of the meetings leading to a decision are included under the heading for that decision. Meetings that do not lead to a decision are grouped together under the heading "Deliberations".

When the Council includes a new item in its agenda, the section covering its first consideration bears the heading "Initial proceedings".

Some meetings have been grouped together, and an overview of all developments at those meetings is provided. In some of these cases, similar resolutions, generally renewing the mandate of a subsidiary body and adopted without debate, have also been grouped together; a brief overview of their main provisions is provided.

Meetings with countries contributing troops to a peacekeeping mission are dealt with under the item that covers that mission.

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<sup>1</sup> The *Repertoire of the Practice of the Security Council* covers formal meetings and documents of the Security Council. Some of the questions considered in this chapter were also discussed in informal consultations among the members of the Council.

<sup>2</sup> Other documents relating to a specific item but not mentioned at a formal meeting of the Council are listed in the annual report of the Security Council to the General Assembly.

<sup>3</sup> The summaries are based on those contained in the *Index to Proceedings of the Security Council*.

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Information on formal meetings held in private is given in a footnote to the subsequent open meeting.

Unless otherwise noted, representatives of States Members of the United Nations who were invited to participate in the Council's proceedings were invited under rule 37 of the Council's provisional rules of procedure, and all other speakers were invited under rule 39.<sup>4</sup>

Unless otherwise indicated, draft resolutions were prepared in the course of the Council's prior consultations.

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<sup>4</sup> See chapter III for more information.



## Europe

### 29. The situation in Cyprus

**Decisions of 14 June 2000 to 25 November 2002:  
resolutions 1303 (2000), 1331 (2000), 1354  
(2001), 1384 (2001), 1416 (2002) and 1442 (2002)**

During the period from 14 June 2000 to 25 November 2002, at each of the six meetings held on the agenda item,<sup>1</sup> the Security Council, unanimously and without debate, adopted a resolution<sup>2</sup> extending the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) for a period of six months, on the basis of the recommendations contained in the reports of the Secretary-General on the United Nations operation in Cyprus.<sup>3</sup>

In his reports, the Secretary-General stated that the situation along the ceasefire lines in Cyprus had remained stable. In his report dated 1 December 2000<sup>4</sup> and in subsequent reports, the Secretary-General noted that restrictions had been imposed on UNFICYP by the Turkish Cypriot authorities and the Turkish forces as from 30 June 2000, and called for the restoration of the military status quo ante in the area of Strovilia. In the prevailing circumstances, the Secretary-General considered the continued presence of UNFICYP essential for the maintenance of the ceasefire on the island and recommended the extension of the mandate of the Force. In resolution 1331 (2000) and subsequent resolutions, the Council urged the Turkish Cypriot side and Turkish forces to rescind the restrictions on the

operations of UNFICYP and to restore the military status quo ante at Strovilia.

At the 4155th meeting, on 14 June 2000, the President of the Council stated that he had received letters from the parties concerned; at the meetings held from 13 December 2000 to 25 November 2002,<sup>5</sup> the President stated that he had met with representatives of the parties, who had confirmed that they maintained their well-known positions vis-à-vis the item on the Council's agenda.

**Decision of 14 April 2003 (4740th meeting):  
resolution 1475 (2003)**

On 1 April 2003, the Secretary-General submitted a report on his mission of good offices in Cyprus.<sup>6</sup> In that report, the Secretary-General informed the Council on his intensive efforts undertaken from 1999 to early 2003 to assist the two sides in Cyprus to achieve a comprehensive settlement of the Cyprus problem, which would have allowed a reunited Cyprus to sign the Treaty of Accession to the European Union on 16 April 2003. The Secretary-General noted that, during that period, he had refrained from reporting in writing to the Council, other than by brief references in his reports on UNFICYP, while the members of the Council had been kept informed through regular oral briefings by his Special Adviser and himself. He recalled that the adoption by the Council of resolution 1250 (1999), together with the evolving Greek-Turkish rapprochement, the candidature of Turkey for accession to the European Union, and the prospect of accession of Cyprus to the European Union had presented a set of new circumstances and a unique opportunity. By resolution 1250 (1999), the Council had requested him to invite the leaders of the two sides to negotiations and had set the following four principles as guidelines for the negotiations, namely, no preconditions; all issues on the table; commitment in good faith to continue to negotiate until a settlement is reached; and full consideration of relevant United Nations resolutions and treaties.

<sup>1</sup> The 4155th (14 June 2000), 4246th (13 December 2000), 4328th (15 June 2001), 4436th (14 December 2001), 4551st (13 June 2002) and 4649th (25 November 2002) meetings. During this period, in addition to the meetings covered in this section, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Peacekeeping Force in Cyprus, pursuant to resolution 1353 (2001), annex II, sections A and B. Those meetings were held on 7 December 2001 (4435th), 5 June 2002 (4549th), 21 November 2002 (4648th), 5 June 2003 (4769th) and 20 November 2003 (4866th).

<sup>2</sup> Resolutions 1303 (2000), 1331 (2000), 1354 (2001), 1384 (2001), 1416 (2002) and 1442 (2002).

<sup>3</sup> S/2000/496 and Corr.1, S/2000/1138, S/2001/534, S/2001/1122, S/2002/590 and S/2002/1243.

<sup>4</sup> S/2000/1138, submitted pursuant to resolution 1303 (2000).

<sup>5</sup> See footnote 1.

<sup>6</sup> S/2003/398.

As part of the good offices efforts under the auspices of the Secretary-General, proximity talks had been held between the United Nations and each of the parties from December 1999 to November 2000. Direct talks had then been facilitated from January 2002 to February 2003. During the process, the parties had not been able to reach agreement without third-party assistance. Accordingly, the Secretary-General had submitted a comprehensive settlement proposal (“Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem”) to the parties on 11 November 2002, which had then been revised and refined twice — once on 10 December 2002 and then again on 26 February 2003 — after further consultations with the parties.

The Secretary-General noted that his plan was not simply a framework but a truly comprehensive proposal, including all necessary legal instruments, and leaving nothing to be negotiated subsequently. In conformity with the vision of the Council for a settlement, the plan provided for a United Cyprus Republic with a single sovereignty, international personality and citizenship. It would comprise two politically equal constituent States — the “Greek Cypriot State” and the “Turkish Cypriot State” — which were to be joined together in a bicomunal, bizonal federation. The plan contained detailed proposals on all necessary aspects of governance, security, property, territory, constituent state residency, economic aspects, reconciliation and implementation. As a constitutive act for a reunified Cyprus, the plan required the holding of separate simultaneous referenda by the Greek Cypriot and Turkish Cypriot populations. The plan required the referenda to be held before 16 April 2003 to allow a reunited Cyprus to sign the Treaty of Accession to the European Union on that date.

The Secretary-General, in his report, noted that the process had come to an end, when, at negotiations in The Hague on 10 and 11 March 2003, the leaders of the two parties were unable to reach an agreement to submit the plan for approval at separate simultaneous referenda on 30 March 2003. Reflecting on the reasons for the failure of the parties to seize the opportunity to achieve a comprehensive settlement, the Secretary-General recalled that both sides bore a share of the blame for the many opportunities that had been missed over the years. With respect to the most recent failure, however, he held that the Turkish Cypriot leader bore prime responsibility. With a few exceptions, he had

declined to engage in negotiations on the basis of give and take, which had greatly complicated the efforts by the Secretary-General to accommodate both the legitimate concerns of principle and the concrete and practical interests of the Turkish Cypriots. At the negotiations in The Hague, the newly elected Greek Cypriot leader, while expressing misgivings concerning the plan of the Secretary-General, had agreed conditionally that the plan be submitted to referenda and had expressed the willingness not to reopen negotiations on the plan itself, albeit under very stringent conditions. The Turkish Cypriot leader had informed the Secretary-General that he was not prepared to agree to put the plan to referenda, citing fundamental objections to the plan to basic points and expressing the belief that further negotiations were likely to be successful only if they began from a new starting point and if the parties agreed on basic principles. Accordingly, the Secretary-General had drawn the conclusion that the process had reached an end. While noting that his plan remained on the table, the Secretary-General did not propose to take a new initiative without a solid reason to believe that the political will necessary for a successful outcome existed.

At its 4738th meeting, on 10 April 2003, the Council included in its agenda the above-mentioned report of the Secretary-General on his mission of good offices in Cyprus.<sup>6</sup> At the meeting, at which no statements were made, the Council heard a briefing by the Special Adviser to the Secretary-General on Cyprus. During his briefing, the Special Adviser expressed his belief that the settlement proposal had been a fair and honourable package, comprehensive in approach and only needing technical finalization. He held that the fact that a solution had not been achieved was deeply disappointing and seemed attributable to failings of political will rather than to the absence of favourable circumstances. He reiterated the regret of the Secretary-General that a unique opportunity had been missed and that the Greek Cypriots and the Turkish Cypriots had been denied the opportunity to vote to reunite Cyprus. Reiterating that the Secretary-General did not intend to take a new initiative unless and until such time that the political will necessary for a successful outcome existed, he expressed the view that this would come about only if there was an unequivocally stated preparedness on the part of the leaders of both sides, fully and determinedly backed at the highest political level in both motherlands, to

commit to finalizing the plan, without reopening its basic principles or key trade-offs, by a specific date, with United Nations assistance; and to putting it to separate simultaneous referenda, as provided for in the plan, on a certain date soon thereafter. He held that the onus was on the parties and the motherlands to demonstrate the political will to solve the problem on the basis of the plan of the Secretary-General.<sup>7</sup>

At its 4740th meeting, on 14 April 2003, the Council again included in its agenda the report of the Secretary-General.<sup>6</sup> A statement was made by the representative of the Russian Federation.

At the meeting, a draft resolution submitted by Bulgaria, France, Germany, Spain, the United Kingdom and the United States<sup>8</sup> was put to the vote and adopted unanimously and without debate as resolution 1475 (2003), by which the Council, *inter alia*:

Commended the Secretary-General for taking the initiative to present to the parties a comprehensive settlement plan aimed at bridging the gaps between them;

Regretted that, due to the negative approach of the Turkish Cypriot leader, culminating in the position taken at the meeting held in The Hague on 10 and 11 March 2003, it was not possible to reach agreement to put the plan to simultaneous referenda as suggested by the Secretary-General, and thus that the Turkish Cypriots and the Greek Cypriots had been denied the opportunity to decide for themselves on a plan that would have permitted the reunification of Cyprus and as a consequence it would not be possible to achieve a comprehensive settlement before 16 April 2003;

Gave its full support to the Secretary-General's carefully balanced plan of 26 February 2003 as a unique basis for further negotiations, and called on all concerned to negotiate within the framework of the Secretary-General's good offices, using the plan to reach a comprehensive settlement;

Stressed its full support for the mission of good offices of the Secretary-General as entrusted to him in resolution 1250

(1999); and requested the Secretary-General to continue to make available his good offices for Cyprus as outlined in his report.

Speaking after the vote, the representative of the Russian Federation stated that the basic parameters of the Secretary-General's plan were balanced in nature and called upon the parties to continue the negotiating process to reach a peaceful settlement, using those basic parameters as a basis for dialogue. He noted that the Russian Federation had supported resolution 1475 (2003) based on the belief that, taking into account the well-known concerns of both parties to the conflict regarding individual elements of the Secretary-General's plan, it would be possible to adjust the plan to reach a compromise solution.<sup>9</sup>

**Decisions of 11 June and 24 November 2003  
(4771st and 4870th meetings): resolutions  
1486 (2003) and 1517 (2003)**

At its 4771st and 4870th meetings, held on 11 June and 24 November 2003, respectively, the Council adopted unanimously and without debate resolutions 1486 (2003) and 1517 (2003), extending the mandate of UNFICYP for periods of six months, upon the recommendations contained in the reports of the Secretary-General.<sup>10</sup> In his reports, the Secretary-General stated that the situation along the ceasefire lines in Cyprus had remained stable. In the prevailing circumstances, the Secretary-General considered the continued presence of UNFICYP essential for the maintenance of the ceasefire on the island and recommended the extension of the mandate of the Force. At the meetings, the President of the Council stated that he had met with representatives of the parties, who had confirmed that they maintained their well-known positions vis-à-vis the item on the Council's agenda.

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<sup>7</sup> S/PV.4738, pp. 2-4.

<sup>8</sup> S/2003/418.

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<sup>9</sup> S/PV.4740, p. 2.

<sup>10</sup> S/2003/572, submitted pursuant to resolutions 1442 (2002) and 1250 (1999); and S/2003/1078, submitted pursuant to resolutions 1486 (2003) and 1250 (1999).

## 30. Items relating to the situation in the former Yugoslavia

### A. The situation in Bosnia and Herzegovina

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

At its 4117th meeting,<sup>1</sup> on 22 March 2000, the Security Council included in its agenda the report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (UNMIBH) dated 15 March 2000.<sup>2</sup> In his report, the Secretary-General, *inter alia*, stated that despite some progress, the Mission had to take strong action to seek to overcome continued obstruction, resistance and delay in some key areas, including concerning the establishment of a state-level State Border Service, the integration of the Ministry of the Interior and minority recruitment for police forces. He reported that parties had, on several issues, acted against the letter and spirit of the New York Declaration of 15 November 1999<sup>3</sup> that was adopted during the appearance of the members of the Presidency of Bosnia and Herzegovina before the Council. The Secretary-General maintained that UNMIBH would need the support of the Security Council and Member States with influence on the Bosnian Croat and Bosnian Serb authorities to overcome resistance in important areas.

At the meeting, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, following which most members of the Council made statements.<sup>4</sup> In addition, statements were made by the representatives of Bosnia and Herzegovina, Germany, Italy, Portugal (on behalf of the European Union<sup>5</sup>) and Turkey.

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

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

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

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

<sup>3</sup> S/1999/1179, annex.

<sup>4</sup> The representative of Mali did not make a statement.

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

<sup>6</sup> S/PV.4117, pp. 2-3.

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

<sup>8</sup> *Ibid.*, p. 13.

<sup>9</sup> *Ibid.*, p. 5.

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

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

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

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

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

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

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

At its 4154th meeting, on 13 June 2000, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 2 June 2000.<sup>18</sup> In his report, the Secretary-General, *inter alia*, reported progress in the establishment of the State Border Service and the integration of the Ministry of the Interior and the chain of command and communication systems of the police, while regretting the lack of progress in the area of refugee returns and recruitment of minority police officers. He also reported that all UNMIBH components had begun the preparation of a strategic and operational framework for the fulfilment of the core mandate of the Mission by December 2002. He therefore recommended the extension of the mandate of UNMIBH for a further 12-month period.

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

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

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<sup>11</sup> *Ibid.*, p. 14.

<sup>12</sup> *Ibid.*, p. 21.

<sup>13</sup> S/2000/376.

<sup>14</sup> S/PV.4136, pp. 2-6.

<sup>15</sup> *Ibid.*, p. 7 (Bangladesh); p. 8 (Netherlands, France); and p. 11 (Canada).

<sup>16</sup> *Ibid.*, p. 10 (Russian Federation); and p. 11 (United Kingdom).

<sup>17</sup> *Ibid.*, p. 8 (France); and p. 11 (Canada).

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

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

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

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

At its 4162nd meeting, on 21 June 2000, the Council again included in its agenda the report of the Secretary-General dated 2 June 2000.<sup>18</sup> Statements were made by the representatives of the Russian Federation, China, the United Kingdom, Canada and the United States.<sup>22</sup> The President (France) drew the attention of the members of the Council to a draft resolution submitted by Canada, France, Germany, Italy, the Netherlands, the United Kingdom and the United States.<sup>23</sup> He also drew the attention of members to a letter dated 14 June from the representative of Portugal, transmitting the text of the declaration of the ministerial meeting of the Peace and Implementation Council, held in Brussels on 23 and 24 May 2000.<sup>24</sup>

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

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

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

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

Authorized the Member States to take all necessary measures to effect the implementation of and to ensure compliance with annex 1-A of the Peace Agreement; authorized Member States to take all necessary measures, at the request of SFOR, either in defence of SFOR or to assist the force in carrying out its mission, and recognized the right of the force to take all necessary measures to defend itself from attack or threat of attack;

<sup>20</sup> S/PV.4154, pp. 2-7.

<sup>21</sup> *Ibid.*, pp. 9.

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

<sup>23</sup> S/2000/591.

<sup>24</sup> S/2000/586.

<sup>25</sup> S/PV.4162, pp. 2-3.

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

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

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

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

Speaking after the vote, the representative of China noted that, while his delegation had voted in favour of the draft resolution, he was of the view that the Federal Republic of Yugoslavia, as a signatory to the Dayton Agreement, should have been invited to the meeting of the Peace Implementation Council held in Brussels in May 2000.<sup>26</sup> The representative of the United Kingdom, supported by the representative of the United States, held that the lack of unanimity on parts of the resolution should not be seen as detracting from the unanimous support of the Council for the work of the United Nations Mission.<sup>27</sup> The representatives of Canada and the United States noted that they fully supported the decision not to invite the Federal Republic of Yugoslavia to the ministerial meeting of the Peace Implementation Council in Brussels.<sup>28</sup>

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

At its 4169th meeting, on 13 July 2000, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate. The President (Jamaica) made a statement on behalf of the Council<sup>29</sup>

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

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

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

Acknowledged the report of the Secretary-General on Srebrenica;<sup>30</sup>

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

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

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

At its 4188th meeting, on 15 August 2000, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. Statements were made by most members of the Council.<sup>31</sup> In his briefing, the Under-Secretary-General reported progress in all areas of the mandate of UNMIBH, including police reform, judicial reform and the return of minority refugees and displaced persons. In particular, he noted that the judicial system assessment programme of UNMIBH was finalizing its work and was coordinating closely with the Office of the High Representative, which was expected to assume most of the judicial assessment functions when the mandate of UNMIBH in that area expired late in 2000.<sup>32</sup>

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

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<sup>26</sup> *Ibid.*, p. 3.

<sup>27</sup> *Ibid.*, p. 3 (United Kingdom); and p. 4 (United States).

<sup>28</sup> *Ibid.*, p. 4 (Canada, United States).

<sup>29</sup> S/PRST/2000/23.

<sup>30</sup> A/54/549.

<sup>31</sup> The representative of Mali did not make a statement.

<sup>32</sup> S/PV.4188, pp. 2-3.

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

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

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

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

In his briefing, the High Representative, *inter alia*, commented on the "seismic changes" that had occurred in the two key neighbouring countries of the Federal Republic of Yugoslavia and Croatia, expressing both hope and caution for the effects of this change on the situation in Bosnia and Herzegovina. On the situation in Bosnia and Herzegovina itself, he reported slow progress in all areas of reform and expressed his opinion that sustained change would depend on the outcome of the general elections on 11 November 2000.<sup>36</sup>

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

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

At its 4222nd meeting, on 14 November 2000, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. At the meeting, statements were made by most members of the Council,<sup>38</sup> as well as by the representatives of Austria<sup>39</sup> and the Federal Republic of Yugoslavia.

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

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

<sup>34</sup> *Ibid.*, p. 12.

<sup>35</sup> S/2000/999.

<sup>36</sup> S/PV.4209, pp. 2-5.

<sup>37</sup> *Ibid.*, pp. 17-18.

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

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

<sup>40</sup> S/PV.4222, pp. 2-4.

<sup>41</sup> *Ibid.*, p. 5.



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

At its 4245th meeting, on 12 December 2000, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 30 November 2000.<sup>43</sup> In his report, the Secretary-General, *inter alia*, observed that the international community had made a massive contribution to the cause of peace in Bosnia and Herzegovina in the past five years, but progress had been frustratingly slow and difficult, owing mainly to political obstruction by extremist nationalists. He held that the recent general elections held in Bosnia and Herzegovina had demonstrated yet again how nationalist parties were willing to incite inter-ethnic fear and suspicion in order to preserve their power and privileges. Nevertheless, he reported that progress had been made in all core areas of the mandate of UNMIBH and that, together with the changes in the leaderships of core neighbouring countries, this progress had enabled the Mission to draw up the mandate implementation plan with a proposed timetable of December 2002 for the completion of the core mandate of UNMIBH. The Secretary-General requested the Council to support the Mission's assessment that the authorized strength of UNMIBH for the period 2001/2002 might be reduced to 1,850 officers of the International Police Task Force.

At the meeting, the Council heard a briefing by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council<sup>44</sup> and the representative of Bosnia and Herzegovina.

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

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

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

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

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

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

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

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

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<sup>42</sup> *Ibid.*, pp. 11-12.

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

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

<sup>45</sup> S/PV.4245, pp. 2-6.

<sup>46</sup> *Ibid.*, pp. 15-16.

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

<sup>48</sup> *Ibid.*, pp. 27-28.

Agreement on Bosnia and Herzegovina". Statements were made by all members of the Council and the representatives of Bosnia and Herzegovina, Croatia, Sweden (on behalf of the European Union<sup>49</sup>) and the Federal Republic of Yugoslavia. The President (Ukraine)<sup>50</sup> drew the attention of the members of the Council to two letters, dated 26 February and 8 March 2001, respectively, from the representative of Sweden addressed to the Secretary-General,<sup>51</sup> transmitting a statement by the Presidency on behalf of the European Union concerning the formation of a new Council of Ministers in Bosnia and Herzegovina, as well as a statement by the Presidency on behalf of the European Union on the conclusions of the Croat National Congress of Bosnia and Herzegovina, condemning its recent moves to place itself outside the provisions of the Dayton-Paris Agreement.

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

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

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

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

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

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

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

<sup>50</sup> Ukraine was represented by its Foreign Minister.

<sup>51</sup> S/2001/181 and S/2001/212.

<sup>52</sup> S/PV.4303, pp. 2-5.

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

<sup>54</sup> *Ibid.*, p. 22.

<sup>55</sup> Ukraine was represented by its Foreign Minister.

<sup>56</sup> S/PRST/2001/11.

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

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

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

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

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

At its 4330th meeting, on 15 June 2001, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 7 June 2001.<sup>57</sup> In his report, the Secretary-General, *inter alia*, reported that UNMIBH continued to make measurable progress in the implementation of its mandate and towards its goal of completing the core mandate by December 2002. He therefore recommended to the Security Council an extension of the mandate of UNMIBH at an authorized strength of 1,850 police officers for a further 12-month period.

At the meeting, the Council heard a statement by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council, as well as by the representatives of Bosnia and Herzegovina, Sweden (on behalf of the European Union<sup>58</sup>) and the Federal Republic of Yugoslavia.

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

could take over the economic and social harmonization.<sup>59</sup>

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

At its 4333rd meeting, on 21 June 2001, the Council again included in its agenda the report of the Secretary-General of 7 June 2001.<sup>57</sup> The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. A draft resolution<sup>63</sup> was then put to the vote and adopted unanimously and without a debate as resolution 1357 (2001), by which the Council, acting under Chapter VII of the Charter with regard to sections I and II of the resolution, *inter alia*:

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

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

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

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

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

<sup>59</sup> S/PV.4330, pp. 2-7.

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

<sup>61</sup> *Ibid.*, pp. 21-22.

<sup>62</sup> *Ibid.*, pp. 23-25.

<sup>63</sup> S/2001/610.

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

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

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

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

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

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

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

<sup>64</sup> S/2001/868.

Belgium (on behalf of the European Union<sup>65</sup>) and Bosnia and Herzegovina.

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

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

At its 4433rd meeting, on 5 December 2001, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 29 November 2001.<sup>71</sup> In his report, the Secretary-General, *inter alia*, informed the Council of progress made by UNMIBH towards the goal of completing its core mandate, including on police reform and restructuring, and the

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

<sup>66</sup> S/PV.4379, pp. 2-8.

<sup>67</sup> *Ibid.*, pp. 8-12.

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

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

<sup>70</sup> S/PV.4379 (Resumption 1), pp. 5-6.

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

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

At the meeting, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, following which statements were made by all members of the Council and the representatives of Belgium (on behalf of the European Union<sup>72</sup>) and Bosnia and Herzegovina.

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

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

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

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

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

<sup>73</sup> S/PV.4433, pp. 2-3.

<sup>74</sup> *Ibid.*, pp. 9-10.

<sup>75</sup> *Ibid.*, p. 15.

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

At the meeting, the Council was addressed by the Secretary-General, the High Representative, the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, and the High Representative for the European Union's Common Foreign and Security Policy, following which statements were made by all members of the Council<sup>77</sup> and the representatives of Bosnia and Herzegovina, Croatia, Spain, Ukraine and the Federal Republic of Yugoslavia. The President drew the attention of the Council to a draft resolution.<sup>78</sup>

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

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

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<sup>76</sup> S/2002/209.

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

<sup>78</sup> S/2002/221.

<sup>79</sup> S/PV.4484, p. 3.

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

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

The High Representative for the European Union's Common Foreign and Security Policy, in his statement, indicated that the European Union police mission would seek to establish sustainable policing arrangements under Bosnia and Herzegovina ownership in accordance with best European and international practice. He stated that the Mission would have a strength of about 480 police officers and 70 civilians, and expected that its goal would be achieved by the end of 2005.<sup>82</sup>

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

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

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

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

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

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

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

At its 4555th meeting, on 19 June 2002, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 5 June 2002.<sup>84</sup> In that report, the Secretary-General observed that UNMIBH was moving rapidly towards the completion of its core tasks, but that the systematic weakness of the rule of law in Bosnia and Herzegovina would require continued monitoring of and assistance to local police, a task that would be taken over by the European Union follow-on mission. In addition, the Secretary-General stressed that the continued presence and support of SFOR would be essential. He therefore recommended the extension of the current mandate of UNMIBH at an authorized strength of 1,600 police officers, to be drawn down after the October general elections to 460 officers, until 31 December 2002.

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

At its 4558th meeting, on 21 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.<sup>84</sup> The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. A draft resolution<sup>86</sup> was then put to the vote and adopted unanimously and without a debate as resolution 1418 (2002), by which the Council, acting under Chapter VII of the Charter, inter alia:

<sup>80</sup> Ibid., pp. 4-7.

<sup>81</sup> Ibid., pp. 7-11.

<sup>82</sup> Ibid., pp. 11-12.

<sup>83</sup> Ibid., pp. 28-30.

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

<sup>85</sup> S/PV.4555, pp. 2-6.

<sup>86</sup> S/2002/680.

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

Decided to remain seized of the matter.

At its 4563rd meeting, on 30 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.<sup>84</sup> Statements were made by the Secretary-General, as well as the representatives of Bulgaria, China, Colombia, France, Ireland, Norway, the Russian Federation, the United Kingdom and the United States. The President (Syrian Arab Republic) drew the attention of the Council to a draft resolution submitted by Bulgaria, France, Germany, Ireland, Italy, Norway, the Russian Federation and the United Kingdom,<sup>87</sup> by which the Council would have extended the mandate of UNMIBH for an additional period terminating on 31 December 2002.

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

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

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

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

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

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<sup>87</sup> S/2002/712.

<sup>88</sup> S/PV.4563, pp. 2-3.

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

<sup>90</sup> S/PV.4563, pp. 3-4.

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

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

At its 4564th meeting, also on 30 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.<sup>95</sup> The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. The President drew the attention of the Council to a draft resolution submitted by France, Ireland, Norway and the United Kingdom.<sup>96</sup> It was put to the vote and adopted unanimously and without debate as resolution

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

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

Decided to remain seized of the matter;

At the 4566th meeting, on 3 July 2002, a draft resolution<sup>97</sup> was put to the vote and adopted unanimously and without debate as resolution 1421 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

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

Decided to remain seized of the matter.

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

At the 4568th meeting, held on 10 July 2002 in response to the request contained in the above-mentioned letter, statements were made by all members of the Council and the representatives of Argentina, Bosnia and Herzegovina, Brazil, Canada, Costa Rica (on behalf of the Rio Group), Cuba, Denmark (on behalf of the European Union<sup>99</sup>), Fiji, Germany, India, the Islamic Republic of Iran, Jordan, Liechtenstein, Malaysia, Mongolia, New Zealand, Samoa, Sierra Leone, South Africa, Thailand, Ukraine, Venezuela and the Federal Republic of Yugoslavia, as well as the Permanent Observer of Switzerland.<sup>100</sup>

<sup>91</sup> *Ibid.*, p. 4.

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

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

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

<sup>95</sup> S/2002/618.

<sup>96</sup> S/2002/716.

<sup>97</sup> S/2002/724.

<sup>98</sup> S/2002/723.

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

<sup>100</sup> The representative of Croatia was invited to participate



At the meeting, the representative of Canada raised concern over the discussion that had been taking place among members of the Council regarding exemptions for peacekeepers from prosecution by the International Criminal Court.<sup>101</sup> He maintained that with regard to the issue at hand, fundamental principles of law were in question, that the Council had not been empowered to rewrite treaties, that the draft resolutions being circulated<sup>102</sup> contained elements that “exceed[ed] the Council’s mandate” and that their adoption would “undermine the credibility of the Council”. In his opinion, the adoption of a resolution on the International Criminal Court under Chapter VII of the Charter, in the absence of a threat to international peace and security, would be *ultra vires*. For those reasons, he held that adoption of the draft resolutions circulating at that time could place Canada and other Member States “in the unprecedented position of having to examine the legality of a Security Council resolution”. In addition, he held that options existed that would preserve the integrity of the international legal system and the Rome Statute of the International Criminal Court, including the withdrawal of United States forces from current peacekeeping missions or the negotiation of bilateral agreements with receiving States.<sup>103</sup>

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

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

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

but did not make a statement.

<sup>101</sup> See footnote 94.

<sup>102</sup> Not issued as documents of the Council.

<sup>103</sup> S/PV.4568, p. 3.

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

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

<sup>106</sup> S/PV.4568, p. 12.

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

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

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

At its 4573rd meeting, on 12 July 2002, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the discussion. A draft resolution<sup>112</sup> was then put to the vote and adopted unanimously and without debate as resolution 1423 (2002), by which the Council, acting under Chapter VII of the Charter with regard to sections I and II of the resolution, authorized the continuation of SFOR for a further period of 12 months and, reaffirming the legal basis of the Charter on which the International Police Task Force was given its mandate in resolution 1035 (1995), in section III of the resolution:

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

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

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

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

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

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

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

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

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

<sup>113</sup> S/2002/1176.

<sup>108</sup> S/PV.4568, pp. 9-10.

<sup>109</sup> Ibid., pp. 13-14.

<sup>110</sup> Ibid., pp. 10-12.

<sup>111</sup> S/PV.4568 (Resumption 1), p. 3.

<sup>112</sup> S/2002/757.

European Union<sup>114</sup>) and the Federal Republic of Yugoslavia.<sup>115</sup>

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

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

At its 4661st meeting, on 12 December 2002, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 2 December 2002.<sup>119</sup> In his final report on UNMIBH, which would complete its mandate on 31 December 2002, the Secretary-General held that, through UNMIBH, the United Nations had demonstrated its ability to

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

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

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

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

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

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

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

<sup>116</sup> S/PV.4631, pp. 2-7.

<sup>117</sup> *Ibid.*, pp. 7-11.

<sup>118</sup> *Ibid.*, pp. 15-17.

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

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

<sup>121</sup> S/PV.4661, pp. 2-3.

<sup>122</sup> *Ibid.*, pp. 3-7.

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

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

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

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

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

At its 4786th meeting, on 11 July 2003, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate. A draft resolution<sup>125</sup> was put to the vote and adopted unanimously and without a debate as resolution 1491 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

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

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

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

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

**Deliberations of 8 October 2003  
(4837th meeting)**

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

At the meeting, the Council heard briefings by the High Representative, as well as by the President of the International Tribunal for the Former Yugoslavia, following which statements were made by all members of the Council, as well as by the representatives of Bosnia and Herzegovina and Italy (on behalf of the European Union<sup>127</sup>).

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

<sup>123</sup> *Ibid.*, pp. 7-10.

<sup>124</sup> S/PRST/2002/33.

<sup>125</sup> S/2003/697.

<sup>126</sup> S/2003/918.

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

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

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

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<sup>128</sup> S/PV.4837, pp. 2-7.

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

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

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

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

<sup>131</sup> *Ibid.*, pp. 9-10.

## B. The situation in Croatia

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

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

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

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

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

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

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

participate,<sup>135</sup> a number of documents were brought to the attention of the Council.<sup>136</sup>

In his reports on UNMOP, the Secretary-General observed, *inter alia*, that in accordance with its mandate UNMOP had continued to monitor the demilitarization of the Prevlaka peninsula and the neighbouring areas in Croatia and the Federal Republic of Yugoslavia and had held regular meetings with the local authorities in order to strengthen liaison, reduce tensions, improve safety and security and promote confidence between the parties. In 2000, the absence of major conflict in the region and the change of government in both Croatia and the Federal Republic of Yugoslavia had created more favourable conditions for progress on the Prevlaka issue. A process of consultation between the two sides had led to the formation in December 2001 of a joint Interstate Diplomatic Commission tasked with resolving the outstanding border disputes between the two States. During 2002, the Commission and its constituent subcommissions had met continually in an effort to develop a common agenda for resolving the Prevlaka

dispute. The Secretary-General, in his report dated 28 June 2002, considered that given the progress made by the parties towards resolving the dispute, once the parties agreed upon a transitional border-crossing regime UNMOP would be able to withdraw. However, in order to maintain a favourable condition for the negotiations, he recommended to the Council a three-month extension of the Mission.<sup>137</sup> In April 2002, the two sides had been able to report in a joint letter to the President of the Security Council that they had been negotiating, in good faith and in an atmosphere of mutual confidence and respect, a comprehensive cross-border regime which “would eventually contribute to the successful ending of the United Nations Mission of Observers in Prevlaka”.<sup>138</sup> In his report dated 2 October 2002, the Secretary-General recommended a two-month extension of the mandate of UNMOP, with the Mission preparing for its withdrawal thereafter, to be completed by 31 December 2002.<sup>139</sup>

By the resolutions adopted,<sup>140</sup> the Council, *inter alia*, authorized the United Nations military observers to continue monitoring the demilitarization of the Prevlaka peninsula, urged the parties to abide by their mutual commitments and implement fully the Agreement on Normalization of Relations and called upon the parties to cease all violations of the demilitarized regime in the United Nations designated zones. Furthermore, by resolution 1424 (2002) of 12 July 2002, the Council expressed its intention to review the duration of the authority of UNMOP if the parties informed the Council that a negotiated agreement had been reached as described in the report of the Secretary-General.<sup>141</sup> By resolution 1437 (2002) of 11 October 2002, in authorizing the last extension of the mandate of UNMOP, until 15 December 2002, the

<sup>135</sup> The representatives of Germany and Italy attended only the 4088th meeting, and the representative of Croatia attended all meetings except the 4170th meeting. No statements were made.

<sup>136</sup> Letter dated 10 January 2000 from Croatia transmitting its position on the security issue of the Prevlaka peninsula (S/2000/8); letter dated 24 December 1999 from the Federal Republic of Yugoslavia transmitting a report to the Secretary-General on the situation of negotiations with Croatia in connection with the resolution of the disputed issue of Prevlaka (S/1999/1278); letter dated 22 December 2000 from the Federal Republic of Yugoslavia concerning the mandate of UNMOP (S/2000/1235); letter dated 5 January 2001 from Croatia indicating its readiness to resolve the Prevlaka issue with the new Government of the Federal Republic of Yugoslavia and agreeing to a single six-month extension of the mandate of UNMOP (S/2001/13); letter dated 3 July 2001 from the Federal Republic of Yugoslavia concerning the extension of the mandate of UNMOP (S/2001/668); letter dated 9 July 2001 from Croatia concerning the extension of the mandate of UNMOP and welcoming the constructive approach of the new Government in Belgrade to the resolution to the issue of Prevlaka (S/2001/680); letter dated 28 December 2001 from the Federal Republic of Yugoslavia concerning the extension of the mandate of UNMOP (S/2001/130); and letter dated 7 January 2002 from Croatia concerning the extension of the mandate of UNMOP (S/2002/29).

<sup>137</sup> S/2002/713, para. 13.

<sup>138</sup> S/2002/1341, para. 9, citing a letter dated 10 April 2002 from the representatives of Croatia and the Federal Republic of Yugoslavia reporting, pursuant to resolution 1387 (2002), on the progress of the two countries on talks on the Prevlaka issue, and stating that the Interstate Diplomatic Commission had initiated the Protocol on the Principles for Identification — Delimitation and Drafting of the State Border Agreement, which was due to be signed at the next meeting, in Belgrade on 23 April 2002 (S/2002/368).

<sup>139</sup> S/2002/1101, para. 13.

<sup>140</sup> See footnote 133.

<sup>141</sup> S/2002/713, section V.

Council requested the Secretary-General to prepare for the termination of the mandate of UNMOP.

**Decision of 12 December 2002 (4662nd meeting): statement by the President**

At its 4662nd meeting, on 12 December 2002, in which the representative of Croatia was invited to participate, the Council included in its agenda the report of the Secretary-General on UNMOP.<sup>142</sup> In his report, the Secretary-General, *inter alia*, welcomed the protocol signed by Croatia and the Federal Republic of Yugoslavia on 10 December 2002, concerning interim regime along the southern border between the two States. He noted that the parties had advanced sufficiently in their bilateral relations so that an international monitoring mechanism was no longer required. The Secretary-General observed that by contributing to isolating Prevlaka from the surrounding conflicts and tensions throughout a turbulent decade in the Balkans, UNMOP had demonstrated that even a small United Nations presence, properly conceived and executed, could make a difference.

At the meeting, the President (Colombia) drew the attention of the Council to a letter dated 10 December 2002 from the representatives of Croatia and the Federal Republic of Yugoslavia to the President

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<sup>142</sup> S/2002/1341.

of the Security Council;<sup>143</sup> the Council then heard a briefing by the Under-Secretary-General for Peacekeeping Operations on the basis of the above-mentioned report of the Secretary-General.

In his briefing, the Under-Secretary-General stated that the signing of the Protocol had been a significant step forward on the way to the full normalization of relations between Croatia and the Federal Republic of Yugoslavia, and had paved the way for a smooth and orderly handover of the responsibilities of UNMOP to the local authorities.

The President then made a statement on behalf of the Council,<sup>144</sup> by which the Council, *inter alia*:

Welcomed the protocol signed by the Government of Croatia and the Government of the Federal Republic of Yugoslavia on 10 December 2002 establishing a provisional cross-border regime on the Prevlaka peninsula;

Welcomed the commitment of both Governments to continue negotiations on Prevlaka with a view to amicably resolving all outstanding issues, and commended their diplomatic efforts to bolster peace and stability in the region;

Commended the important role played by the UNMOP in helping to create conditions conducive to a negotiated settlement of the dispute.

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<sup>143</sup> S/2002/1348, transmitting the Protocol between the Governments of Croatia and the Federal Republic of Yugoslavia on the Interim Regime along the Southern Border between the two States signed on 10 December 2002.

<sup>144</sup> S/PRST/2002/34.

### **C. Items relating to the former Yugoslav Republic of Macedonia**

**Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council**

**Initial proceedings**

**Decision of 7 March 2001 (4290th meeting): statement by the President**

By a letter dated 4 March 2001 addressed to the President of the Security Council,<sup>145</sup> the representative of the former Yugoslav Republic of Macedonia, referring to an incident on the border with the Federal Republic of Yugoslavia in which three soldiers of the national army of his Government had been killed, requested an urgent meeting of the Council at which the Minister for Foreign Affairs of the former Yugoslav Republic of Macedonia would present an action plan of his Government on measures for the cessation of violence and stabilization “on the border with the Federal Republic of Yugoslavia (Kosovo section)” and for the prevention of a spillover of violence into his country.

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<sup>145</sup> S/2001/191.

At its 4289th meeting, held on 7 March 2001 in response to the request contained in the above-mentioned letter, the Council included in its agenda, without objection, the item entitled “Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)”. In addition to members of the Council,<sup>146</sup> statements were made by the representatives of Albania, Bulgaria, Croatia, the Federal Republic of Yugoslavia, Greece, Slovenia and Sweden (on behalf of the European Union<sup>147</sup>).

At the meeting, the Council heard a briefing by the Minister for Foreign Affairs of the former Yugoslav Republic of his country. He informed the Council that the “disturbing developments” on the northern border of the former Yugoslav Republic of Macedonia, in addition to affecting the national inter-ethnic relations, had also threatened the peace, security and stability of his country and the entire region. He explained that as a result of that situation, his Government had adopted an action plan to implement preventive measures, with a continued measured security response, against a spillover of the conflict from both sides of the border. The plan called for the “full observance” of resolution 1244 (1999) and the strengthening of cooperation between the Kosovo Force and the national army of the former Yugoslav Republic of Macedonia.<sup>148</sup>

All speakers acknowledged the gravity of the current situation in the former Yugoslav Republic of Macedonia and expressed their condemnation of the violence. Furthermore, most speakers applauded the measured response by the Government of the former Yugoslav Republic of Macedonia to the violence and expressed support for the continuation of the efforts of the Government to ensure the rule of law within its territory. Recognition was also extended by speakers to the important roles of the United Nations, NATO, OSCE and the European Union in assisting the Government of the former Yugoslav Republic of Macedonia.

<sup>146</sup> The representative of Bangladesh did not make a statement.

<sup>147</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>148</sup> S/PV.4289, pp. 2-4.

The representative of the Russian Federation noted that it was time for the “international community to draw lessons from the sad experience of aiding and abetting separatist elements of the Albanian extremists”.<sup>149</sup>

The representative of the Federal Republic of Yugoslavia stated that his country was “faced with the same problems” on its territory and referred to an incident whereby “Albanian terrorists” had been responsible for an attack on a Yugoslav army vehicle which had resulted in the killing of two national soldiers.<sup>150</sup>

At the 4290th meeting, on 7 March 2001, the President (Ukraine) made a statement on behalf of the Council,<sup>151</sup> by which the Council, inter alia:

Strongly condemned recent violence by ethnic Albanian armed extremists in the north of the former Yugoslav Republic of Macedonia, in particular the killing of three soldiers of the armed forces of the former Yugoslav Republic of Macedonia in the area of Tanusevci;

Regretted that the violence continued and called for an immediate end to it;

Underlined the responsibility of the Government of the former Yugoslav Republic of Macedonia for the rule of law in its territory;

Supported actions by the Government of the former Yugoslav Republic of Macedonia to address the violence with an appropriate level of restraint and to preserve the political stability of the country and foster harmony between all ethnic components of the population;

Recalled the need to respect the sovereignty and territorial integrity of the former Yugoslav Republic of Macedonia.

**Decision of 21 March 2001 (4301st meeting):  
resolution 1345 (2001)**

At the 4301st meeting, on 21 March 2001, the President (Ukraine) drew the attention of the Council to a draft resolution;<sup>152</sup> it was put to the vote and adopted unanimously and without debate as resolution 1345 (2001), by which the Council, inter alia:

Strongly condemned extremist violence, including terrorist activities, in certain parts of the former Yugoslav Republic of Macedonia and certain municipalities in southern Serbia;

<sup>149</sup> Ibid., p. 5.

<sup>150</sup> Ibid., p. 15.

<sup>151</sup> S/PRST/2001/7.

<sup>152</sup> S/2001/256.



Demanded that all those who are currently engaged in armed action against the authorities of those States immediately cease all such action, lay down their weapons and return to their homes; called on Kosovo Albanian political leaders, and leaders of the ethnic Albanian communities in the former Yugoslav Republic of Macedonia, southern Serbia and elsewhere, publicly to condemn violence and ethnic intolerance;

Welcomed the efforts of the Kosovo Force to implement resolution 1244 (1999);

Called on States and appropriate international organizations to give practical help to strengthen democratic, multi-ethnic societies;

Decided to monitor developments on the ground carefully and remain actively seized of the matter.

### **The situation in the former Yugoslav Republic of Macedonia**

#### **Decision of 13 August 2001 (4356th meeting): statement by the President**

At the 4356th meeting, on 13 August 2001, the President (Colombia) made a statement on behalf of the Council.<sup>153</sup> by which the Council, inter alia:

Welcomed the signing of the Framework Agreement on the former Yugoslav Republic of Macedonia and called for its full and immediate implementation;

Reaffirmed the sovereignty and territorial integrity of the former Yugoslav Republic of Macedonia and called for the full implementation of Council resolution 1345 (2001);

Condemned the ongoing violence by extremists and called on all parties to respect the ceasefire;

Supported the actions of the President and Government of the former Yugoslav Republic of Macedonia aimed at resolving the crisis;

Welcomed the efforts of the international community and called on them to assist the former Yugoslav Republic of Macedonia in the implement often of the Framework Agreement.

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<sup>153</sup> S/PRST/2001/20.

#### **Decision of 26 September 2001 (4381st meeting): resolution 1371 (2001)**

At the 4381st meeting, on 26 September 2001, the President (France) drew the attention of the Council to a letter dated 21 September 2001 from the representative of the former Yugoslav Republic of Macedonia addressed to the President of the Council.<sup>154</sup>

The President then drew the attention of the Council to a draft resolution;<sup>155</sup> it was put to the vote and adopted unanimously and without debate as resolution 1371 (2001), by which the Council, inter alia:

Reaffirmed its commitment to the sovereignty and territorial integrity of the former Yugoslav Republic of Macedonia and other States of the region;

Called for the full implementation of resolution 1345 (2001);

Supported the full and timely implementation of the Framework Agreement, rejected the use of violence in pursuit of political aims and stressed that only peaceful political solutions can assure a stable and democratic future for the former Yugoslav Republic of Macedonia;

Demanded that all concerned ensure the safety of international personnel in the former Yugoslav Republic of Macedonia;

Welcomed the efforts of the United Nations Interim Administration Mission in Kosovo and the international security presence to implement fully resolution 1244 (1999).

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<sup>154</sup> S/2001/897, transmitting a letter dated 17 September 2001 from the representative of the former Yugoslav Republic of Macedonia to the Chairman-in-Office of OSCE regarding a further enhancement of the OSCE spillover monitor mission to Skopje; and a letter dated 18 September 2001 from the President of the former Yugoslav Republic of Macedonia to the Secretary General of NATO concerning a light NATO presence in the country to provide additional security for the international monitors.

<sup>155</sup> S/2001/902.

## D. Items relating to Kosovo<sup>156</sup>

### Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)

#### Deliberations of 11 May to 16 November 2000 (4138th, 4153rd, 4171st, 4190th, 4200th and 4225th meetings)

At its 4138th meeting,<sup>157</sup> on 11 May 2000, the Security Council included in its agenda the report of the Security Council mission on the implementation of resolution 1244 (1999),<sup>158</sup> which was dispatched to Kosovo from 27 to 29 April 2000. In the report, the mission observed, *inter alia*, that while progress had been made with regard to the implementation of resolution 1244 (1999), inadequate physical, social and economic security had remained a major concern. Furthermore, it was stressed that lack of freedom of movement, access to education, health care, social services and employment hampered the return of the internally displaced, primarily Kosovo Serbs and Kosovo Roma.

At the meeting, following the presentation of the report by the head of the mission (Bangladesh),<sup>159</sup> all members of the Council concurred with the findings of the report.

The representative of China recalled that resolution 1244 (1999) reaffirmed the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. He added that the presence of the United Nations in Kosovo was by no means for the purpose of helping the local people gain independence.<sup>160</sup>

The representative of the Russian Federation expressed concern over the implementation of the

provisions of resolution 1244 (1999) that were connected with the respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, and in that regard noted that all activities of the United Nations Interim Administration Mission in Kosovo (UNMIK) had to correspond to that provision of the resolution to ensure the functioning of Kosovo with substantial autonomy within the Federal Republic of Yugoslavia. The representative also made reference to the problem of the return of agreed contingents of the Yugoslav military and police to Kosovo as stipulated in paragraph 4 of resolution 1244 (1999), which had not yet been resolved.<sup>161</sup>

At its 4153rd meeting, on 9 June 2000, the Council included in its agenda the report of the Secretary-General on UNMIK dated 6 June 2000.<sup>162</sup> In his report, the Secretary-General observed, *inter alia*, that UNMIK, working closely with the Kosovo Force (KFOR), had consolidated the central and municipal structures through which the people of Kosovo participated in the interim administration of the province. With the participation of both ethnic Albanian and non-Albanian communities in Kosovo, the composition of those structures had become more reflective of the population in the province, while the overall security situation, despite some improvements, remained fragile. The Secretary-General pointed out that the harassment and intimidation of non-Albanian communities continued at unacceptable levels, and made reference to the tremendous complexity faced in building coexistence and tolerance.

At the meeting, in which the representative of Albania, Portugal and Spain were invited to participate, the President (France) drew the attention of the Council to several documents.<sup>163</sup> The Council was then

<sup>156</sup> In this Supplement, the term "Kosovo" is used as the short form for "Kosovo, Federal Republic of Yugoslavia" and "Kosovo, State Union of Serbia and Montenegro", without prejudice to issues of status.

<sup>157</sup> At its 4102nd and 4108th meetings, held in private on 16 February and 6 March 2000, the Council heard a briefing by the Assistant Secretary-General, the Special Representative of the Secretary-General and the head of the international security presence in Kosovo.

<sup>158</sup> S/2000/363.

<sup>159</sup> S/PV.4138, pp. 2-5.

<sup>160</sup> *Ibid.*, p. 23.

<sup>161</sup> *Ibid.*, p. 8.

<sup>162</sup> S/2000/538, submitted pursuant to resolution 1244 (1999).

<sup>163</sup> Letters from the representative of the Federal Republic of Yugoslavia, calling for the full implementation of resolution 1244 (1999) notably with regard to the security situation of the non-Albanian community (S/2000/491, S/2000/497, S/2000/508, S/2000/525, S/2000/526, S/2000/527, S/2000/553 and S/2000/547); letter dated 8 June 2000 from the representative of the former Yugoslav Republic of Macedonia, concerning two incidents which occurred at the border of the former

briefed by the Special Representative of the Secretary-General and Head of UNMIK, marking one year after the adoption of resolution 1244 (1999). In his briefing, the Special Representative noted that although progress had been made since the inception of UNMIK in June 1999 with regard to, *inter alia*, the return of Kosovo Albanian refugees, demilitarization and the establishment of an interim administration, a great deal remained to be done in the fields of rule of law and protection of minority rights. He stressed that the ambiguities in resolution 1244 (1999), concerning the interim status of Kosovo, demanded explanation with regard to the wording of “substantial autonomy”.<sup>164</sup>

Most speakers expressed concern over the continued fragile security situation described in the report of the Secretary-General and called upon relevant actors to ensure the implementation of resolution 1244 (1999). Some speakers also argued that UNMIK and KFOR should ensure that their actions be in full conformity with resolution 1244 (1999).<sup>165</sup>

The representative of China asserted that despite the clear provisions of resolution 1244 (1999) with regard to the status of Kosovo, some of the administrative measures adopted in Kosovo impaired the sovereignty of the Federal Republic of Yugoslavia, which created a false impression that Kosovo was moving towards independence. Furthermore, he emphasized that any attempt to lead Kosovo to independence was dangerous and illegal.<sup>166</sup>

The representative of Ukraine opined that the only foreseeable way to settle the issue of the future status of Kosovo would be by agreement reached between the Federal Republic of Yugoslavia and the Kosovo Albanians through talks under international auspices. The representative noted that other scenarios might undermine the fragile atmosphere of peace in the whole region, as well as the role of the Council itself.<sup>167</sup>

At its 4171st and 4190th meetings, held on 13 July and 24 August 2000, the Council was briefed by the Assistant Secretary-General for Peacekeeping Operations on the status of implementation of

resolution 1244 (1999). Those briefings included, *inter alia*, security updates of the situation on the ground and the status of preparations for the upcoming municipal elections, the first to be held since the inception of UNMIK in 1999.<sup>168</sup> At both meetings, statements were made by almost all members of the Council.<sup>169</sup>

Most speakers welcomed the holding of the upcoming elections, although the representative of the Russian Federation cautioned that such elections might provoke a new crisis that would constitute a threat to regional stability and security. In that regard, the representative reiterated that in violating resolution 1244 (1999), the Special Representative had “*de facto* arrogated to himself the exclusive rights to run Kosovo” without consulting the Security Council and without any cooperation from the authorities of the Federal Republic of Yugoslavia.<sup>170</sup>

At its 4200th meeting, on 27 September 2000, the Council had before it the report of the Secretary-General on UNMIK dated 18 September 2000.<sup>171</sup> In his report, the Secretary-General observed, *inter alia*, that UNMIK had continued its preparations for the scheduled municipal elections on 28 October 2000. Regarding the situation of the minority communities in Kosovo, UNMIK remained deeply concerned at the violence against non-Albanian ethnic groups, in particular Kosovo Serbs and Kosovo Roma. However, the Mission welcomed recent signs that members of the minority communities of Kosovo had begun to return to the province, and expressed its continued efforts to encourage the return process.

At the meeting, the Council heard a briefing by the Special Representative of the Secretary-General, following which all members of the Council made statements. In his briefing, the Special Representative reported on progress achieved by the Mission since its inception in June 1999, which included the establishment of the Joint Administrative Structure in December 1999, the Kosovo Transitional Council, with the representation of all communities, and the Interim Administrative Council. With regard to the work of the Mission’s four pillars: the UNHCR pillar had

Yugoslav Republic of Macedonia with Kosovo, on 2 April and 5 June 2000 (S/2000/552).

<sup>164</sup> S/PV.4153, pp. 2-9.

<sup>165</sup> *Ibid.*, p. 16 (Russian Federation); and p. 25 (Ukraine).

<sup>166</sup> *Ibid.*, p. 12.

<sup>167</sup> *Ibid.*, p. 25.

<sup>168</sup> S/PV.4171, pp. 2-7; and S/PV.4190, pp. 2-5.

<sup>169</sup> The representative of Mali did not make a statement at the 4171st meeting.

<sup>170</sup> S/PV.4190, p. 8.

<sup>171</sup> S/2000/878, submitted pursuant to resolution 1244 (1999).

facilitated the return of one million refugees to Kosovo; the United Nations pillar had established a functioning civil administration in all areas of public life in Kosovo; the OSCE pillar had been instrumental in developing the media sector and commencing the establishment of a Kosovo police service; and the European Union pillar had helped to lay the foundation for a functioning market economy. The preparations for the elections to be held on 28 October 2000 had been ongoing over the past 14 months, and the Special Representative noted that all the elements were in place for the elections to be held in a successful manner. Noting that the Kosovo Serb community had decided not to participate in the elections, the Special Representative stressed that the Mission remained determined to foster coexistence and thus lay the foundations for eventual reconciliation. He stated that the first democratic elections were a very important step towards that process.<sup>172</sup>

At the meeting, although most speakers expressed their support and encouragement to the electoral process, the representatives of the Russian Federation and China both asserted that the requisite conditions for holding municipal elections were lacking, as such elections needed thorough preparation and to be conducted in a climate of freedom and peace.<sup>173</sup>

At its 4225th meeting, on 16 November 2000, the Council heard a briefing by the Special Representative of the Secretary-General. In addition to most members of the Council,<sup>174</sup> the representatives of Albania, Austria<sup>175</sup> and the Federal Republic of Yugoslavia made statements. In his briefing, the Special Representative described the municipal elections held on 28 October 2000 as a technical success. With regard to the tasks in the aftermath of the elections, he emphasized the urgent need to (1) define “substantial autonomy”; (2) develop institutions of self-government as laid down by resolution 1244 (1999); and (3) organize general elections throughout Kosovo.<sup>176</sup>

Most speakers expressed their support and welcomed the achievements of the municipal elections held on 28 October 2000. At the same time, most

speakers expressed regret regarding the non-participation in the elections of the Kosovo Serb community and concurred with the steps taken by the Special Representative to ensure that representatives of that community and other minorities would be able to participate in the local municipal administration. Many speakers stressed that the next challenge was to implement the results of the municipal elections and urged the leaders and people of Kosovo to continue to cooperate with UNMIK in that regard.

Regarding the elections, the representative of the United States pointed out that contrary to the predictions of many, including some in the Council, the elections had not been plagued by violence.<sup>177</sup> The representative of the Russian Federation did not share the positive assessment of the Special Representative with regard to the elections, highlighting that the Kosovo Albanian political leaders who had participated had conducted the campaign around the question of the independence of Kosovo. He also noted that controlling and halting the tendencies towards the secession of Kosovo should be a priority of UNMIK. He stressed that the future status of Kosovo needed to be resolved by the launching of a dialogue between the authorities of the Federal Republic of Yugoslavia and Kosovo leaders and not by violating resolution 1244 (1999).<sup>178</sup> The representative of China commented that his delegation took note of the fact that the Government of the Federal Republic of Yugoslavia had deemed the election result null and void. Noting that the non-Albanian communities in Kosovo did not have effective participation in the elections due to the lack of security guarantees as members of ethnic groups, his delegation expected UNMIK to implement measures to ensure their representation. Furthermore, echoing the view of the Russian Federation that the elections had been regarded locally as a symbol of Kosovo moving towards independence, the representative of China stressed that, if the tendency towards the independence of Kosovo continued to grow, it would be in contravention of resolution 1244 (1999). He noted that the Council should pay attention to such a tendency towards the independence of Kosovo and to the consequences it could have on the situation in the Balkans.<sup>179</sup>

<sup>172</sup> S/PV.4200, pp. 2-5.

<sup>173</sup> *Ibid.*, p. 10 (Russian Federation); and p. 12 (China).

<sup>174</sup> The representative of the Netherlands did not make a statement.

<sup>175</sup> In the capacity of Chairman-in-Office of OSCE.

<sup>176</sup> S/PV.4225, pp. 2-8.

<sup>177</sup> *Ibid.*, p. 8.

<sup>178</sup> *Ibid.*, p. 12.

<sup>179</sup> *Ibid.*, pp. 14-15.

The representative of the Federal Republic of Yugoslavia reaffirmed that the new Government of his country fully subscribed to resolution 1244 (1999), considering it “the main and only basis for a just and lasting solution” and stressed the importance of proceeding urgently towards its full implementation, while ensuring the active participation of his Government in that process. He listed a number of priorities in that regard, including the conclusion of an agreement on the status of the international presences in Kosovo and Metohija and the return of a limited contingent of the army of Yugoslavia and police to those provinces. While it was premature to address the issue of political negotiations on the final status of Kosovo and Metohija, he stated that his Government was willing, bearing in mind the importance it placed on its sovereignty and territorial integrity, to work towards achieving substantial autonomy for Kosovo and Metohija, within the context of resolution 1244 (1999).<sup>180</sup>

At the same meeting, drawing attention to another matter, the representative of the Russian Federation stated that in view of new circumstances the lifting of the arms embargo imposed on the Federal Republic of Yugoslavia by resolution 1160 (1998) was a long overdue step since the demands of that resolution had already been met.<sup>181</sup>

**Decision of 22 November 2000  
(4232nd meeting): statement by the President**

At the 4232nd meeting, on 22 November 2000, in which the representative of the Federal Republic of Yugoslavia was invited to participate, the President (Netherlands) made a statement on behalf of the Council,<sup>182</sup> by which the Council, *inter alia*:

Expressed its shock at, and strongly condemned, the attack perpetrated on the home of the head of the liaison committee of the Federal Republic of Yugoslavia in Pristina on 22 November 2000, as well as on Serbian policemen in the south of Serbia on 21 November 2000;

Called for an immediate and full investigation to bring the perpetrators to justice;

Called on KFOR and UNMIK to continue to make all necessary efforts to prevent further attacks;

Demanded that all those concerned refrain from acts of violence and cooperate with KFOR and UNMIK.

**Decision of 19 December 2000 (4250th meeting):  
statement by the President**

At its 4249th meeting, on 19 December 2000, the Council included in its agenda the report of the Secretary-General on UNMIK dated 15 December 2000.<sup>183</sup> In his report, the Secretary-General observed, *inter alia*, that significant progress had been made with regard to successful municipal elections on 28 October 2000, despite the non-participation of the Kosovo Serb community, and the establishment of provisional municipal assemblies. UNMIK had continued its efforts to consolidate and further strengthen the existing joint interim administrative structures. The Secretary-General reported that recent changes in the Government of the Federal Republic of Yugoslavia had provided not only renewed hope for the people of the Republic, but also a new opportunity for UNMIK to improve its consultations with Federal authorities, and to engage in a constructive dialogue on issues of mutual concern. With regard to the interim administration, UNMIK had expressed the belief that the international community must actively pursue the process of defining substantial autonomy with the population of Kosovo sharing more and more responsibility in the administration of the province. In that regard, it was noted that UNMIK would work closely with Member States and representatives of the local population to formulate such a framework in accordance with resolution 1244 (1999). The Secretary-General denoted concern over the lack of returns of Kosovo Serbs and cooperation between the Kosovo Serbs and the Mission. The continuing conflict in the Presevo Valley in southern Serbia proper had served to destabilize the region and undermine relations between Kosovo and the Federal authorities, and had posed a serious threat to both the local population and to community relations inside Kosovo.

At that meeting, at which all members of the Council and the Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia made statements, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations in line with the above-mentioned report of the Secretary-General.

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<sup>180</sup> *Ibid.*, pp. 23-24.

<sup>181</sup> *Ibid.*, pp. 12-13.

<sup>182</sup> S/PRST/2000/35.

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<sup>183</sup> S/2000/1196, submitted pursuant to resolution 1244 (1999).

Most speakers expressed grave concern over the recent events in the Presevo Valley and maintained that the events posed a serious threat to regional stabilization. Noting the measures taken by UNMIK and KFOR to curb the violence, speakers urged the relevant Kosovo Albanians to engage in political dialogue.

The representative of the Russian Federation stressed that the Security Council and the Secretary-General needed to ensure tighter control over the activities of UNMIK as resolution 1244 (1999) was being implemented partially and unsatisfactorily. He noted the imperative need to immediately establish constructive cooperation among UNMIK, KFOR and the authorities of the Federal Republic of Yugoslavia on all matters connected with the implementation of resolution 1244 (1999), including ensuring conditions for the return of the internally displaced and refugees and preparing for a timetable and conditions for the return to Kosovo of the Federal Republic of Yugoslavia military and Serbian police personnel.<sup>184</sup>

At its 4250th meeting, on 19 December 2000, the Council had before it the report of the Secretary-General on UNMIK.<sup>185</sup> The President (Russian Federation) made a statement on behalf of the Council,<sup>186</sup> by which the Council, *inter alia*:

Called for the dissolution of Albanian extremist groups; and called for the withdrawal from the area, in particular from the ground safety zone, of non-residents engaged in violent activities;

Welcomed the commitment of Yugoslav authorities to work towards a peaceful settlement;

Welcomed specific measures taken by KFOR to address the problem, including increased surveillance of the border, confiscation of weapons and the disruption of identified and illegal activity within Kosovo in the vicinity of the eastern administrative boundary;

Welcomed the dialogue between KFOR and the Yugoslav and Serbian authorities.

#### **Deliberations of 18 January and 13 February 2001 (4258th and 4277th meetings)**

At its 4258th meeting, on 18 January 2001, the Council heard a briefing on developments in the

<sup>184</sup> S/PV.4249, p. 18.

<sup>185</sup> S/2000/1196, submitted pursuant to resolution 1244 (1999).

<sup>186</sup> S/PRST/2000/40.

implementation of resolution 1244 (1999) by the Under-Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the representatives of the Federal Republic of Yugoslavia and Sweden (on behalf of the European Union<sup>187</sup>).

In his briefing, the Under-Secretary-General noted that with regard to minority communities in Kosovo, Kosovo Serbs and their property had continued to be the targets of violent incidents, including arson and grenade attacks. With regard to the situation in southern Serbia, he observed that the security environment in the Presevo Valley had remained tense although the risks of major conflict appeared to have diminished. The Under-Secretary-General also elaborated on developments within the political and administrative structures of Kosovo and progress achieved in civil matters.<sup>188</sup> Most speakers expressed concern with regard to security in and around Kosovo, including the Presevo Valley, and focused their remarks on the subjects of elections, the need for reconciliation among the Kosovo ethnic communities, the judiciary, political prisoners, refugee return, missing persons and detainees and economic recovery.

The representative of Norway called on UNMIK and KFOR to make every possible effort to prevent activities which could destabilize the situation in the region and adversely affect developments inside Kosovo.<sup>189</sup>

In his statement, the representative of the Federal Republic of Yugoslavia highlighted the major security problems in the ground safety zone, stemming from the incursions of “terrorists,” and, recalling the presidential statement of 19 December 2000,<sup>190</sup> called on the Council, UNMIK and KFOR to take even more active and robust measures to overcome the situation.<sup>191</sup>

On the subject of Kosovo-wide elections, the representative of the Russian Federation noted that his

<sup>187</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>188</sup> S/PV.4258, pp. 2-6.

<sup>189</sup> *Ibid.*, p. 17.

<sup>190</sup> S/PRST/2000/40.

<sup>191</sup> S/PV.4258, p. 25.

delegation believed that the timing of such elections should be determined by assessing how they would help to achieve a comprehensive settlement in Kosovo.<sup>192</sup> A few speakers shared the view of the Special Representative that the legal framework for elections should be settled before the elections were held.<sup>193</sup> The representative of China warned that such elections could have serious negative effects and stressed that resolution 1244 (1999) was very clear on the final status of Kosovo.<sup>194</sup>

At the same meeting, the representative of the United States argued that Kosovo would never be peaceful and stable until its status was resolved. He underlined that resolution 1244 (1999) clearly stated that all options remained on the table, and set forth a process without dictating a solution. Within that context, he stressed that the terms of any eventual settlement must be mutually acceptable to both sides, and backed by the international community, as no other approach would result in a stable, long-term solution.<sup>195</sup>

At its 4277th meeting, on 13 February 2001, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. In addition to most members of the Council,<sup>196</sup> statements were made by the representatives of the Federal Republic of Yugoslavia and Sweden (on behalf of the European Union<sup>197</sup>).

In his briefing, the Under-Secretary-General noted that, while the situation in the Presevo Valley, where training activities had been observed, remained worrying, UNMIK and KFOR had continued to play a key role in monitoring the Kosovo side of the administrative boundary.<sup>198</sup>

Most speakers condemned the ongoing violence in southern Serbia and other areas within Kosovo, and recalled the presidential statement of 19 December 2000.<sup>199</sup> Echoed by other members, the representative

of Norway held that the tense situation in southern Serbia threatened to become the next focal point of conflict in the Balkans and urged that the crisis be addressed immediately.<sup>200</sup>

The representative of the Federal Republic of Yugoslavia stated that the situation in Kosovo and Metohija was unsatisfactory and that not enough had been done to implement the key provisions of resolution 1244 (1999). He maintained that attempts at solving it hastily and inadequately through the holding of “so-called Kosovo-wide elections” would only exacerbate the situation, and underlined the need for elections to be prepared in cooperation with the authorities of the Federal Republic of Yugoslavia.<sup>201</sup>

The representative of the United States expressed the hope that Kosovo-wide elections would be held as soon as possible in 2001.<sup>202</sup>

At the meeting, several speakers stressed that, prior to the proposed Kosovo-wide elections, the following steps needed to be taken: clearly define the nature and functions of the provisional institutions of self-government; fully implement the results of the municipal elections held in 2000; and complete voter registration so that all ethnic groups would be properly represented in the next elections.<sup>203</sup> The representative of Norway cautioned that premature or ill-prepared elections risked undermining the stability the Council sought to bolster.<sup>204</sup> Underlining the need for Belgrade to participate fully in preparations for the elections, the representative of the Russian Federation questioned the appropriateness of attempts to speed up the date for holding elections without first providing the necessary conditions for the return of approximately 200,000 refugees and displaced persons. Echoed by the representative of Ukraine,<sup>205</sup> he held that there should be greater clarity in defining the concept of autonomy for Kosovo within the Federal Republic of Yugoslavia and consolidation of the legal framework for provisional self-government prior to elections.<sup>206</sup>

<sup>192</sup> Ibid., p. 11.

<sup>193</sup> Ibid., p. 12 (Jamaica); and p. 15 (Ukraine).

<sup>194</sup> Ibid., p. 20.

<sup>195</sup> Ibid., pp. 8-9.

<sup>196</sup> The representative of Mali did not make a statement.

<sup>197</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>198</sup> S/PV.4277, p. 4.

<sup>199</sup> S/PRST/2000/40.

<sup>200</sup> S/PV.4277, p. 16.

<sup>201</sup> Ibid., p. 21.

<sup>202</sup> Ibid., p. 11.

<sup>203</sup> Ibid., p. 5 (France); pp. 13-14 (China); p. 14 (Ireland); p. 16 (Norway); and p. 19 (Sweden).

<sup>204</sup> Ibid., p. 16.

<sup>205</sup> Ibid., p. 12.

<sup>206</sup> Ibid., pp. 6-7.

**Decision of 16 March 2001 (4298th meeting):  
statement by the President**

At its 4296th and 4298th meetings,<sup>207</sup> on 16 March 2001, the Council included in its agenda the report of the Secretary-General on UNMIK dated 13 March 2001.<sup>208</sup> In his report, the Secretary-General observed, *inter alia*, that despite the political, security and economic challenges facing the Mission, there had been considerable progress in the implementation of the mandate of UNMIK. As the emergency phase was largely over, emphasis was focused on capacity-building in which the groundwork for elaborating a legal framework for provisional institutions of self-government had been laid and consultations had begun with representatives from the communities within Kosovo. The Secretary-General noted that the reluctance of many of the leaders of Kosovo to espouse fully the principles upon which self-autonomy was predicated had undermined the progress made by the international community. In that context, he underlined that the political leadership in Kosovo had to finally decide, and demonstrate that it was ready to take on the responsibility of self-government for a tolerant and all-inclusive democratic society and a well-regulated market economy.

At the 4296th meeting, in addition to all members of the Council, statements were made by the representatives of Albania, Bulgaria, the Federal Republic of Yugoslavia, Sweden (on behalf of the European Union<sup>209</sup>), the former Yugoslav Republic of Macedonia and Turkey.

The Special Representative briefed the Council on the status of UNMIK and the challenges ahead regarding the implementation of resolution 1244 (1999). He recalled that on assuming office he had outlined the following road map for the work of UNMIK: drawing up a legal framework for substantial autonomy that would lead to Kosovo-wide elections; strengthening the law enforcement and criminal justice system of Kosovo; creating the preconditions for self-

sustained economic growth; and engaging the authorities of the Federal Republic of Yugoslavia in cooperation on issues of common concern. On regional security issues, the Special Representative noted that the developments in the Presevo Valley, while not falling under his remit, had a direct impact on the internal stability and on the political process in Kosovo. He underlined that UNMIK strongly supported the international community's intervention and backing for a negotiated political solution that would make it possible to abolish the ground safety zone. He also noted that extremist actions in the former Yugoslav Republic of Macedonia had been destabilizing the situation in the region. While noting that it was an internal problem, he underlined the importance of KFOR and UNMIK supporting the Government of the former Yugoslav Republic of Macedonia in solving the immediate problems including sealing off the border. In conclusion, the Special Representative noted that a precondition for an improved security environment was the creation of a meaningful provisional self-government through the elaboration of a legal framework, followed in due course by Kosovo-wide elections, and "not the other way round".<sup>210</sup>

Regarding the elections, the representative of the Russian Federation cautioned that "rushing through to elections" before the return of refugees and proper security of all peoples would strengthen the mono-ethnic nature of Kosovo and heighten a nationalist mood in the area. He underlined the importance of UNMIK making it absolutely clear on what "autonomy" within the Federal Republic of Yugoslavia actually meant in accordance with resolution 1244 (1999), and stressed the need for the direct involvement of the Federal Republic of Yugoslavia, not just informing it.<sup>211</sup> The representative of France opined that the elections could be held once the conditions were met and that setting a date *a priori* would be risky.<sup>212</sup> The representative of the Federal Republic of Yugoslavia held the view that prior to holding Kosovo-wide elections certain conditions had to be met, such as the return of all displaced persons, as well as the establishment of a legal framework with

<sup>207</sup> At its 4286th meeting, held in private on 6 March 2001, the Council had a constructive discussion with the Prime Minister of the Federal Republic of Yugoslavia.

<sup>208</sup> S/2001/218, submitted pursuant to resolution 1244 (1999).

<sup>209</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>210</sup> S/PV.4296, pp. 3-5.

<sup>211</sup> *Ibid.*, p. 6.

<sup>212</sup> *Ibid.*, p. 9.



a clear delineation of competencies of the elected bodies.<sup>213</sup>

At the 4298th meeting, the President (Ukraine), on the basis of the report of the Secretary-General,<sup>214</sup> made a statement on behalf of the Council,<sup>215</sup> by which the Council, *inter alia*:

Welcomed the establishment of a working group under the authority of the Special Representative of the Secretary-General aimed at developing a legal framework for provisional institutions for democratic and autonomous self-government in Kosovo, and stressed the need for all ethnic groups to be represented in the work of that group;

Called on all parties to support the efforts of UNMIK to build a stable multi-ethnic democratic society in Kosovo and to ensure suitable conditions for Kosovo-wide elections;

Welcomed close contact between the Government of the Federal Republic of Yugoslavia and UNMIK and KFOR;

Called for an end to all acts of violence in Kosovo, in particular those which were ethnically motivated, and urged all political leaders in Kosovo to condemn those acts and to increase their efforts to create inter-ethnic tolerance;

Remained concerned about the security situation in certain municipalities in southern Serbia as a result of the violent actions of ethnic Albanian armed groups;

Welcomed the ceasefire agreements signed on 12 March 2001 and called for strict compliance with their provisions;

Welcomed the decision taken by NATO to authorize the commander of KFOR to allow the controlled return of forces of the Federal Republic of Yugoslavia to the ground safety zone.

#### **Deliberations of 9 April, 19 June and 22 June 2001 (4309th, 4331st and 4335th meetings)**

At its 4309th meeting, on 9 April 2001, the Council was briefed on developments in the implementation of resolution 1244 (1999) by the Under-Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the representatives of the Federal Republic of Yugoslavia and Sweden (on behalf of the European Union<sup>216</sup>).

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<sup>213</sup> *Ibid.*, pp. 31-32.

<sup>214</sup> S/2001/218.

<sup>215</sup> S/PRST/2001/8.

<sup>216</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

In his briefing, the Under-Secretary-General noted that intensive work by the Joint Working Group had continued on the development of a legal framework. He noted that during a meeting of the Special Representative with the President of Serbia, Vojislav Koštunica, the President had confirmed his support for Kosovo Serb participation in the Working Group, if it was backed up by expert support. The Under-Secretary-General observed that, based on the progress that had been made, elections would be possible before the end of the year, and said that every effort was being made to ensure full participation of Kosovo Serb and other ethnic minorities. Noting that progress had been made at the local level with the establishment of democratically functioning municipal assemblies, the Under-Secretary-General noted that concern remained with regard to the apparent politicization of municipal civil administration. He informed the Council that, in an effort to prioritize law and order, work continued on realigning the police and judicial institutions into a single new UNMIK pillar. On relations with the Government of the Federal Republic of Yugoslavia, he pointed to several positive developments in relations between UNMIK and Belgrade, including the opening of the UNMIK Belgrade office.<sup>217</sup>

Most speakers reiterated their support for the four priority areas identified by the Special Representative, and welcomed the progress that had been achieved. Most speakers also highlighted the need for the drafting of the legal framework and the electoral process to be conducted with the full participation of all communities, and in that regard, welcomed the support that the President of Serbia had pledged. Many speakers appealed to UNMIK and KFOR to step up their efforts to curb violence and extremism in Kosovo.

A few speakers stressed that the necessary security conditions should be in place to ensure the participation of all ethnic communities in Kosovo.<sup>218</sup> Regarding the arms embargo to Kosovo, several speakers called for stricter implementation of resolution 1160 (1998).<sup>219</sup>

The representative of Tunisia opined that the Council should give prompt thought to the exit strategy

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<sup>217</sup> S/PV.4309, pp. 2-5.

<sup>218</sup> *Ibid.*, p. 7 (Russian Federation); and p. 16 (Norway).

<sup>219</sup> *Ibid.*, p. 8 (Russian Federation); p. 14 (Jamaica); p. 16 (Colombia); and p. 20 (Mali).

of UNMIK given the complexity of the situation in the region as a whole.<sup>220</sup> In the light of that statement, the representative of Singapore expressed uncertainty as to whether, in terms of the end goal of getting Kosovo off the agenda of Council, the Council was moving forward or backwards.<sup>221</sup>

At its 4331st meeting, on 19 June 2001, at which no statements were made, the Council included in its agenda the report of the Security Council mission to Kosovo, conducted from 16 to 18 June 2001.<sup>222</sup> The representative of the Federal Republic of Yugoslavia was invited to participate in the meeting. In his capacity as head of the mission of the Council, the President (Bangladesh) presented the report. The findings of the mission included the recognition that the status quo in Kosovo was unacceptable and that a political process had to be taken forward in accordance with resolution 1244 (1999).

At its 4335th meeting, on 22 June 2001, the Council included in its agenda the above-mentioned report of the Security Council mission and the report of the Secretary-General on UNMIK dated 7 June 2001.<sup>223</sup> In his report, the Secretary-General observed, *inter alia*, that UNMIK had continued to make steady progress in the implementation of its mandate notably through the elaboration of the Constitutional Framework for provisional self-government, which would form the basis of Kosovo-wide elections on 17 November 2001. The Secretary-General underlined that the Constitutional Framework represented a balanced elaboration of the concept of “substantial autonomy” envisaged in resolution 1244 (1999). However, he noted that the success of the Provisional Government depended on the participation of all communities. The tense security situation punctuated by outbursts of violence against Kosovo minority communities had remained the single most important threat to the attainment of the international community’s goals.

At that meeting, the Council was briefed by the Under-Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the representatives of Albania, the

Federal Republic of Yugoslavia and Sweden (on behalf of the European Union<sup>224</sup>).

In his briefing, the Under-Secretary-General focused on the main interrelated challenges that faced Kosovo, including issues related to security, return of refugees and internally displaced persons, confidence-building measures and the holding of Kosovo-wide elections later that year. He noted that UNMIK would focus on the creation of confidence-building measures Kosovo wide. On returns of the internally displaced and refugees, he stated that the process should be conducted in secure and sustainable conditions. He looked to the Government of the Federal Republic of Yugoslavia to support UNMIK in its endeavours, through, *inter alia*, encouraging the Kosovo Serb community to participate in elections and take their rightful place in the provisional government. The Under-Secretary-General noted that in its report the Council mission concurred with the views expressed by the report of the Secretary-General.<sup>225</sup>

Most speakers noted the need for substantial progress in the security situation to ensure the return of refugees and internally displaced persons and the participation in the political process of Kosovo Serbs, strongly condemned violence and extremism and repeated their willingness to support all those who favoured moderation. Commending the initiatives of UNMIK in the area of law and order, including the establishment of a new pillar and the recent promulgation of three pertinent regulations, speakers endorsed the intention of UNMIK to create the new post of Deputy Special Representative of the Secretary-General to lead the pillar, as well as the need to recruit additional international judges and prosecutors. Warmly welcoming improved relations between UNMIK and Belgrade and urging that they continue to develop, most speakers commended the invitation of Belgrade to Kosovo Serbs to register for the forthcoming elections, and encouraged further cooperation with the Government of the Federal Republic of Yugoslavia on all issues concerning the implementation of resolution 1244 (1999).

<sup>220</sup> *Ibid.*, p. 10.

<sup>221</sup> *Ibid.*, p. 14.

<sup>222</sup> S/2001/600.

<sup>223</sup> S/2001/565, submitted pursuant to resolution 1244 (1999).

<sup>224</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>225</sup> S/PV.4335, pp. 2-5.

Although most speakers endorsed the political strategy of UNMIK regarding the promulgation of the Constitutional Framework and the forthcoming elections, the representative of the Russian Federation was critical of the fact that the Constitutional Framework contained no reference to the need for full compliance with resolution 1244 (1999), including its basic provision of respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.<sup>226</sup> The representative of Singapore noted that the political status of Kosovo was clear in resolution 1244 (1999), which should not be allowed to create further divisions in Kosovo, with all their adverse regional implications.<sup>227</sup>

At its 4350th and 4359th meetings, held on 26 July and 28 August 2001, the Council heard briefings on developments in the implementation of resolution 1244 (1999) from the Under-Secretary-General for Peacekeeping Operations. In addition to almost all members of the Council,<sup>228</sup> statements were made by the representatives of Belgium (on behalf of the European Union<sup>229</sup>), the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia.

In his briefings, the Under-Secretary-General elaborated on, *inter alia*, developments *vis-à-vis* preparations for Kosovo-wide elections and the handover to the provisional institutions of self-government, and efforts to engage the minority communities, improve the situation of law and order and implement confidence-building measures. He cautioned that the Kosovo Serb community had not yet participated in voter registration in any great numbers, and expressed hope that clear persistent signals from Belgrade for Kosovo Serbs to register would help to reverse that trend.<sup>230</sup>

Most speakers expressed disappointment at the low level of registration among the non-Albanian Kosovo population for the scheduled elections and reiterated the need for the total participation of all

communities. They welcomed the support of the Serb authorities in encouraging Kosovo Serbs to register, and called for their unequivocal and sustained support in the run-up to the elections.

Concerning the arms embargo in the Federal Republic of Yugoslavia, the representative of the United States noted the full support of his Government for its lifting as discussed with the Government of the Federal Republic of Yugoslavia during the visit of the Council in June.<sup>231</sup> In support of the statement by the United States, the representative of the Russian Federation, echoed by the representative of the former Yugoslav Republic of Macedonia, reaffirmed their position in favour of lifting the arms embargo.<sup>232</sup>

### **Security Council resolution 1160 (1998) of 31 March 1998**

#### **Decision of 10 September 2001 (4366th meeting): resolution 1367 (2001)**

At the 4366th meeting, on 10 September 2001, in which the representative of the Federal Republic of Yugoslavia was invited to participate, the President (France) drew the attention of the Council to a letter dated 6 September 2001 from the Secretary-General.<sup>233</sup> The President then drew the attention of the Council to a draft resolution;<sup>234</sup> it was put to vote and adopted unanimously and without debate as resolution 1367 (2001), by which the Council, *inter alia*:

Decided to terminate the prohibitions established by paragraph 8 of resolution 1160 (1998);

Decided further to dissolve the Committee established by paragraph 9 of resolution 1160 (1998).

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<sup>226</sup> *Ibid.*, p. 6.

<sup>227</sup> *Ibid.*, p. 7.

<sup>228</sup> The representative of Tunisia did not make a statement at the 4350th meeting.

<sup>229</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>230</sup> S/PV.4350, pp. 2-5; and S/PV.4359, pp. 2-5.

<sup>231</sup> S/PV.4359, p. 6.

<sup>232</sup> *Ibid.*, p. 8 (Russian Federation); and p. 23 (the former Yugoslav Republic of Macedonia).

<sup>233</sup> S/2001/849, in which he stated that the new authorities of the Federal Republic of Yugoslavia were cooperating constructively with the international community in efforts to bring peace and stability to the region, expressed the belief that the Federal Republic of Yugoslavia had complied with the provisions of resolution 1160 (1998) and suggested that the Security Council reconsider the prohibitions imposed by paragraph 8 of that resolution.

<sup>234</sup> S/2001/854.

**Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)**

**Decision of 5 October 2001 (4388th meeting): statement by the President**

At its 4387th meeting,<sup>235,236</sup> on 5 October 2001, the Council included in its agenda the report of the Secretary-General on UNMIK.<sup>237</sup> In his report, the Secretary-General observed, *inter alia*, that UNMIK had continued to work intensively on preparations for the Kosovo-wide elections to be held on 17 November 2001, on implementation of the Constitutional Framework for Provisional Self-Government and on building public administration capacities in order to prepare for the transfer of authority that would bring substantial autonomy to the people of Kosovo as laid down in resolution 1244 (1999). Despite some difficulties, the Mission had made significant strides in strengthening security and law and order through the establishment of the police and justice pillar. However, continued inter-ethnic and criminal activity had remained a major concern.

At that meeting, the Council was briefed by the Special Representative of the Secretary-General on the basis of the above-mentioned report. In addition to all members of the Council, statements were made by the representatives of Albania, Belgium (on behalf of the European Union<sup>238</sup>) and the Federal Republic of Yugoslavia.

<sup>235</sup> For more information on the discussion at this meeting, see chap. I, part V, case 6, with regard to special cases concerning the application of rules 27-36 of the provisional rules of procedure.

<sup>236</sup> At its 4373rd meeting, held in private on 17 September 2001, the Council considered the item entitled "Briefing by His Excellency Nebojša Čović, Deputy Prime Minister of Serbia, Federal Republic of Yugoslavia". At that meeting, the Council had a constructive interactive discussion with the Deputy Prime Minister of Serbia, Federal Republic of Yugoslavia, and the Special Representative of the Secretary-General and Head of the United Nations Interim Administration Mission in Kosovo.

<sup>237</sup> S/2001/926 and Add.1, submitted pursuant to resolution 1244 (1999).

<sup>238</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

At its 4388th meeting, on 5 October 2001, the Council included in its agenda the above-mentioned report of the Secretary-General.<sup>237</sup> The representative of the Federal Republic of Yugoslavia was invited to attend the meeting. The President (Ireland), then made a statement on behalf of the Council,<sup>239</sup> by which the Council, *inter alia*:

Welcomed the elections to be held on 17 November 2001 as a basis for the establishment of democratic self-governing institutions as specified in the Constitutional Framework for Provisional Self-Government, under which the people of Kosovo would enjoy substantial autonomy in accordance with resolution 1244 (1999);

Emphasized the responsibility of the elected leaders of Kosovo to respect fully the final status provisions of resolution 1244 (1999);

Supported the continuing efforts by UNMIK and KFOR to improve public security;

Called on Kosovo Albanian leaders to actively support these efforts to promote security and return, and to combat extremism, including terrorist activities;

Stressed the need for proper organization and adequate security for the elections on 17 November, and welcomed continuing steps taken in that regard;

Called on all women and men of Kosovo to vote in the elections of 17 November;

Commended the authorities of the Federal Republic of Yugoslavia for their encouragement to the Kosovo Serb community to register, which confirmed the multi-ethnic character of Kosovo, and called on them to also actively encourage the fullest possible participation in the vote;

Underlined the importance, for the Kosovo Serb community, to integrate into the structures set up by UNMIK;

Encouraged the further development of a constructive dialogue between UNMIK and the authorities of the Federal Republic of Yugoslavia.

**Decision of 9 November 2001 (4409th meeting): statement by the President**

At the 4409th meeting, on 9 November 2001, in which the representative of the Federal Republic of Yugoslavia was invited to participate, the President (Jamaica) drew the attention of the Council to a letter dated 6 November 2001 from the representative of the Federal Republic of Yugoslavia to the Secretary-

<sup>239</sup> S/PRST/2001/27.

General.<sup>240</sup> She then made a statement on behalf of the Council,<sup>241</sup> by which the Council, *inter alia*:

Called upon all women and men of Kosovo to vote;

Welcomed the signing on 5 November 2001 of the UNMIK-Federal Republic of Yugoslavia Common Document by the Special Representative of the Secretary-General and the Special Representative of the President of the Federal Republic of Yugoslavia and the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Serbia;

Emphasized the responsibility of the provisional institutions of self-government and all concerned to respect fully the final status provisions of resolution 1244 (1999).

**Decision of 13 February 2002 (4473rd meeting):  
statement by the President**

At its 4430th and 4454th meetings, on 27 November 2001 and 21 January 2002, the Council heard briefings on developments in the implementation of resolution 1244 (1999) by the Assistant Secretary-General and the Under-Secretary-General for Peacekeeping Operations, respectively. In addition to all members of the Council, statements were also made by the representatives of Belgium (on behalf of the European Union), the Federal Republic of Yugoslavia, Spain and Ukraine.<sup>242</sup> At its 4454th meeting, the Council included in its agenda the report of the Secretary-General on UNMIK dated 15 January 2002.<sup>243</sup> In his report, the Secretary-General observed that the election of the Kosovo Assembly, held on 17 November 2001, was generally considered a great success. Once the provisional institutions of self-government were established, UNMIK would commence with the transfer of competencies, while retaining those reserved to the Special Representative.<sup>244</sup> The Secretary-General noted that on 5 November 2002 his Special Representative and the

Deputy Prime Minister of Serbia had signed a Common Document which, first, provided the authorities of Belgrade with a list of measures that UNMIK had already taken, or was taking, to assist the Kosovo Serb community, so as to make it easier to encourage Kosovo Serb participation in the election; and, secondly, provided a solid basis for a cooperative relationship with the authorities of the Federal Republic of Yugoslavia. The Common Document reiterated the basic principles of resolution 1244 (1999) and outlined in detail a number of areas of mutual interest and common concern such as: swift progress on returns; integration of Kosovo Serbs into the provisional institutions; establishment of a multi-ethnic and unbiased justice system. One of the key provisions of the Common Document was the establishment of a high-ranking working group as the official forum for dialogue and cooperation between UNMIK and the provisional institutions on the one hand, and the Belgrade authorities on the other. The Secretary-General stated that whatever the final determination of the status of Kosovo would be, the relationship between Pristina and Belgrade would be crucial for the future well-being of the region.

In their briefings, the Assistant Secretary-General and the Under-Secretary-General for Peacekeeping Operations updated the Council on the results of the general elections held on 17 November 2001, and discussed the establishment of a provisional government which would involve, *inter alia*, setting up ministries, establishing a functioning local civil service and providing services for the incoming Assembly, including security for certain Assembly members.<sup>245</sup>

Most speakers expressed satisfaction with the relatively orderly and peaceful conduct of the elections, along with the widely representative turnout of voters. However, the representative of Singapore drew attention to the relatively low participation by the Serbian community (46 per cent), stressing that more attention needed to be placed on providing security to that part of the community.<sup>246</sup>

Furthermore, the representative of Singapore expressed the need to start addressing the issue of defining an exit strategy, in line with the note by the President on this subject.<sup>247</sup> He cited the Council's

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<sup>240</sup> S/2001/1051, transmitting a letter from the President of the Former Republic of Yugoslavia on the common document signed by the Federal Republic of Yugoslavia and UNMIK regarding the implementation of resolution 1244 (1999) and the elections to be held in Kosovo on 17 November 2001.

<sup>241</sup> S/PRST/2001/34.

<sup>242</sup> The representative of Belgium made a statement only at the 4430th meeting, and the representatives of Spain and Ukraine made statements at the 4454th meeting.

<sup>243</sup> S/2002/62, submitted pursuant to resolution 1244 (1999).

<sup>244</sup> See S/2002/62, para.15, for an overview of the reserved competencies.

<sup>245</sup> S/PV.4430, pp. 2-4; and S/PV.4454, pp. 2-3.

<sup>246</sup> S/PV.4430, p. 7.

<sup>247</sup> S/2001/905.

decision, in resolution 1244 (1999), that UNMIK should facilitate the “political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords” and asked when the international meeting called for in those accords might be convened.<sup>248</sup>

The representative of the Russian Federation expressed support with the widely held view among countries involved in the settlement process that the process of defining the final status of Kosovo should be frozen for some time to come.<sup>249</sup>

The representative of the Federal Republic of Yugoslavia asserted that resolution 1244 (1999), which guaranteed the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, “continued to be the sole basis for the consideration of the future status of Kosovo and Metohija”.<sup>250</sup>

At the 4473rd meeting,<sup>251</sup> on 13 February 2002, the President (Mexico) made a statement on behalf of the Council,<sup>252</sup> by which the Council, *inter alia*:

Noted the progress made in the implementation of resolution 1244 (1999) and the Constitutional Framework for Provisional Self-Government, including the inauguration of the Kosovo Assembly following the elections on 17 November 2001 in Kosovo;

Called upon the elected representatives of Kosovo to resolve the deadlock over the formation of executive structures of the provisional self-governing institutions and to allow the functioning of those institutions, in accordance with the Constitutional Framework and the outcome of the elections, which expressed the will of the voters;

Supported the development of cooperation between UNMIK, the elected representatives of Kosovo and the authorities in the Federal Republic of Yugoslavia, and stated that such cooperation was vital in implementing resolution 1244 (1999);

Reaffirmed the fundamental importance of the rule of law in the political development of Kosovo and condemned any attempt to undermine it;

Supported all efforts of UNMIK, together with KFOR and the Kosovo Police Service, to combat all kinds of crime, violence and extremism.

<sup>248</sup> S/PV.4430, pp. 7-8.

<sup>249</sup> S/PV.4454, p. 16.

<sup>250</sup> S/PV.4430, p. 19.

<sup>251</sup> The representative of the Federal Republic of Yugoslavia was invited to participate but did not make a statement.

<sup>252</sup> S/PRST/2002/4.

**Decision of 24 April 2002 (4519th meeting):  
statement by the President**

At its 4498th meeting,<sup>253</sup> on 27 March 2002, the Council heard a briefing on recent developments in Kosovo by the Assistant Secretary-General for Peacekeeping Operations, following which all members of the Council, the representative of Spain (on behalf of the European Union<sup>254</sup>) and the Deputy Prime Minister of the Federal Republic of Yugoslavia made statements.

In his briefing, the Assistant Secretary-General noted that efforts by UNMIK to engage the Kosovo Serbs in the Government had continued. On the issue of returns, he reported that UNMIK had been planning returns to 25 different locations throughout Kosovo, with confidence-building measures aimed at promoting reconciliation and a climate conducive to returns already under way. Despite the continuation of attacks on minority communities, the overall security situation had improved in Kosovo.<sup>255</sup>

The Deputy Prime Minister of the Federal Republic of Yugoslavia stressed the urgency of creating a truly multi-ethnic society. Pointing to the positive steps taken by the Government of the Federal Republic of Yugoslavia to that end, he urged the Council and the wider international community to assist in the effort and warned of the consequences should extremist groups prevail.<sup>256</sup>

On the issue of the final status of Kosovo, the representative of the Russian Federation maintained that until multi-ethnic coexistence had been established in the province, it would be counter-productive and politically dangerous to begin considering that issue. Noting that many matters were in need of urgent resolution, he proposed, with the support of several speakers, that the Council should undertake a

<sup>253</sup> At the 4475th meeting, held in private on 25 February 2002, the Council, the Minister for Foreign Affairs of the former Yugoslav Republic of Macedonia, the representatives of the Federal Republic of Yugoslavia, Spain (on behalf of the European Union and associated States) and the Assistant Secretary-General for Peacekeeping Operations had a constructive discussion.

<sup>254</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey aligned themselves with the statement.

<sup>255</sup> S/PV.4498, pp. 2-6.

<sup>256</sup> *Ibid.*, pp. 6-8.

comprehensive survey on the implementation of resolution 1244 (1999), with the participation of the Special Representative.<sup>257</sup>

Pointing out that the issue of Kosovo had been discussed by the Council more regularly than any other issue, the representative of Singapore suggested the need for a more focused approach with regard to the achievements and failures of the Council's work in Kosovo in order to avoid assessments by other parties. He emphasized that, as UNMIK had an unusual mandate in perpetuity when every other peacekeeping operation had very specific time frames, the regular review of the activities of UNMIK was of necessity to the Council. Within that context, the representative expressed the hope that the Council would also address the final resolution of the future status of Kosovo in accordance with resolution 1244 (1999), in which it called on UNMIK to facilitate "a political process designed to determine the future status of Kosovo, taking into account the Rambouillet accords". Drawing attention to the fact that the Rambouillet accords called for a formulated mechanism for a final settlement for Kosovo three years after its signature on 18 March 1999, he proposed that the Security Council address the issue of that time frame which had expired on 18 March 2002.<sup>258</sup>

At its 4518th meeting, on 24 April 2002, the Council included in its agenda the report of the Secretary-General dated 22 April 2002.<sup>259</sup> In his report, the Secretary-General observed, *inter alia*, that the formation of the Government was an important step forward in the implementation of one of the core tasks of resolution 1244 (1999). He encouraged the Kosovo Serb political entity to participate in the Government and work for the improvement of the Kosovo Serb community from within. The Secretary-General, highlighting the need for a political roadmap for both UNMIK and the provisional institutions of self-government, reported that he had requested his Special Representative to develop benchmarks against which progress could be measured in the critical areas of the rule of law, functioning democratic institutions, the economy, freedom of movement, the return of

internally displaced persons and refugees and contributions to regional stability.

At that meeting, the Council was briefed by the Special Representative of the Secretary-General. In addition to all members of the Council, statements were made by the representatives of Albania, the Federal Republic of Yugoslavia, Spain (on behalf of the European Union<sup>260</sup>) and Ukraine.

In his briefing, the Special Representative observed that UNMIK had been entering into a new phase. He underlined the need to transfer authority within Kosovo to the provisional government, and to convince Kosovans to look beyond Kosovo to Belgrade and the region. To accomplish those goals, the Special Representative outlined a set of priorities, stressing the need to: consolidate reliable and multi-ethnic institutions; boost the economy through job creation and privatization; further strengthen the rule of law; and focus on an integrated effort to facilitate return. On the transfer of responsibilities from UNMIK to the provisional institutions, he observed that the following benchmarks should be achieved before launching a discussion on the issue of status: existence of effective, representative and functioning institutions; enforcement of the rule of law; freedom of movement; respect for the right of all Kosovans to remain and return; development of a sound basis for a market economy; clarity of property titles; normalized dialogue with Belgrade; and reduction and transformation of the Kosovo Protection Corps in line with its mandate.<sup>261</sup>

Most speakers offered their support for the Special Representative's mission priorities and commended his efforts to develop the benchmarks requested by the Secretary-General.<sup>262</sup>

While cautioning against an early withdrawal of UNMIK, the representative of Singapore opined that the failure of the Council to address the final status question contributed to the unstable situation in Kosovo and hindered efforts at reconciliation.<sup>263</sup>

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<sup>257</sup> *Ibid.*, p. 12 (Russian Federation); p. 15 (Singapore); p. 16 (Cameroon); p. 16 (Syrian Arab Republic); p. 19 (Colombia); and p. 21 (Mexico).

<sup>258</sup> *Ibid.*, pp. 14-15.

<sup>259</sup> S/2002/436.

<sup>260</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey also aligned themselves with the statement.

<sup>261</sup> S/PV.4518, pp. 2-4.

<sup>262</sup> S/2002/436, para. 54.

<sup>263</sup> S/PV.4518, p. 14.

The representative of the Russian Federation warned that the necessary conditions for the beginning of the political process were not currently in place. Thus any kind of hasty action could only destabilize the situation in Kosovo and in the region.<sup>264</sup> The representative of Albania declared that any old ideas of creating a greater Serbia, a greater Croatia or a greater Albania belonged to history and that no one should reactivate them.<sup>265</sup>

At its 4519th meeting, on 24 April 2002, the Council included in its agenda the above-mentioned report of the Secretary-General.<sup>266</sup> The President (Russian Federation) made a statement on behalf of the Council,<sup>267</sup> by which the Council, *inter alia*:

Welcomed progress made in the formation of the executive bodies of the provisional institutions of self-government in Kosovo, to include representatives of all communities;

Called upon the leaders of the provisional institutions of self-government actively to demonstrate their commitment and support efforts to promote security, returns, human rights, economic development, and a multi-ethnic and fair society with peaceful coexistence and freedom of movement for all the population of Kosovo;

Welcomed the decision of the Government of the Federal Republic of Yugoslavia to transfer Kosovo Albanian prisoners into the custody of UNMIK.

**Decision of 24 May 2002 (4543rd meeting):  
statement by the President**

At its 4533rd meeting, on 16 May 2002, in which the representative of the Federal Republic of Yugoslavia was invited to participate, the Council was briefed by the Under-Secretary-General for Peacekeeping Operations on developments in Kosovo. No statements were made at the meeting.

In his briefing, the Under-Secretary-General drew the attention of the Council to the draft programme of the Kosovo Government which envisaged the following priorities: consolidation of democratic structures; improvement of education and health care; promotion of economic development; protection of the rights and interests of communities; and regional integration, including meaningful dialogue with the

authorities. He expressed regret that the Kosovo Serbs were not putting forward candidates for the three allotted government posts, which meant that the Kosovo Serbs were still not part of the decision-making process and had not participated in the talks on the government programme.<sup>268</sup>

At the 4543rd meeting,<sup>269</sup> on 24 May 2002, the President (Singapore) made a statement on behalf of the Council,<sup>270</sup> by which the Council, *inter alia*:

Reaffirmed its previous relevant resolutions and statements regarding Kosovo, in particular the statements of its President of 7 March 2001<sup>271</sup> and 9 November 2001;<sup>272</sup>

Called upon the elected leaders of Kosovo to focus their attention on the urgent matters for which they have responsibility, in accordance with resolution 1244 (1999) and the Constitutional Framework;

Reiterated its full support for the Special Representative of the Secretary-General;

Urged Kosovo's leaders to work in close cooperation with UNMIK and KFOR, with a view to promoting a better future for Kosovo and stability in the region.

**Deliberations of 26 June, 30 July and  
5 September 2002 (4559th, 4592nd and  
4605th meetings)**

At its 4559th meeting, on 26 June 2002, the Council was briefed by the Under-Secretary-General for Peacekeeping Operations on recent developments in Kosovo. In addition to all members of the Council, statements were made by the representatives of the Federal Republic of Yugoslavia and Spain (on behalf of the European Union<sup>273</sup>).

In his briefing, the Under-Secretary-General reported on the much welcomed development of the

<sup>268</sup> S/PV.4533, pp. 2-4.

<sup>269</sup> The representatives of the Federal Republic of Yugoslavia, Germany, Italy and the former Yugoslav Republic of Macedonia were invited to attend but made no statements.

<sup>270</sup> S/PRST/2002/16.

<sup>271</sup> S/PRST/2001/7; see section 30.c above.

<sup>272</sup> S/PRST/2001/34.

<sup>273</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>264</sup> *Ibid.*, p. 24.

<sup>265</sup> *Ibid.*, p. 28.

<sup>266</sup> S/2002/436.

<sup>267</sup> S/PRST/2002/11.



completion of the Kosovo Government in which two Kosovo Serb representatives had assumed positions.<sup>274</sup>

Most speakers reiterated their support for the Special Representative's establishment of benchmarks against which progress could be measured in the critical areas of the democratic provisional government of Kosovo.

The representative of the Russian Federation, however, reaffirmed the position of his delegation, and the understanding previously reached with the Special Representative that the benchmarks could in no way be regarded as any sort of road map to independence for Kosovo.<sup>275</sup>

At its 4592nd meeting, on 30 July 2002, the Council included in its agenda the report of the Secretary-General on UNMIK dated 17 July 2002.<sup>276</sup> In his report, the Secretary-General observed, *inter alia*, that the formation of the Government with the participation of the Kosovo Serbs was an important step forward for the provisional institutions of self-government. The scheduled municipal elections would provide an important opportunity to consolidate elected democratic structures. Strengthening the rule of law throughout Kosovo remained a high priority. UNMIK remained committed to achieving sustainable returns in the course of the year and improve living conditions for minority communities.

In addition to all members of the Council, statements were made by the representatives of Albania, Denmark (on behalf of the European Union<sup>277</sup>), the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia and Ukraine.

At that meeting, the Council was briefed by the Special Representative of the Secretary-General, who reported on the progress *vis-à-vis* the benchmarks outlined during his last briefing. He informed the Council that the message of UNMIK was "standards before status", towards which progress had been made. He furthermore noted that the benchmarks allowed for measurement of progress and to eventually decide, when the time was right, to commence the process to

determine the future status of Kosovo, in line with paragraph 11 (e) of resolution 1244 (1999). The Special Representative noted that although he could not say what the future status of Kosovo would be, he could say what it would not be: there would be no partition, no cantonization, and no return to the status *quo ante* of 1999.<sup>278</sup> He proposed to the Council to visit Kosovo in the context of the municipal elections scheduled for 26 October 2002 for a first-hand assessment of the progress made and where work had yet to be achieved.<sup>279</sup>

Most speakers welcomed the positive developments outlined in the Secretary-General's report, and expressed their appreciation and support for the efforts of the Special Representative towards that end. Many speakers expressed concern at the slow pace of internally displaced persons and refugee return, but nevertheless were encouraged by the more favourable climate and by the commitment of UNMIK to achieving sustainable returns in the course of that year.

Regarding the future status of Kosovo, the Deputy Prime Minister of the Federal Republic of Yugoslavia supported the statement of the Special Representative that final status should not be discussed until certain standards were achieved, and noted that politicians should take into account the stability of the region and should reach the decision on the final status only after a truly multi-ethnic society had been established in Kosovo.<sup>280</sup>

At its 4605th meeting, on 5 September 2002, the Council was briefed by the Assistant Secretary-General for Peacekeeping Operations on recent developments in Kosovo. In addition to all members of the Council, statements were made by the representatives of Denmark (on behalf of the European Union<sup>281</sup>), the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia and Ukraine.

In his briefing, the Assistant Secretary-General elaborated on developments in the priority areas of UNMIK, including the building of functioning democratic institutions and preparing for the municipal

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<sup>274</sup> S/PV.4559, pp. 2-5.

<sup>275</sup> *Ibid.*, p. 6.

<sup>276</sup> S/2002/779.

<sup>277</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>278</sup> S/PV.4592, pp. 2-5.

<sup>279</sup> *Ibid.*, p. 29.

<sup>280</sup> *Ibid.*, p. 7.

<sup>281</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey aligned themselves with the statement.

elections. Regarding the return of internally displaced persons, he noted the considerable increase in spontaneous returns, which, in some cases, had led to violence. He stressed that there could not be artificial mass returns and pointed out that the policy of UNMIK was based on the right of individual return in an organized and sustainable manner.<sup>282</sup>

Most speakers noted with satisfaction the positive steps taken by UNMIK in the process of establishing democratic institutions in Kosovo. On the other hand, the representative of the Russian Federation stressed that the local authorities had a long way to go before the Council could seriously speak about the consolidation of the day-to-day workings of the institutions of self-government of Kosovo and about the principle of multi-ethnicity.<sup>283</sup>

The representative of the Russian Federation, echoed by the representatives of the Syrian Arab Republic and Bulgaria,<sup>284</sup> suggested that a visit of the Council to Kosovo and Belgrade after the holding of municipal elections on 26 October 2002 would be timely in order to assess progress made and get to know the situation on the ground as proposed by the Special Representative.<sup>285</sup>

**Decision of 24 October 2002 (4633rd meeting): statement by the President**

At the 4633rd meeting, on 24 October 2002, in which the representative of the Federal Republic of Yugoslavia was invited to participate, the President (Cameroon) made a statement on behalf of the Council,<sup>286</sup> by which the Council, *inter alia*:

Reaffirmed its continued commitment to the full and effective implementation of Council resolution 1244 (1999) in Kosovo, commended the Special Representative of the Secretary-General and the Commander of KFOR for the ongoing efforts to that end, and called upon the provisional institutions of self-government, local leaders and all others concerned to cooperate fully with them;

Welcomed the progress made in preparing the municipal elections on 26 October 2002, and called upon all eligible voters, including those from minority communities, to seize the

chance to have their interests properly represented by taking part in the elections;

Expressed its firm belief that wide participation in the voting was essential to provide the best opportunity for future progress towards the building of a multi-ethnic and tolerant society.

**Deliberations of 6 November and 19 December 2002 (4643rd and 4676th meetings)**

At its 4643rd meeting, on 6 November 2002, the Council included in its agenda the report of the Secretary-General on UNMIK dated 9 October 2002.<sup>287</sup> In his report, the Secretary-General observed, *inter alia*, that although the scheduled elections on 26 October 2002 would be an important step forward in the democratic process, of equal significance was the meaningful participation in the elected bodies at the central and local levels by all communities in Kosovo in order to ensure successful governance. The Secretary-General also emphasized the importance of the rule of law and noted positive development with regard to the Kosovo Police Service.

At that meeting, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the representatives of Denmark (on behalf of the European Union<sup>288</sup>), the Federal Republic of Yugoslavia, Japan and Ukraine.

In his briefing, the Under-Secretary-General observed that the municipal elections held on 26 October were confirmed by the Council of Europe Election Observation Mission as “in line with Council of Europe principles and international standards for democratic elections”. He also noted the low participation of the Kosovo Serb community.<sup>289</sup>

Most speakers concurred with the report of the Secretary-General. The representative of the Russian Federation, echoed by most speakers, underlined the key importance of strengthening constructive cooperation between the UNMIK leadership and Belgrade in order to resolve many ongoing problems in implementing the provisions of resolution 1244

<sup>282</sup> S/PV.4605, pp. 2-6.

<sup>283</sup> *Ibid.*, p. 7.

<sup>284</sup> *Ibid.*, p. 8 (Russian Federation); p. 12 (Syrian Arab Republic); and p. 17 (Bulgaria).

<sup>285</sup> *Ibid.*, p. 8.

<sup>286</sup> S/PRST/2002/29.

<sup>287</sup> S/2002/1126.

<sup>288</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey aligned themselves with the statement.

<sup>289</sup> S/PV.4643, pp. 2-5.

(1999).<sup>290</sup> The representative of Denmark, speaking on behalf of the European Union, asserted that the final status of Kosovo needed to be addressed in due course in line with resolution 1244 (1999).<sup>291</sup>

The representative of Japan raised the issue of Security Council missions, observing that the Council had decided to send a third mission to Kosovo. Although recognizing the importance of such missions, the representative noted that their cost and the criteria for deciding when and where to dispatch them, as well as their composition, be discussed in a transparent manner.<sup>292</sup>

At the 4676th meeting, on 19 December 2002, in which the representative of the Federal Republic of Yugoslavia was invited to participate, no statements were made. The Council included in its agenda the report of the Security Council mission to Kosovo and Belgrade, conducted from 14 to 17 December 2002.<sup>293</sup> Overall, the mission noted the positive developments with regard to the implementation of resolution 1244 (1999), while assessing that the situation in Kosovo remained fragile and much more work was needed to achieve implementation of resolution 1244 (1999). At that meeting, the Council was briefed, on the basis of the above-mentioned report, by the head of the Security Council mission (Norway).<sup>294</sup>

**Decision of 6 February 2003 (4703rd meeting):  
statement by the President**

At its 4702nd meeting, on 6 February 2003, the Council included in its agenda the report of the Secretary-General dated 29 January 2003.<sup>295</sup> In his report, the Secretary-General observed, *inter alia*, that significant achievements were made towards the end of 2002, including the second municipal elections in Kosovo and the beginning of the handover to local control of the electoral process. However, he noted that Kosovo still had considerable length from reaching the individual benchmarks under the principle of “standards before status”. The Secretary-General expressed concern over the violence among the Kosovo

Albanian community as well as the persistent violence against the Kosovo Serb community.

At that meeting, following a briefing by the Special Representative of the Secretary-General, all members of the Council, and the representatives of Greece (on behalf of the European Union<sup>296</sup>), Norway and Serbia and Montenegro made statements.

In his briefing, the Special Representative remarked, *inter alia*, that 2003 would not be the year for finally resolving the status of Kosovo, but that it was time to lay the groundwork for the political process which, in the end, would determine its status.<sup>297</sup>

Most speakers expressed concern about the unilateral statements made and initiatives taken by some in Kosovo and in the region concerning the status of Kosovo in contravention of resolution 1244 (1999). In view of such worrisome developments, most speakers stressed that meeting the standards laid out in the benchmarks was a prerequisite for the question of the final status to be addressed validly, pursuant to resolution 1244 (1999).

The representative of Pakistan expressed the hope that, when the time came for the political process, it would be based on consultations with all concerned, particularly the people of Kosovo, and that it would ensure their fundamental rights, consistent with the Charter of the United Nations.<sup>298</sup>

The representative of Serbia and Montenegro emphasized that international obligations and laws relevant to the Federal Republic of Yugoslavia, including resolution 1244 (1999), continued to apply, under the adoption of the new Constitutional Charter, to Serbia and Montenegro.<sup>299</sup> The representative called for the full implementation of resolution 1244 (1999), including paragraph 9, which outlined the responsibilities of the international security presence to be deployed and acting in Kosovo.<sup>300</sup>

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<sup>290</sup> *Ibid.*, p. 7.

<sup>291</sup> *Ibid.*, p. 20.

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

<sup>293</sup> S/2002/1376.

<sup>294</sup> S/PV.4676, pp. 2-5.

<sup>295</sup> S/2003/113.

<sup>296</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>297</sup> S/PV.4702, p. 5.

<sup>298</sup> *Ibid.*, p. 12.

<sup>299</sup> *Ibid.*, p. 19.

<sup>300</sup> *Ibid.*, p. 20.

At its 4703rd meeting, on 6 February 2003, the Council again included in its agenda the report of the Secretary-General dated 29 January 2003.<sup>301</sup> The President (Germany) made a statement on behalf of the Council,<sup>302</sup> by which the Council, *inter alia*:

Reaffirmed its continued commitment to the full and effective implementation of resolution 1244 (1999);

Further reaffirmed its commitment to the objective of a multi-ethnic and democratic Kosovo, and called upon all communities to work towards that goal and actively participate in the public institutions as well as the decision-making process, and integrate into society;

Encouraged the establishment of direct dialogue between Pristina and Belgrade on issues of practical importance to both sides;

Condemned the violence within the Kosovo Albanian community, as well as the violence against the Kosovo Serb community;

Urged local institutions and leaders to exert influence on the climate for the rule of law by condemning all violence and actively supporting the efforts of the police and the judiciary;

Welcomed the report of the Secretary-General on the activities of UNMIK and recent developments in Kosovo<sup>301</sup> and the briefing of the Special Representative of the Secretary-General on the status of implementation of the benchmarks for Kosovo;

Strongly rejected unilateral initiatives which might jeopardize stability and the normalization process not only in Kosovo but also in the entire region;

Supported the continued efforts of the Special Representative of the Secretary-General, including in such priority areas as revitalizing the economy through investment, combating crime and illegal trafficking, and building a multi-ethnic society, while ensuring conditions for the sustainable return of refugees and internally displaced persons.

#### **Deliberations of 23 April to 30 October 2003 (4742nd, 4770th, 4782nd, 4809th, 4823rd and 4853rd meetings)**

At its 4742nd meeting,<sup>303</sup> on 23 April 2003, the Council included in its agenda the report of the Secretary-General on UNMIK dated 14 April 2003.<sup>304</sup> In his report, the Secretary-General observed, *inter*

*alia*, that the tendency of local Kosovo Albanian leaders and the provisional institutions of self-government to focus on symbols and image and to publicly promote positions contrary to resolution 1244 (1999) was a cause of concern. He welcomed the continuing and accelerating transfer of responsibilities to the provisional institutions and underlined that the transfer process would not affect the authority of UNMIK and KFOR under resolution 1244 (1999) or the powers and responsibilities reserved to the Special Representative. The Secretary-General called for all local leaders to strictly adhere to resolution 1244 (1999) and the Constitutional Framework. Observing that acts of intimidation, threats and violence directed against minorities continued to occur, he called for the leaders and people in Kosovo to put an end to such acts, and work actively on inter-ethnic dialogue and reconciliation. The Secretary-General commended the initiative by his Special Representative to start dialogue on practical matters of mutual concern between Belgrade and Pristina.

At the meeting, at which all members of the Council and the representatives of Albania, Greece (on behalf of the European Union<sup>305</sup>) and Serbia and Montenegro made statements, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, based on the above-mentioned report of the Secretary-General.

Most speakers welcomed the progress made on the transfer of further powers to the provisional institutions for self-government of Kosovo.

The representative of the Russian Federation stressed that the process of handing over authority should in no way subvert the decision of principle regarding the status of the province as that decision should be taken at a later stage, in “strict compliance” with resolution 1244 (1999).<sup>306</sup>

Regarding the final status question, the representative of Pakistan expressed the belief that the resolution of the status question should be the primary

<sup>301</sup> S/2003/113.

<sup>302</sup> S/PRST/2003/1.

<sup>303</sup> For more information on the discussion at this meeting, see chap. XII, part I, sect. A, case 2, with regard to Article 1 (2) of the Charter.

<sup>304</sup> S/2003/421.

<sup>305</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>306</sup> S/PV.4742, p. 11.

focus of the Council's work in all but the most exceptional of cases.<sup>307</sup>

Several speakers argued that solving the status issue, one way or another, in a rushed manner would not solve the underlying problems of Kosovo and the region as a whole as much more needed to be achieved with regards to implementing the standards outlined by the Special Representative.<sup>308</sup>

At its 4770th meeting, on 10 June 2003, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the representatives of Greece (on behalf of the European Union<sup>309</sup>) and Serbia and Montenegro.

In his briefing, the Assistant Secretary-General noted that UNMIK and the provisional institutions had continued their joint efforts to transfer to the provisional institutions the non-reserved responsibilities. At the same time, he observed that much remained to be done in developing provisional democratic self-governing institutions and ensuring conditions for a peaceful and normal life for all the inhabitants of Kosovo. He further noted that political pressure on UNMIK had significantly increased with attempts to challenge its role under resolution 1244 (1999) and the Constitutional Framework.<sup>310</sup>

The representative of France stated that no progress could be achieved in Kosovo on the basis of unilateral action contrary to resolution 1244 (1999) or by flouting the authority of UNMIK and KFOR.<sup>311</sup>

The representative of Bulgaria opined that the final word on the status of Kosovo should be given to the United Nations, in compliance with resolution 1244 (1999).<sup>312</sup>

The representative of Spain viewed with great concern the attitude of the Kosovo Albanian leaders,

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<sup>307</sup> *Ibid.*, p. 7.

<sup>308</sup> *Ibid.*, p. 8 (Germany); and p. 10 (Bulgaria).

<sup>309</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>310</sup> S/PV.4770, pp. 2-5.

<sup>311</sup> *Ibid.*, p. 5.

<sup>312</sup> *Ibid.*, p. 8.

who publicly promoted, on an ongoing basis, positions that ran counter to resolution 1244 (1999).<sup>313</sup>

The representative of Pakistan expressed the hope that progress on the final status issue could begin at an early stage, adding that there could be no exception or special exemptions to the application of the principle of self-determination.<sup>314</sup>

The representative of Germany stated that the question of status would be addressed at the appropriate time and through the appropriate process. He underlined that only the Council had the power to assess the implementation of resolution 1244 (1999), and had the final word in settling the status issue. No unilateral move or arrangements intended to predetermine the status of Kosovo — either for the whole or for parts of Kosovo — could be accepted.<sup>315</sup>

The representative of the Russian Federation advised that the process of the transfer of competencies could in no way be a substitute for a fundamental decision in principle on the status of the region, which must be taken at a later stage and exclusively on the basis of resolution 1244 (1999).<sup>316</sup>

At its 4782nd meeting, on 3 July 2003, the Council included in its agenda the report of the Secretary-General on UNMIK dated 26 June 2003.<sup>317</sup> In his report, the Secretary-General observed, *inter alia*, that although Kosovo had made significant progress in achieving substantial autonomy and self-government, as required under resolution 1244 (1999), major challenges remained. In that regard, the “standards before status” policy remained the guiding principle of UNMIK activities. Concerning the transfer of competencies to the provisional institutions of Kosovo, the Kosovo Assembly continued to show a tendency to go beyond its prescribed institutional role as a legislative body which was clearly beyond the scope of its competencies under the Constitutional Framework. The Secretary-General noted that much work remained to be done on the issue of returns and reintegration. As UNMIK implemented its mandate and steered the political process in accordance with resolution 1244 (1999), it faced increasing and competing political pressures, and unilateral calls from Kosovo Albanians, Kosovo Serbs and Belgrade for

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<sup>313</sup> *Ibid.*, p. 11.

<sup>314</sup> *Ibid.*, p. 13.

<sup>315</sup> *Ibid.*, pp. 13-14.

<sup>316</sup> *Ibid.*, p. 16.

<sup>317</sup> S/2003/675.

mutually exclusive approaches to the future of Kosovo had continued.

At the meeting, at which, in addition to all members of the Council, statements were made by the representatives of Albania, Italy (on behalf of the European Union<sup>318</sup>), Japan and Serbia and Montenegro, the Council heard a briefing by the Special Representative.

In his briefing, the Special Representative outlined the progress of the provisional government of Kosovo towards implementation of the standards. While recognizing that some progress had been achieved, he noted that the political rhetoric on both the Kosovo Albanian and Serbian sides had become more adversarial as both sides were pre-positioning themselves on the future status of Kosovo. In that regard, the Special Representative underlined the need for both sides to foster confidence.<sup>319</sup>

Most speakers expressed their support for the gradual transfer of non-reserved competencies in accordance with resolution 1244 (1999) and recognized that much work remained with regard to the implementation of the benchmarks in conformity with the “standards before status” principle.

By a letter dated 14 August 2003 to the President,<sup>320</sup> the representative of Serbia and Montenegro requested that an urgent meeting of the Council be convened to consider the latest developments in Kosovo and Metohija, especially the alleged terrorist attack in the village of Gorazdevac in the Pec region, which had resulted in the death of two Serb children and injuries to others on 13 August 2003.

At its 4809th meeting, held on 18 August 2003 in response to the request contained in the above-mentioned letter, which was included in the agenda, the Council heard a statement by the Deputy Prime Minister of Serbia and President of the Coordination Centre for Kosovo and Metohija, followed by statements by members of the Council.

The Deputy Prime Minister briefed the Council on the Gorazdevac attack as described in the above-

mentioned letter. He blamed the attack on Albanian “extremists and terrorists”, who sought to drive all Serbs out from Kosovo and Metohija and to discourage the refugees and internally displaced persons from returning. He stated that UNMIK and KFOR had become “hostage” to a determined Albanian minority and urged the international community to take “vigorous and decisive measures” in order to ensure that resolution 1244 (1999) was implemented equitably to all parties and ethnic groups; international law enforcement officials investigated ethnically motivated crimes and brought perpetrators to justice; a thorough disarmament was carried out; a thorough investigation of the crimes committed by individual members of the Kosovo Protection Corps was conducted leading to the abolishment of the Corps; and perpetrators of war crimes were indicted by the International Tribunal for the Former Yugoslavia and extradited to The Hague.<sup>321</sup>

All speakers condemned the Gorazdevac attack and expressed the hope that UNMIK, under the leadership of the new Special Representative, would spare no efforts to arrest the perpetrators and bring them to justice. Speakers reiterated their commitment to a multi-ethnic Kosovo and maintained that ethnically motivated violence could not be allowed to obstruct the reconciliation process, the return of refugees and the upcoming dialogue between Belgrade and Pristina. In that regard, speakers expressed their continued support for the principle of “standards before status”.

Regarding the future status of Kosovo, the representative of Germany noted that all parties must understand that no unilateral act could change the status of Kosovo as laid down in resolution 1244 (1999) and that there could be no debate of the status issue before the benchmarks were met.<sup>322</sup>

At its 4823rd meeting, on 12 September 2003, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, following which, in addition to all members of the Council, statements were made by the representatives of Albania, Italy (on behalf of the European Union<sup>323</sup>) and Serbia and Montenegro.

<sup>318</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>319</sup> S/PV.4782, pp. 3-5.

<sup>320</sup> S/2003/815.

<sup>321</sup> S/PV.4809, pp. 2-5.

<sup>322</sup> *Ibid.*, p. 6.

<sup>323</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

In his briefing, the Assistant Secretary-General noted, *inter alia*, that the previous reporting period had been characterized by a number of violent attacks and shootings which had occurred throughout Kosovo and primarily targeted the Kosovo Serb community as well as UNMIK law enforcement authorities. The former incidents had raised further feelings of insecurity among Kosovo Serbs and signs of an increase in inter-ethnic tension had been evident. With regard to the “standards before status” policy framework, the Special Representative reconfirmed the commitment of UNMIK towards that end and its focus on progress towards achieving the benchmarks for implementation of that policy.<sup>324</sup>

The representative of the United States emphasized that unilateral comments or declarations by neighbouring Governments or parties inside Kosovo about the future of Kosovo were premature and unhelpful. In that context, the representative added that attempts to prejudge final status would only distract from the important work at hand of implementing the standards and beginning the direct dialogue on practical matters where the focus should be.<sup>325</sup>

Several speakers reiterated their support with the policy promoted by UNMIK in conformity with the “standards before status” principle.

At the 4853rd meeting, on 30 October 2003, statements were made by all members of the Council and the representatives of Albania, Italy (on behalf of the European Union<sup>326</sup>), Japan, Serbia and Montenegro and Ukraine. The Council included in its agenda the report of the Secretary-General on UNMIK dated 15 October 2003.<sup>327</sup> In his report, the Secretary-General observed, *inter alia*, that UNMIK had continued to make progress in establishing substantial autonomy and self-government, as required under resolution 1244 (1999). In implementing the Mission’s mandate, the Special Representative had continued to operate within the framework provided by the “standards before status” policy. While there had been noticeable improvements in the internal coordination and effectiveness of the policymaking and legislative

processes within the provisional institutions of self-government, more had remained to be done to ensure adequate levels of minority representation and employment at both the central and local levels of government. The security situation had remained a cause of concern due to a number of serious incidents involving minorities. The Secretary-General noted that his Special Representative had made the establishment of direct dialogue — one of the eight outlined standards — on practical matters of mutual concern between Pristina and Belgrade one of his central priorities, and had called on both sides to make their best efforts to ensure that the talks, which had been launched on 14 October 2003 in Vienna, would result in concrete actions leading to a measurable improvement in the daily lives of residents.

At that meeting, the Council received a briefing by the Special Representative of the Secretary-General, who acknowledged that, despite vast improvements in the overall security situation across most of Kosovo, the inter-ethnic violence over the summer had had a serious effect on the perception of security within the minority communities. Stressing that those incidents should not be allowed to hamper the positive trends in returns, he welcomed the open letter signed by the provisional institutions urging internally displaced persons to return, and the allocation of significant budget resources by the provisional institutions to fund return projects. The Special Representative noted that security and the rule of law had remained the highest priority. He informed the Council that the launch of direct dialogue between Pristina and Belgrade in Vienna on 14 October 2003 had provided encouraging signals that progress could be made. With regard to implementation of all eight standards, the Special Representative noted that UNMIK and the provisional government had been intensely involved in elaborating a joint plan of implementation that would allow the provisional institutions to meet the standards within agreed timeframes. On a related matter, he noted that the agreed transfer of competencies in non-reserved areas to the provisional institutions was nearing completion. At the same time, he referred to the increasing demands by the leaders of Kosovo that UNMIK also transfer competencies in reserved areas.<sup>328</sup>

Most speakers reiterated their support for the priorities outlined by UNMIK, namely, improving the rule of law and the security situation, in particular for

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<sup>324</sup> S/PV.4823, pp. 2-5.

<sup>325</sup> *Ibid.*, p. 7.

<sup>326</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>327</sup> S/2003/996.

<sup>328</sup> S/PV.4853, pp. 2-5.

minority communities; furthering returns and minority rights; and strengthening economic development. Most speakers welcomed the continued transfer of non-reserved competencies, as listed in chapter 5 of the Constitutional Framework, to the provisional institutions and the launch of the direct dialogue on practical matters between Pristina and Belgrade on 14 October 2003.

**Decision of 12 December 2003 (4880th meeting): statement by the President**

At the 4880th meeting, on 12 December 2003, in which the representative of Serbia and Montenegro was invited to participate, no statements were made. The President (Bulgaria) made a statement on behalf of the Council,<sup>329</sup> by which the Council, *inter alia*:

Welcomed the launching of a review mechanism giving new momentum to the implementation of the “standards before status” policy that was designed for Kosovo;

Urged the provisional institutions of self-government to participate fully and demonstrate their commitment to the process;

Supported the “standards for Kosovo” document and reaffirmed its intention to continue to consider the regular reports of the Secretary-General as to the progress of the provisional institutions of self-government towards meeting the standards;

Supported the prospect of a comprehensive review of the progress of the provisional institutions of self-government in meeting the standards;

Stressed that further advancement towards a process to determine the future status of Kosovo in accordance with resolution 1244 (1999) would depend on the positive outcome of the comprehensive review;

Reaffirmed its full support to the Special Representative of the Secretary-General and called on the provisional institutions of self-government of Kosovo and all concerned to cooperate fully with him.

**Deliberations of 17 December 2003 (4886th meeting)**

At its 4886th meeting, on 17 December 2003, the Council received a briefing by the Under-Secretary-General for Peacekeeping Operations. In addition to all members of the Council, statements were made by the

<sup>329</sup> S/PRST/2003/26.

representatives of Albania, Italy (on behalf of the European Union<sup>330</sup>) and Serbia and Montenegro.

The Under-Secretary-General for Peacekeeping Operations noted, *inter alia*, that, depending on progress made towards reaching the standards, as assessed during the reporting period, a general review of the progress of the provisional institutions would be undertaken around mid-2005. He explained that if the provisional institutions had not fulfilled the standards by that time, it had been proposed that they be given a further period to work on meeting the standards. The Under-Secretary-General made clear that no deadline was set for the standards implementation and the future status process would not start automatically on the general review date.<sup>331</sup>

All speakers reiterated their support of the launching of a review mechanism for the implementation of the “standards before status” policy. Although most speakers recognized notable progress in Kosovo, it was generally agreed that work remained to be done with regard to the implementation of the standards.

The representative of Pakistan said that the “standards before status” policy, devised only for Kosovo, should not set a precedent for other similar situations, either past, present or future. He also stated that the standards should not become an excuse to avoid addressing the status question, which was the underlying problem in Kosovo. He expressed that the solution to the status issue should be based on the wishes of the people of Kosovo, in accordance with the principle of self-determination enshrined in the Charter of the United Nations, and at the same time respond to the interests and welfare of all the people of Kosovo.<sup>332</sup>

The representative of Serbia and Montenegro stressed that such a review mechanism for the implementation of standards must provide for regular and active involvement by Serbia and Montenegro, whose sovereignty over Kosovo and its territorial integrity were basic elements of resolution 1244 (1999).<sup>333</sup>

<sup>330</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>331</sup> S/PV.4886, pp. 2-7.

<sup>332</sup> *Ibid.*, pp. 13-14.

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



## E. Briefing by Mr. Carl Bildt, Special Envoy of the Secretary-General for the Balkans

### Initial proceedings

#### Deliberations of 28 February and 23 June 2000 (4105th and 4164th meetings)

At its 4105th meeting, on 28 February 2000, the Security Council included in its agenda, without objection, the item entitled “Briefing by Mr. Carl Bildt, Special Envoy of the Secretary-General for the Balkans”. The Council was briefed by the Special Envoy on the situation in the Balkans. All members of the Council made statements.<sup>334</sup>

In his briefing, the Special Envoy focused on the Balkan region as a whole, noting that his task was to assess what could be done to prevent new conflicts from occurring and to pave the way for self-sustaining stability in the region as a whole. In his assessment, the underlying issue in the region was the conflict between forces that favoured or accepted integration within and between societies and the forces who favoured disintegration — often in the name of extreme nationalism. Referring to the situation in Kosovo, the Special Envoy held that the lack of a proper peace agreement was not only making it difficult to resolve the situation there, but also to move towards stability for the region as a whole. The Special Envoy suggested four starting points for a search for a settlement, including the solid support of the Council; active participation of the States of the region; a true deal that would meet the minimum demands of everyone, but the maximum demands of no one; and an agreement set within the context of a wider arrangement for the region as a whole, and preferably for the region within the wider European context. However, the Special Envoy cautioned that efforts for finding peace were handicapped by the fact that neither was it possible to make peace without including the regime in Belgrade, nor could the international community deal with personalities who were indicted by the International Tribunal for the Former Yugoslavia. Turning to the situation between Serbia and Montenegro, he warned that those two republics of the Federal Republic of

Yugoslavia were on a slow but steady collision course, lauded the leadership of Montenegro for reacting in a measured way to provocations and indicated that the efforts to help Montenegro in that situation should be accelerated.<sup>335</sup>

Most members of the Council concurred with the statement made by the Special Envoy with regard to his emphasis on the need for a comprehensive and regional approach to the resolution of conflicts in the Balkans, while adding different factors necessary for a solution to his assessment. Speakers mentioned security, the return of refugees, reconciliation and reconstruction as priority areas in the search for peace. The representative of France held that democratic reform was a key element in the stabilization process.<sup>336</sup> The representative of China held that high priority should be given to realizing self-governance and self-reliance in the countries of the region by gradually reducing their dependency on external assistance.<sup>337</sup> The representative of Namibia held that a series of regional security conferences should be instituted and that the Stability Pact for South-Eastern Europe should be reviewed and adjusted to include the Federal Republic of Yugoslavia.<sup>338</sup>

Several speakers supported the assessment of the Special Envoy with regard to the regime in Belgrade.<sup>339</sup> On the other hand, the representative of the Russian Federation disagreed with the Special Envoy’s reference to the Belgrade regime as an obstacle to the development of the entire region, warning of the politicization of the activities of the International Tribunal for the Former Yugoslavia and holding that there should be more engagement with the authorities of the Federal Republic of Yugoslavia.<sup>340</sup>

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<sup>334</sup> The representatives of Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia were invited to participate in the meeting but did not make statements. The Secretary-General also attended the meeting, but did not make a statement.

<sup>335</sup> S/PV.4105, pp. 2-5.

<sup>336</sup> *Ibid.*, p. 6.

<sup>337</sup> S/PV.4105 (Resumption 1), p. 2.

<sup>338</sup> *Ibid.*, p. 4.

<sup>339</sup> *Ibid.*, p. 2 (Canada); p. 3 (United Kingdom); p. 5 (Netherlands); and pp. 6-7 (United States).

<sup>340</sup> S/PV.4105, pp. 8-9; and S/PV.4105 (Resumption 1), p. 10.

The representative of Ukraine noted the absence of an established dialogue between the Special Envoy of the Secretary-General for the Balkans and the Security Council. Being aware that the broad mandate of the Special Envoy, entrusted to him by the Secretary-General, allowed him to address some issues that fell outside the focus of the Council, the representative nevertheless held that the efforts of the Special Envoy were a valuable contribution to the common cause of establishing sustainable peace and stability in the Balkans. He expressed his belief that those common efforts could be much more effective if the two-way communication between the Council and the Special Envoy were established on a permanent basis.<sup>341</sup>

At its 4164th meeting,<sup>342</sup> on 23 June 2000, the President (France) informed the Council that he had received several requests to participate in the meeting variously on the basis of rule 37, rule 39 and without reference to either rule 37 or rule 39 of the provisional rules of procedure of the Council. Following a debate on these procedural issues, the Council voted on the requests for participation and, while accepting all other requests, rejected the request by Mr. Jovanović, which made no reference to either rule 37 or 39, by 7 votes to 4, with 4 abstentions.<sup>343</sup>

Before the vote on the request by Mr. Jovanović, statements were made by the representatives of Ukraine and the United States. After the vote, statements were made by the representatives of Argentina, China, France and the Russian Federation. The representative of the United States held that Mr. Jovanović represented a Government whose senior leadership had been indicted for war crimes and other violations of international humanitarian law by a Tribunal established by the Council itself. In his opinion, allowing any representative of that leadership to participate in a meeting of the Council would undermine the International Tribunal for the Former Yugoslavia.<sup>344</sup> The representative of Ukraine stated that the Federal Republic of Yugoslavia was a participant in the peace process in the Balkans, a signatory to the Dayton Peace Agreement, a host country of the international presence in Kosovo and a

party to the settlement of the Prevlaka dispute. He believed that this provided sufficient grounds to allow the country to participate in the discussion of the Council on the situation in the Balkans, and recalled Article 32 of the Charter, under which any party to a dispute under consideration had to be invited to participate in the discussion on the dispute.<sup>345</sup>

The representative of the Russian Federation regretted the policy of certain countries to exclude the Federal Republic of Yugoslavia from the settlement process for the Balkans. Recalling Articles 31 and 32 of the Charter, he noted that the interests of the Federal Republic of Yugoslavia were directly affected by the item under discussion and held that a discussion of the Balkan problem without the Federal Republic of Yugoslavia was “nonsense”.<sup>346</sup>

After the procedural voting, the Council heard a briefing by the Special Envoy of the Secretary-General for the Balkans. Statements were then made by most members of the Council,<sup>347</sup> by the representatives of Albania, Austria,<sup>348</sup> Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Iraq, Japan, Norway, Pakistan, Portugal (on behalf of the European Union<sup>349</sup>), Slovenia and the former Yugoslav Republic of Macedonia,<sup>350</sup> as well as by the Secretary-General of the Council of the European Union.

In his briefing, the Special Envoy held that stability in the region was hardly achievable in the long run, if there was not a stable structure for the region as a whole and a firm place for the region in the wider process of European integration. He expressed the belief that the most pressing issue in the region was the question of the future of the Federal Republic of Yugoslavia, whose current structure he deemed unsustainable, both with a view to the constitutional crisis between the Republic of Montenegro and the federal authorities in Belgrade, as well as with a view to the unresolved issue of the future status of Kosovo.

<sup>341</sup> S/PV.4105, pp. 7-8.

<sup>342</sup> For more information on the discussion at this meeting, see chap. XI, part VIII, sect. B, with regard to Article 50 of the Charter.

<sup>343</sup> For details, see chap. III, part I, case 7.

<sup>344</sup> S/PV.4164, pp. 3-4.

<sup>345</sup> *Ibid.*, p. 4.

<sup>346</sup> *Ibid.*, p. 5.

<sup>347</sup> The representatives of Mali and the Russian Federation did not make statements following the briefing.

<sup>348</sup> In the capacity of Chairman-in-Office of OSCE.

<sup>349</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>350</sup> The representatives of Greece, Romania and Turkey were invited to participate but did not make statements.

On the latter, he opined that he could not see any circumstances under which a peace agreement would not have to include a clear constitutional separation between Kosovo and the Republic of Serbia, while recognizing that most leaders in the region saw the continued territorial integrity of the Federal Republic of Yugoslavia as important. In conclusion, he expressed the hope that all of the mentioned issues would in the future come together in a comprehensive regional settlement of the outstanding political issues and expressed his belief that the forces of disintegration in the region would finally be overcome only on the day when the full conditions existed for the region to be subject to the forces of integration in Europe as a whole.<sup>351</sup>

The Secretary-General of the Council of the European Union, recalling the commitment of the European Union to the region, affirmed that the European Union would further pursue its policy of bringing the countries of the region closer to the European Union.<sup>352</sup>

Most speakers commented on the situations in Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Kosovo and the former Yugoslav Republic of Macedonia. Several speakers condemned the recent violence against non-Albanians in Kosovo.<sup>353</sup> Several speakers called for democratization in Serbia.<sup>354</sup>

Commenting on the situation in Kosovo, the representative of China, supported by the representative of Iraq, condemned the use of force by NATO in 1999, as well as the bombing of civilian facilities and a foreign diplomatic establishment and held that ethnic conflicts were domestic concerns, while the wilful interference of foreign forces was an external factor that had exacerbated the conflict. He emphasized that the United Nations should not encourage and support any activity of changing a Government of a country through foreign interference and that the Kosovo problem could only be resolved within the framework of the Federal Republic of Yugoslavia.<sup>355</sup> The representatives of Ukraine and Belarus also supported the notion that the territorial integrity of the Federal Republic of Yugoslavia must be preserved.<sup>356</sup>

The representative of Ukraine reiterated his regret over the lack of an established dialogue between the Special Envoy and the Security Council and held that a written report on the activities of the Special Envoy was indispensable.<sup>357</sup>

The representative of Slovenia saw the tensions between the Republics of Serbia and Montenegro as a type of dispute the continuation of which was likely to endanger the maintenance of international peace and security and held that its prevention deserved the closer attention of the Security Council.<sup>358</sup>

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<sup>351</sup> S/PV.4164, pp. 6-9.

<sup>352</sup> *Ibid.*, p. 13.

<sup>353</sup> *Ibid.*, pp. 9-10 (Portugal on behalf of the European Union); pp. 13-16 (United States); pp. 21-22 (Ukraine); pp. 22-23 (Argentina); p. 27 (Norway); pp. 27-28 (Japan); and S/PV.4164 (Resumption 1), pp. 2-4 (Bulgaria).

<sup>354</sup> S/PV.4164, pp. 9-10 (Portugal on behalf of the European Union); pp. 13-16 (United States); pp. 18-19 (Malaysia); p. 20 (Canada); p. 27 (Norway); pp. 27-28 (Japan); and S/PV.4164 (Resumption 1), pp. 2-4 (Bulgaria); pp. 11-12 (Albania); pp. 12-14 (Bosnia and Herzegovina); and pp. 15-16 (Croatia).

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<sup>355</sup> S/PV.4164, pp. 16-17 (China); S/PV.4164 (Resumption 1), pp. 14-15 (Iraq).

<sup>356</sup> S/PV.4164, pp. 21-22 (Ukraine); S/PV.4164 (Resumption 1), pp. 9-10 (Belarus).

<sup>357</sup> S/PV.4164, p. 22.

<sup>358</sup> S/PV.4164 (Resumption 1), pp. 4-6.

## 31. The situation in Georgia

### **Decision of 31 January 2000 (4094th meeting): resolution 1287 (2000)**

At its 4094th meeting,<sup>1</sup> on 31 January 2000, the Security Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 19 January 2000.<sup>2</sup> In his report, the Secretary-General observed that his Special Representative, with support from representatives of the Russian Federation, as facilitator, the Organization for Security and Cooperation in Europe (OSCE) and the Group of Friends of the Secretary-General, and with the good will of the Georgian and Abkhaz sides, had tried to move the peace process forward by reviving the machinery created since 1997 in the framework of the Geneva process<sup>3</sup> and formulating proposals addressing the distribution of constitutional competencies between Tbilisi and Sukhumi. The Secretary-General noted that the ultimate goal of the Geneva process was the comprehensive political settlement of the conflict, and that progress on the matter of status was an indispensable step towards that goal. In that regard, he expressed distress over the continuing reluctance of the Abkhaz side to discuss the matter.

The Secretary-General underlined that the critical issue of the return of refugees and internally displaced persons, whose continued exile years after the cessation of hostilities remained an unacceptable tragedy, demanded to be addressed urgently. He urged both sides to put forward and implement new approaches to resolve the problem of displacement, continue steps towards the full implementation of confidence-building measures and called upon both sides to fully implement the measures on which they had agreed upon during the Athens and Istanbul meetings.<sup>4</sup> In that regard, appreciation was expressed

of the invitation of the Government of Ukraine to host the third meeting on confidence-building measures.

Regarding the security situation, the Secretary-General expressed major concern at the prolonged absence of monitoring by the United Nations Observer Mission in Georgia (UNOMIG) in the Georgian-controlled upper part of the Kodori Valley since the hostage-taking incident of 13 October 1999. He reaffirmed that the Georgian authorities were responsible for providing the necessary security conditions to enable the UNOMIG personnel to carry out their mandate in the Kodori Valley, and that they should take the necessary measures in that regard without delay. He recognized the continued efforts of UNOMIG as a central element in the efforts to stabilize the situation in Abkhazia, Georgia, especially through its monitoring presence on the ground, and through its sustained efforts to further the peace process. The Secretary-General recommended that the Council extend the mandate of UNOMIG for a further six-month period.

At the meeting, the President (United States) drew the attention of the Council to a letter dated 26 January 2000 from the representative of the Russian Federation.<sup>5</sup> The President then drew the attention of the Council to a draft resolution;<sup>6</sup> it was put to the vote and adopted unanimously and without debate as resolution 1287 (2000),<sup>7</sup> by which the Council, *inter alia*:

Reiterated its call for the parties to the conflict to deepen their commitment to the United Nations-led peace process and display the necessary will to achieve substantial results on the key issues of the negotiations, in particular on the distribution of constitutional competences between Tbilisi and Sukhumi as part of a comprehensive settlement, with full respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders;

<sup>1</sup> During this period, in addition to the meetings covered in this section, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Observer Mission in Georgia, pursuant to resolution 1353 (2001), annex II, sections A and B. The meetings were held on 24 January 2002 (4457th), 24 July 2002 (4586th), 17 January 2003 (4687th) and 25 July 2003 (4796th).

<sup>2</sup> S/2000/39, submitted pursuant to resolution 1255 (1999).

<sup>3</sup> For details of the framework, see S/26875.

<sup>4</sup> For details of the Athens and Istanbul meetings, see

S/1998/1012 and S/1999/805, respectively.

<sup>5</sup> S/2000/52, transmitting a decision of the Council of Heads of State of the Commonwealth of Independent States (CIS) on further measures for the settlement of the conflict in Abkhazia, Georgia, including extending the presence of the collective peacekeeping forces of CIS for six months.

<sup>6</sup> S/2000/743.

<sup>7</sup> The representative of Jamaica subsequently indicated that she would have voted in favour had she been present at the time of the voting.

Considered unacceptable and illegitimate the holding of self-styled elections in Abkhazia, Georgia;

Called upon the parties to continue to enhance their efforts to implement fully the confidence-building measures on which they agreed at the Athens and Istanbul meetings of 16 to 18 October 1998 and 7 to 9 June 1999, respectively;

Reaffirmed the necessity for the parties to strictly respect human rights;

Reaffirmed the unacceptability of the demographic changes resulting from the conflict, and called upon the parties to address this issue urgently by agreeing and implementing effective measures to guarantee the security of those who exercise their unconditional right to return;

Demanded that both sides observe strictly the Moscow Agreement;

Welcomed UNOMIG keeping its security under constant review;

Decided to extend the mandate of UNOMIG for a new period terminating on 31 July 2000;

Requested the Secretary-General to continue to keep the Council regularly informed and to report three months from the date of the adoption of the resolution on the situation in Abkhazia, Georgia.

**Decision of 11 May 2000 (4137th meeting):  
statement by the President**

At its 4137th meeting, on 11 May 2000, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 24 April 2000.<sup>8</sup> In his report, the Secretary-General observed that, since the beginning of the United Nations-led peace process, the ultimate goal was the comprehensive settlement of the conflict, including defining the status of Abkhazia within the State of Georgia, on the basis of the territorial integrity, sovereignty and independence of Georgia, and the imprescriptible right of refugees and displaced persons to return to their previous places of permanent residence. In pursuance of resolution 1287 (2000), work had continued on the question of the distribution of constitutional competences between Tbilisi and Sukhumi. A revised draft paper on that issue had been distributed in mid-March 2000 to the Russian Federation, as facilitator, and to members of the Group of Friends of the Secretary-General, incorporating their comments on the original draft.

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<sup>8</sup> S/2000/345, submitted pursuant to resolution 1287 (2000).

Further discussions had been ongoing with a view to finalizing the draft in the near future and submitting it to the two sides of the conflict. While its basic position on the question of the status had not changed, the Abkhaz side had indicated its interest not to be excluded from the discussion.

The Secretary-General further noted that although confidence-building measures had continued to be facilitated by international and local non-governmental organizations, academic institutions and the United Nations Human Rights Office in Abkhazia, Georgia, the process had somewhat lagged as a result of the mistrust engendered by the long delays in the exchange of detainees. He, however, expressed satisfaction over the good will demonstrated by the two sides that had brought about the successful exchange of hostages on 29 March 2000 and called for the two sides to actively consider the implementation of the confidence-building measures agreed on during the meetings held in Athens and Istanbul in 1998 and 1999.

The Secretary-General observed that the situation in the UNOMIG area of responsibility had remained generally calm although unstable during the reporting period, and there were no significant violations of the Agreement on a Ceasefire and Separation of Forces (Moscow Agreement) signed in Moscow on 14 May 1994.<sup>9</sup> He noted that both sides should be reminded of their responsibility to provide a safe, secure and dignified return for all refugees and internally displaced persons. It was also noted that the two sides had the primary responsibility to ensure a proper security environment for the work of UNOMIG and other agencies and organizations.

At the meeting, the President (China) made a statement on behalf of the Council,<sup>10</sup> by which the Council, *inter alia*:

Welcomed the efforts by the Special Representative of the Secretary-General to enhance contacts at all levels between the Georgian and Abkhaz sides, and called upon the parties to continue to expand such contacts;

Called upon the parties to finalize their work on and to sign a draft agreement on peace and guarantees for the prevention of armed confrontation and a draft protocol on the return of refugees to the Gali region and measures for economic rehabilitation;

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<sup>9</sup> S/1994/583 and Corr.1, annex I.

<sup>10</sup> S/PRST/2000/16.

Noted with deep concern the continued failure of the parties to achieve a comprehensive political settlement, which included a settlement on the political status of Abkhazia within the State of Georgia;

Called upon the parties to display the political will required for a breakthrough and to spare no efforts in order to achieve substantive progress without further delay;

Joined the Secretary-General in encouraging the parties to be ready to consider proposals, based on the Security Council decisions, to be presented in due course by the Special Representative on the question of the distribution of constitutional competences between Tbilisi and Sukhumi;

Regretted that the Protocol of 3 February 2000 had not been implemented in full and, in particular, that the withdrawal of illegal armed groups had not been brought about;

Called on the parties to refrain from any actions which could increase tensions on the ground and to ensure the safety of the UNOMIG personnel.

**Decision of 28 July 2000 (4179th meeting):  
resolution 1311 (2000)**

At its 4179th meeting, on 28 July 2000, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia dated 17 July 2000.<sup>11</sup> In his report, the Secretary-General observed, *inter alia*, that no major progress in the framework of the Geneva process had been achieved during the reporting period, but that the results of the session of the Coordinating Council held on 11 July 2000 had opened the prospect for constructive engagement between the parties, especially on security matters. The Special Representative had continued to work closely with the Group of Friends, whom he had met with at least once a month, to further refine the draft document dealing with the distribution of competencies between Tbilisi and Sukhumi on the basis of the principles of Georgian sovereignty. A version of the draft document, dated 25 May 2000, had been produced and circulated among the Group of Friends in the expectation that it might have served in the near future as a basis on which to open a political dialogue between the Georgian and Abkhaz sides. However, differences of views had since arisen among the Group of Friends themselves concerning both content and strategy. Thus the Secretary-General noted that strong concerted efforts

were urgently needed to produce a coordinated draft and approach.

During the period under review, one confirmed violation of the Moscow Agreement had occurred in which a UNOMIG helicopter patrol spotted an armoured vehicle at an Abkhaz observation post within the restricted weapons zone. Endemic organized crime throughout the area remained a serious problem whereby most violent incidents in the conflict area were products of power struggles or revenge among various criminal groupings. On 1 June 2000, in the Kodori Valley, a group of armed and masked men took hostage a UNOMIG foot patrol, the members of which were held for several days in the upper Kodori Valley. They were released unharmed on 5 June following consultations which included a high-level negotiating team of the Government of Georgia.

The Secretary-General also reported that the plight of thousands of internally displaced persons, and of those thousands more who had chosen to return to their homes in the Gali district, had become increasingly desperate. He encouraged both sides to negotiate with a view to reaching agreement on measures aimed at achieving that return. Satisfaction was expressed that confidence-building measures in various fields had continued, often behind the scenes, and both sides were encouraged to engage with full seriousness and resolution by strengthening the depth and breadth of contact at all levels.

Despite the slow progress, the Secretary-General observed that UNOMIG continued to play an essential role in the search for a peaceful solution to the Georgian-Abkhaz conflict through its sustained efforts to further the peace process. He also noted the Mission remained a central element in the efforts to stabilize the situation in Abkhazia, Georgia, and recommended that the Council extend the mandate of UNOMIG for a further six-month period.

At the meeting, the President (Jamaica) drew the attention of the Council to several documents.<sup>12</sup> The

<sup>11</sup> S/2000/697, submitted pursuant to resolution 1287 (2000).

<sup>12</sup> Letter dated 16 June 2000 from the representative of Georgia, transmitting a statement of the Ministry of Foreign Affairs related to the situation in Abkhazia (S/2000/594); letters dated 26 June 2000 from the representative of the Russian Federation transmitting decisions on the collective peacekeeping forces in Abkhazia, Georgia, and Tajikistan, adopted at the meeting of the Council of Heads of State of CIS, held in

President then drew the attention of the Council to a draft resolution,<sup>13</sup> it was put to the vote and adopted unanimously and without debate as resolution 1311 (2000), by which the Council, *inter alia*:

Deplored all violent incidents, as well as the development of criminal activities, in the conflict zone, and called on the two sides to take urgent measures to cooperate with each other in the fight against crime of all sorts and in improving the work of their respective law enforcement organs;

Demanded that both sides observe strictly the Agreement on a Ceasefire and Separation of Forces, signed in Moscow on 14 May 1994;

Decided to extend the mandate of UNOMIG for a new period terminating on 31 January 2001, subject to a review by the Council of the mandate of UNOMIG in the event of any changes that may be made in the mandate or in the presence of the collective peacekeeping force, and expressed its intention to conduct a thorough review of the operation at the end of its current mandate, in the light of steps taken by the parties to achieve a comprehensive settlement.

**Decision of 14 November 2000 (4221st meeting): statement by the President**

At its 4221st meeting, on 14 November 2000, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia dated 25 October 2000.<sup>14</sup> In his report, the Secretary-General observed, *inter alia*, that the general situation in the zone of conflict remained calm but unstable during the reporting period. Some improvement in the security situation might have been attributed in part to the reactivation of Working Group I (on security issues) of the Coordinating Council and the increasing cooperation of the Georgian and Abkhaz sides in implementing agreements reached within that format. Also, the heads of the Office of the United Nations High Commissioner for Refugees and the United Nations Development Programme in Georgia, in their capacity as coordinators of Working Group II (on refugees and internally displaced persons) and

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Moscow, on 21 June 2000 (S/2000/629 and 630); letter dated 25 July 2000 from the representative of the Russian Federation transmitting a communiqué of the same date concerning remarks made by the head of the Georgian delegation at a recent meeting of one of the working bodies of the Economic and Social Council and rejecting the remarks as groundless and detrimental to Russian-Georgian relations (S/2000/742).

<sup>13</sup> S/2000/743.

<sup>14</sup> S/2000/1023, submitted pursuant to resolution 1311 (2000).

Working Group III (on social and economic questions), respectively, had held consultations with the Abkhaz side. Efforts of the Group of Friends, including visits by the Special Representative to capitals, to arrive at a coordinated draft document addressing basic principles for the distribution of competencies between Tbilisi and Sukhumi had not yet succeeded.

The Secretary-General noted that the late summer harvest season had brought with it what appeared to be the largest spontaneous return of population to the Gali district since the end of the war in 1993. He described it as disturbing that the substantial *de facto* returnee population continued to live in an undefined and insecure state, and that it should continue to endure daily social and economic hardship, insufficient protection of its human rights and a continuing lack of appropriate representation in local administrative structures. Thus he encouraged both sides to prepare actively for the event and to be ready to take decisions that would improve confidence and contribute to the overall peace effort.

At the meeting, the President (Netherlands) made a statement on behalf of the Council,<sup>15</sup> by which the Council, *inter alia*:

Strongly supported the efforts of the Special Representative of the Secretary-General, undertaken with the support of the Group of Friends of the Secretary-General, to address the issue of the future constitutional status of Abkhazia and, in particular, his intention to submit, in the near future, a draft paper containing proposals to the parties on the question of the distribution of competencies between Tbilisi and Sukhumi as a basis for meaningful negotiations on that issue;

Called upon the parties to agree upon and to take, in the near future, concrete steps towards implementing effective measures to guarantee the security of the refugees and internally displaced persons who exercised their right to return to their homes; and expressed the opinion that the status of spontaneous returnees to the Gali district was a matter that must be addressed urgently;

Strongly condemned the murder of Zurab Achba, legal assistant to the United Nations Human Rights Office in Sukhumi; recalled the commitment of the Abkhaz side to keep UNOMIG fully informed on the course of the investigation into that crime; and deplored the abduction of United Nations and humanitarian personnel.

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<sup>15</sup> S/PRST/2000/32.

**Decision of 31 January 2001 (4269th meeting):  
resolution 1339 (2001)**

At its 4269th meeting, on 31 January 2001, at which a statement was made by the representative of Georgia, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 18 January 2001.<sup>16</sup> In his report, the Secretary-General observed, *inter alia*, that the continued lack of progress on the fundamental issue of the future political status of Abkhazia within the State of Georgia was regrettable and had the potential to jeopardize the whole peace process in the future. No substantive progress had been made on the draft document for the distribution of competencies between Tbilisi and Sukhumi. The Group of Friends of the Secretary-General had yet to arrive at a coordinated position. Meanwhile, the Abkhaz side had continued to refuse to discuss any document that would address the status issue. As such, the Secretary-General urged both sides to show a stronger political will in order to overcome that impasse.

The Secretary-General further noted that the human rights situation of returnees in the Gali district remained precarious and several human rights violations had been registered. For the third time in four months, two UNOMIG military observers had been abducted and held hostage for three days. The absence of effective law enforcement and the continued extreme economic hardship in the UNOMIG area of operations contributed to the overall volatility of the situation, which, if not remedied, had the potential to deteriorate. Two violations of the Moscow Agreement had been reported, one of which involved the use of heavy weapons in a training exercise where the Abkhaz authorities prohibited UNOMIG as well as the collective peacekeeping force of the Commonwealth of Independent States from flying over the area. The Secretary-General expressed hope that the third meeting on confidence-building measures planned for March 2001 in Yalta, Ukraine, would facilitate the much-needed process of reconciliation and strengthen the ongoing positive trend towards the establishment and development of mutual contact at various levels between the two sides and as such contribute to mutual understanding and confidence.

Since the Secretary-General remained convinced that UNOMIG, through its monitoring presence on the

<sup>16</sup> S/2001/59, submitted pursuant to resolution 1311 (2000).

ground, had played a crucial role in the stabilization of the zone of conflict, and its sustained efforts to further the negotiation process also represented a central element in the search for a peaceful settlement of the conflict, he recommended that the mandate of UNOMIG be extended for a further six-month period.

The representative of Georgia stated that the reference in paragraph 4 of the draft resolution before the Council to the draft protocol and the draft agreement on peace and guarantees [for the prevention and non-resumption of hostilities], which had not been referred to in the report of the Secretary-General or been discussed by the members of the Council, was unacceptable to the Government of Georgia. As the parties to the conflict had already signed several agreements on renouncing the use of force in the settlement of the conflict, the representative of Georgia opined that the emphasis should be placed on the necessity of accelerating work on the issues of the return of refugees and internally displaced persons to the Gali district, the economic rehabilitation of the region and guarantees of the non-resumption of hostilities.<sup>17</sup>

At the meeting, the President (Singapore) drew the attention of the Council to a draft resolution,<sup>18</sup> it was put to the vote and adopted unanimously as resolution 1339 (2001), by which the Council, *inter alia*:

Decided to extend the mandate of UNOMIG for a new period that terminated on 31 July 2001, subject to a review by the Council of the mandate of UNOMIG in the event of any changes that may be made in the mandate or in the presence of the collective peacekeeping force.

**Decision of 21 March 2001 (4300th meeting):  
statement by the President**

At its 4300th meeting,<sup>19</sup> on 21 March 2001, in which the Minister for Foreign Affairs of Georgia was invited to participate, the Council included in its

<sup>17</sup> S/PV.4269, p. 2.

<sup>18</sup> S/2001/93.

<sup>19</sup> At its 4299th meeting, held in private on 21 March 2001, the Council was briefed by the Minister for Foreign Affairs of Georgia, the Special Representative and Head of UNOMIG and the representative of Ukraine on the outcome of the third meeting on confidence-building measures between the Georgian and Abkhaz sides, held at Yalta, Ukraine, on 15 and 16 March 2001, and had a constructive discussion.



agenda a letter dated 17 March 2001 from the representative of Ukraine.<sup>20</sup> At the meeting, the President (Ukraine) made a statement on behalf of the Council,<sup>21</sup> by which the Council, inter alia:

Welcomed the successful holding of the third meeting on confidence-building measures between the Georgian and Abkhaz sides in Yalta on 15 and 16 March 2001 and the resumption of dialogue between them, and noted the documents signed there;

Hoped that action flowing from the Yalta meeting would lead to a narrowing of the positions of the two sides and stimulate further constructive dialogue aimed at achieving a comprehensive political settlement of the conflict;

Underlined the unacceptability of the holding of self-styled local elections in Abkhazia, Georgia, on 10 March 2001, which it deemed illegitimate and unhelpful; and stressed the importance of negotiations on the core political questions of the conflict.

**Decision of 24 April 2001 (4314th meeting):  
statement by the President**

At the 4314th meeting,<sup>22</sup> on 24 April 2001,<sup>22</sup> in which the Minister for Special Affairs of Georgia was invited to participate, the President (United Kingdom) made a statement on behalf of the Council,<sup>23</sup> by which the Council, inter alia:

Underlined the decisive importance of early negotiations on the core political questions of the conflict in Abkhazia, Georgia;

Strongly supported, in this context, the efforts of the Special Representative of the Secretary-General to promote the achievement of a comprehensive political settlement based on the resolutions of the Security Council, which must include a settlement of the political status of Abkhazia within the State of Georgia;

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<sup>20</sup> S/2001/242, transmitting final documents signed at the outcome of the third meeting on confidence-building measures between the Georgian and Abkhaz sides, held at Yalta, on 15 and 16 March 2001, namely, the Yalta Declaration of the Georgian and Abkhaz Sides, and the Programme of Action on Confidence-building between the Georgian and Abkhaz sides.

<sup>21</sup> S/PRST/2001/9.

<sup>22</sup> At its 4313th meeting, held in private on 24 April 2001, the Council was briefed by the Special Representative and Head of UNOMIG, with the participation of the Minister for Special Affairs of Georgia, and the representative of Sweden (speaking on behalf of the European Union and associated States), and had a constructive discussion.

<sup>23</sup> S/PRST/2001/12.

Strongly supported, in particular, the intention of the Special Representative to submit, in the near future, his draft paper containing specific proposals to the parties on the question of the distribution of constitutional competences between Tbilisi and Sukhumi;

Welcomed the intention of the Special Representative to submit the draft paper to the parties soon, as a starting point for negotiation, and not as an attempt to impose or dictate any possible solution; and called upon the parties constructively to accept the paper in that light and work towards a mutually acceptable settlement.

**Decision of 31 July 2001 (4353rd meeting):  
resolution 1364 (2001)**

At its 4353rd meeting, on 31 July 2001, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 19 July 2001.<sup>24</sup> In his report, the Secretary-General observed, inter alia, that the interruption of negotiating activities following the killings and hostage-taking incidents over the past four months demonstrated that the overall peace process remained fragile. Also related to the fragile peace process was the fact that meaningful negotiations on the future political status of Abkhazia within the State of Georgia had not yet begun, and in the absence of such negotiations the entire peace process remained in jeopardy. The Group of Friends of the Secretary-General, in close cooperation with the Special Representative, had intensified its efforts to finalize the draft paper on the distribution of competences between Tbilisi and Sukhumi. In this regard, the Abkhaz authorities had reiterated their well-known position that any discussion of the status issue was obsolete because, in their view, the political status of Abkhazia was conclusively decided upon with the Act on State Independence of the Republic of Abkhazia of 1999.<sup>25</sup>

Furthermore, the Secretary-General noted that the increasing number of violations of the Moscow Agreement in the period under review gave rise to grave concern. The same applied for the restrictions of movement imposed on UNOMIG, which prevented the Mission from carrying out its mandate to the full. Since UNOMIG had continued to play a crucial role in the stabilization of the zone of conflict, and its efforts to advance the negotiation process constituted a central

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<sup>24</sup> S/2001/713, submitted pursuant to resolution 1339 (2001).

<sup>25</sup> S/2001/713, para. 5. See also S/1999/1087, para. 7.

element in the search for a peaceful settlement, the Secretary-General recommended that the mandate of UNOMIG be extended for a further six-month period.

At the meeting, the President (China) drew the attention of the Council to a draft resolution,<sup>26</sup> it was put to the vote and adopted unanimously and without debate as resolution 1364 (2001), by which the Council, *inter alia*:

Strongly supported the sustained efforts of the Secretary-General and his Special Representative, with the assistance of the Russian Federation, in its capacity as facilitator, as well as of the Group of Friends of the Secretary-General and of OSCE, to promote the stabilization of the situation and the achievement of a comprehensive political settlement, which must include a settlement of the political status of Abkhazia within the State of Georgia;

Deplored all violations of the Agreement on a Ceasefire and Separation of Forces, and noted with particular concern the military exercises conducted by both parties in June and July 2001 in violation of the Moscow Agreement; reminded the Georgian side in particular to uphold its commitment to put a stop to the activities of illegal armed groups crossing into Abkhazia, Georgia, from the Georgian-controlled side of the ceasefire line; decided to extend the mandate of UNOMIG for a new period that terminated on 31 January 2002, subject to a review by the Council of the mandate of UNOMIG in the event of any changes that may be made in the mandate or in the presence of the collective peacekeeping force.

**Decision of 31 January 2002 (4464th meeting):  
resolution 1393 (2002)**

At its 4464th meeting,<sup>27</sup> on 31 January 2002, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 18 January 2002.<sup>28</sup> In his report, the Secretary-General observed, *inter alia*, that the past three months had seen progress in the political process. After two years of discussion, the finalization of the paper entitled “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi” was a significant step forward. Furthermore, on the basis of the finalized paper, the Special

<sup>26</sup> S/2001/747.

<sup>27</sup> At its 4400th meeting, held in private on 30 October 2001, the Council was briefed by the Special Representative and Head of UNOMIG; the Minister for Special Affairs of Georgia and the representative of Belgium participated, and a constructive discussion was held.

<sup>28</sup> S/2002/88, submitted pursuant to resolution 1364 (2001).

Representative had held consultations in Sukhumi and Tbilisi to prepare the ground for substantive negotiations. The situation remained calm but tense due to, *inter alia*, the continuing presence of the Georgian troops in the upper Kodori Valley. In his report, the Secretary-General welcomed the agreement reached on 17 January 2001 on the withdrawal of the Georgian troops from the Kodori Valley and stated that it should be implemented expeditiously and fully. He also recommended the two sides to implement the Yalta Programme of Action on Confidence-building,<sup>29</sup> as agreed during the meeting held at Yalta in March 2001, as well as the recommendations of the joint assessment mission to the Gali district.<sup>30</sup> Since UNOMIG had continued to play an important role in the stabilization of the zone of conflict and in the search for a political settlement, the Secretary-General recommended that the mandate of UNOMIG be extended for a further six-month period.

At the same meeting, the President (Mauritius) drew the attention of the Council to a draft resolution;<sup>31</sup> it was put to the vote and adopted unanimously and without debate as resolution 1393 (2002), by which the Council, *inter alia*:

Decided to extend the mandate of UNOMIG for a new period terminating on 31 July 2002, and to review the mandate of UNOMIG unless the decision on the extension of the presence of the collective peacekeeping force was taken by 15 February 2002, and noted that on 31 January 2002 the Georgian authorities agreed on the extension of the mandate of the collective peacekeeping force until the end of June 2002;

Requested the Secretary-General to continue to keep the Council regularly informed and to report three months from the date of the adoption of the resolution on the situation in Abkhazia, Georgia, and decided to remain actively seized of the matter.

**Decision of 29 July 2002 (4591st meeting):  
resolution 1427 (2002)**

At its 4591st meeting,<sup>32</sup> on 29 July 2002, in which Georgia was invited to participate, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia,

<sup>29</sup> See S/2001/242.

<sup>30</sup> See S/2001/59, annex II.

<sup>31</sup> S/2002/133.

<sup>32</sup> At its 4590th meeting, held in private on 29 July 2002, the Council and the Minister for Special Affairs of Georgia had a constructive discussion.

dated 10 July 2002.<sup>33</sup> In his report, the Secretary-General observed, *inter alia*, that there was a regrettable lack of progress on the initiation of political status negotiations between the Georgian and Abkhaz sides as the latter side continued to reject any discussion of the paper entitled “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi” on the grounds of Abkhazia’s self-declared independence. However, the Georgian and Abkhaz sides continued practical work within the framework of the Coordinating Council’s working groups. As the Secretary-General remained convinced that the presence of UNOMIG continued to be essential for creating the conditions for a political process towards a settlement of the conflict, and for moving that process forward, he recommended that the mandate of UNOMIG be extended for a further six-month period.

At the meeting, the President (United Kingdom) drew the attention of the Council to a draft resolution;<sup>34</sup> it was put to the vote and adopted unanimously and without debate as resolution 1427 (2002), by which the Council, *inter alia*:

Commended and strongly supported the sustained efforts of the Secretary-General and his Special Representative, with the assistance of the Russian Federation in its capacity as facilitator, as well as of the Group of Friends of the Secretary-General and of OSCE, to promote the stabilization of the situation and the achievement of a comprehensive political settlement, which must include a settlement of the political status of Abkhazia within the State of Georgia;

Underlined further that the process of negotiation leading to a lasting political settlement acceptable to both sides would require concessions from both sides;

Deeply regretted, in particular, the repeated refusal of the Abkhaz side to agree to a discussion on the substance of the document entitled “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi”, again strongly urged the Abkhaz side to receive the document and its letter of transmittal; condemned any violations of the provisions of the Agreement on a Ceasefire and Separation of Forces and demanded that they cease immediately;

Urged once again the parties to implement the recommendations of the joint assessment mission to the Gali district, called in particular on the Abkhaz side to improve law enforcement involving the local population and to address the lack of instruction in their mother tongue for the ethnic Georgian population;

Reminded the Georgian side in particular to uphold its commitment to put an end to the activities of illegal armed groups.

**Decision of 30 January 2003 (4697th meeting):  
resolution 1462 (2003)**

At its 4697th meeting, on 30 January 2003, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 13 January 2003.<sup>35</sup> In his report, the Secretary-General observed, *inter alia*, that after one year of strenuous efforts by his Special Representative, the two sides had not moved much closer to the start of negotiations with regard to the document entitled “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi”. The Abkhaz side refused to even enter into discussions on the principles on which negotiations should be based. The return of internally displaced persons to their homes in safe and secure conditions remained a burning issue and no progress had been made in the implementation of the Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons of 4 April 1994.<sup>36</sup> The Secretary-General underlined that the resumption of sessions of the Coordinating Council, which had not met since January 2001, was essential for further progress to be made in the Georgian-Abkhaz peace process. He noted that the prompt convening of the next session of the Coordinating Council would allow a timely decision to be made on a fourth meeting on confidence-building measures and for preparations to commence accordingly. The Secretary-General recommended that the mandate of UNOMIG be extended for a further six-month period.

At the same meeting, the President (France) drew the attention of the Council to a draft resolution;<sup>37</sup> it was put to the vote and adopted unanimously and without debate as resolution 1462 (2003), by which the Council, *inter alia*:

Strongly urged the parties involved in the conflict in Abkhazia, Georgia, to ensure the necessary revitalization of the peace process in all its major aspects;

Stressed the urgent need for progress on the question of refugees and internally displaced persons;

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<sup>33</sup> S/2002/742, submitted pursuant to resolution 1393 (2002).

<sup>34</sup> S/2002/845.

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<sup>35</sup> S/2003/39, submitted pursuant to resolution 1427 (2002).

<sup>36</sup> S/1994/397, annex II.

<sup>37</sup> S/2003/102.

Decided to extend the mandate of UNOMIG for a new period that terminated on 31 July 2003 and to further review that mandate unless a decision on the presence of the collective peacekeeping force was taken by 15 February 2003.

**Decision of 30 July 2003 (4800th meeting):  
resolution 1494 (2003)**

At its 4800th meeting,<sup>38</sup> on 30 July 2003, in which the representative of Georgia was invited to participate, the Council included in its agenda the report of the Secretary-General concerning the situation in Abkhazia, Georgia, dated 21 July 2003.<sup>39</sup> In his report, the Secretary-General observed, *inter alia*, that the United Nations-led peace process had received a welcome boost following the brainstorming session of the Group of Friends held at Geneva in February 2003, at which it was recommended that the two sides work on three sets of issues, namely, economic cooperation, the return of internally displaced persons and refugees and political and security matters, and the Sochi summit.<sup>40</sup> The United Nations strongly supported these activities which had been aimed at enhancing cooperation between the two sides on matters of mutual concern and advancing, ultimately, towards a comprehensive political settlement. However, the Secretary-General regretted that the core political issue — the future status of Abkhazia within the State of Georgia — still had not been addressed, despite the renewed opportunity to do so within the framework of the recommendations made by the Group of Friends in February 2003.

The Secretary-General noted that the recent initiative by Georgia and the Russian Federation to start a dialogue on the process of refugee return, on the basis of the Quadripartite Agreement of 1994, was most encouraging. In the light of the recommendations of the joint assessment mission to the Gali district of November 2000,<sup>41</sup> and the recommendations

formulated by the security assessment mission of October to December 2002,<sup>42</sup> the Secretary-General recommended that a civilian police component of 20 officers be added to UNOMIG to strengthen its capacity to carry out its mandate and, in particular, to contribute to the conditions conducive to the safe and dignified return of internally displaced persons and refugees. Noting that UNOMIG continued to play an essential role in stabilizing the situation in the conflict zone and in providing a framework within which the sides could advance towards a comprehensive settlement, the Secretary-General recommended a further extension of the mandate of UNOMIG for six months.

At the meeting, the President (Spain) drew the attention of the Council to a draft resolution;<sup>43</sup> it was put to the vote and adopted unanimously and without debate as resolution 1494 (2003) by which the Council, *inter alia*:

Endorsed the recommendation of the Secretary-General in his report of 21 July 2003 that a civilian police component of 20 officers be added to UNOMIG;

Condemned any violations of the provisions of the Agreement on a Ceasefire and Separation of Forces;

Strongly condemned the abduction of four UNOMIG personnel on 5 June 2003, deeply deplored that none of the perpetrators had ever been identified or brought to justice, and supported the Secretary-General's call that that impunity must end;

Called on the Georgian side to continue to improve security for joint patrols of UNOMIG and collective peacekeeping force in the Kodori Valley; decided to extend the mandate of UNOMIG for a new period terminating on 31 January 2004, subject to a review, as appropriate, of its mandate by the Council in the event of changes in the mandate of the collective peacekeeping force;

Requested the Secretary-General to continue to keep the Council regularly informed and to report three months from the date of the adoption of the resolution on the situation in Abkhazia, Georgia; and decided to remain actively seized of the matter.

<sup>38</sup> At its 4799th meeting, held in private on 30 July 2003, the Council heard a briefing by the Head of the United Nations Mission in Georgia, and had a constructive exchange of views.

<sup>39</sup> S/2003/751, submitted pursuant to resolution 1462 (2003).

<sup>40</sup> See S/2003/412 paras. 3 and 5.

<sup>41</sup> See S/2001/59, annex II.

<sup>42</sup> S/2003/412, para. 16.

<sup>43</sup> S/2003/771.

## Middle East

### 32. The situation in the Middle East

#### A. United Nations Disengagement Observer Force

**Decisions of 22 May 2000 to 9 December 2003: resolutions 1300 (2000), 1328 (2000), 1351 (2001), 1381 (2001), 1415 (2002), 1451 (2002), 1488 (2003) and 1520 (2003) and statements by the President**

During this period, the Security Council held eight meetings on the item,<sup>1</sup> at each of which, unanimously and without debate, it adopted a resolution extending the mandate of the United Nations Disengagement Observer Force (UNDOF) on the basis of the recommendations contained in the reports of the Secretary-General on UNDOF.<sup>2</sup> In his reports, the Secretary-General stated that the situation in the Israeli-Syrian sector had generally remained calm, without serious incident. He did note increased activity in the Shab'a farms area originating from the area of operation of the United Nations Interim Force in Lebanon;<sup>3</sup> a shooting incident on 8 January 2003, in which one member of the Syrian security forces was killed and another was taken into custody by the Israel Defense Forces; the latter was later released through the intervention of UNDOF;<sup>4</sup> and the disruption of the

ceasefire on 5 October 2003 by an Israeli air strike on a target north-west of Damascus.<sup>5</sup> The Secretary-General considered the continuing presence of UNDOF to the area to be essential and recommended that the Security Council extend the mandate of the Force. He also noted that the Government of the Syrian Arab Republic and the Government of Israel had given their assent to the proposed extensions.

In the resolutions adopted during this period,<sup>6</sup> the Council called on the parties concerned to implement Council resolution 338 (1973); renewed the mandate of UNDOF for subsequent six-month periods, the last expiring on 30 June 2004; and requested the Secretary-General to submit reports on the developments in the situation and the measures taken to implement the resolution.

Complementary statements by the President were also released, in which it was stated that, despite the quiet in the Israeli-Syrian sector, the situation in the Middle East continued to be potentially dangerous and was likely to remain so, unless and until a comprehensive settlement covering all aspects of the Middle East problem could be reached.<sup>7</sup>

<sup>1</sup> 4148th meeting, held on 22 May 2000, 4235th meeting, held on 17 November 2000, 4322nd meeting, held on 18 May 2001, 4428th meeting, held on 15 November 2001, 4546th meeting, held on 17 May 2001, 4670th meeting, held on 4 December 2002, 4779th meeting, held on 18 June 2003 and 4889th meeting, held on 9 December 2003. During this period, in addition to those meetings, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Disengagement Observer Force, pursuant to resolution 1353 (2001), annex II, sections A and B. The meetings were held on 21 November 2001 (4425th), 24 May 2002 (4545th), 17 December 2002 (4669th), 11 December 2003 (4778th) and 11 December 2003 (4878th).

<sup>2</sup> S/2000/459, S/2000/1103, S/2001/499, S/2001/1079, S/2002/542, S/2002/1328, S/2003/655 and S/2003/1148.

<sup>3</sup> S/2001/499, S/2001/1079, S/2002/542, S/2002/1328, S/2003/655 and S/2003/1148. See also subsection B, relating to the United Nations Interim Force in Lebanon.

<sup>4</sup> S/2003/655.

<sup>5</sup> S/2003/1148.

<sup>6</sup> Resolutions 1300 (2000), 1328 (2000), 1351 (2001), 1381 (2001), 1415 (2002), 1451 (2002), 1488 (2003) and 1520 (2003).

<sup>7</sup> S/PRST/2000/19, S/PRST/2000/36, S/PRST/2001/15, S/PRST/2001/37, S/PRST/2002/18, S/PRST/2002/37, S/PRST/2003/9 and S/PRST/2003/29.

## **B. United Nations Interim Force in Lebanon and developments in the Israel-Lebanon sector**

### **Decisions of 31 January 2000 (4095th meeting): resolution 1288 (2000) and statement by the President**

At its 4095th meeting,<sup>8</sup> on 31 January 2000, the Security Council included in its agenda a report of the Secretary-General dated 17 January 2000 on the United Nations Interim Force in Lebanon (UNIFIL).<sup>9</sup> In his report, the Secretary-General observed that the fighting in southern Lebanon had continued and the area remained volatile. He noted that a significant political development in the region had been the resumption, in December 1999, of negotiations between Israel and the Syrian Arab Republic as brokered by the United States of America.

At the meeting, the President (United States) drew attention to a letter dated 28 December 1999 from the representative of Lebanon addressed to the Secretary-General,<sup>10</sup> in which Lebanon requested the extension of the mandate of UNIFIL, which expired on 31 January 2000, for a further period of six months.

The President drew the attention of the Council to a draft resolution;<sup>11</sup> it was put to the vote and adopted unanimously as resolution 1288 (2000), by which the Council, *inter alia*:

Decided to extend the mandate of UNIFIL for a further period of six months, until 31 July 2000;

Reiterated its strong support for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries;

Re-emphasized the terms of reference and general guidelines of the Force and called upon all parties concerned to fully cooperate with the Force for the full implementation of its mandate;

<sup>8</sup> During this period, in addition to the meetings covered in this section, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Interim Force in Lebanon, pursuant to resolution 1353 (2001), annex II, sections A and B. The meetings were held on 21 January 2002 (4455th), 17 July 2002 (4576th), 21 January 2003 (4689th) and 25 July 2003 (4795th).

<sup>9</sup> S/2000/28, submitted pursuant to resolution 1254 (1999).

<sup>10</sup> S/1999/1284.

<sup>11</sup> S/2000/57.

Condemned all acts of violence committed in particular against the Force, and urged the parties to put an end to them;

Encouraged further efficiency and savings provided they did not affect the operational capacity of the Force;

Requested the Secretary-General to continue consultations with the Government of Lebanon and other parties directly concerned with the implementation of the present resolution and to report to the Security Council thereon.

At the same meeting, the President made a statement on behalf of the Council,<sup>12</sup> by which the Council, *inter alia*:

Reaffirmed its commitment to the full sovereignty, political independence, territorial integrity and national unity of Lebanon within its internationally recognized boundaries;

Asserted that all States should refrain from the threat or use of force against the territorial integrity or political independence of any State;

Reiterated its full support for the Taif Agreement and for the continued efforts of the Lebanese Government to consolidate peace, national unity and security in the country;

Commended the Lebanese Government for its successful effort to extend its authority in the south of the country in full coordination with UNIFIL;

Expressed concern over the continuing violence in southern Lebanon and urged all parties to exercise restraint; and paid a special tribute to all those who gave their life while serving in UNIFIL.

### **Decision of 20 April 2000 (4131st meeting): statement by the President**

At its 4131st meeting, on 20 April 2000, the Council included in its agenda a letter dated 6 April 2000 from the Secretary-General addressed to the President of the Security Council,<sup>13</sup> in which he reported on his meeting with the Foreign Minister of Israel, held at Geneva on 4 April 2000, concerning Israel's decision to withdraw its troops from southern Lebanon. Also included in the agenda was a letter dated 17 April 2000 from the Secretary-General addressed to the President,<sup>14</sup> informing the Council that Israel had conveyed by formal notification its decision to withdraw its forces present in Lebanon, by July 2000. This was to be carried out in full accordance with Council resolutions 425 (1978) and 426 (1978). The Secretary-General also reported that he had

<sup>12</sup> S/PRST/2000/3.

<sup>13</sup> S/2000/294.

<sup>14</sup> S/2000/322.

initiated preparations to enable the United Nations to carry out its responsibilities and intended to consult with the parties and interested Member States, including those contributing troops to UNIFIL. He requested that his Special Envoy go to the region as soon as practical.

At the meeting, the President (Canada) drew attention to a letter dated 6 April 2000 from the representative of Lebanon concerning the withdrawal of Israel from southern Lebanon in compliance with Council resolution 425 (1978).<sup>15</sup> The President then made a statement on behalf of the Council,<sup>16</sup> by which the Council, *inter alia*:

Welcomed the decision of Israel to withdraw its forces present in Lebanon in full accordance with resolutions 425 (1978) and 426 (1978) and Israel's intention to cooperate fully with the United Nations;

Endorsed the decision of the Secretary-General to initiate preparations to enable the United Nations to carry out its responsibilities under those resolutions;

Shared the view of the Secretary-General that cooperation by all parties concerned would be required to avoid a deterioration of the situation;

Welcomed his decision to send his Special Envoy to the region as soon as practicable;

Looked forward to his report on relevant developments, including the outcome of the consultations with the parties and all interested Member States and his conclusions and recommendations on plans and requirements to implement resolutions 425 (1978) and 426 (1978) and all other relevant resolutions.

**Decision of 23 May 2000 (4146th meeting):  
statement by the President**

At its 4146th meeting, on 23 May 2000, the Council included in its agenda the report of the Secretary-General dated 22 May 2000 on the implementation of resolutions 425 (1978) and 426 (1978) and the situation in the Middle East.<sup>17</sup> In his report, the Secretary-General informed the Council that, as a first step for preparations to enable the United Nations to carry out its responsibilities under resolutions 425 (1978) and 426 (1978), he had sent his

Special Envoy, together with the Force Commander of UNIFIL and a team of experts, to meet with the Governments of Israel and Lebanon. He also observed that resolutions 425 (1978) and 426 (1978) called not only for the withdrawal of Israel from Lebanon but provided for the means, supported by UNIFIL, whereby the withdrawal could lead to enhanced conditions for international peace and security and the return of effective authority of the Government of Lebanon in the area. He noted the short deadline of 7 July 2000 set by the Government of Israel for the completion of the withdrawal of its forces from Lebanon and set out the minimum conditions and requirements which needed to be met if resolution 425 (1978) was to be implemented fully and without conditions and if the United Nations was to be in a position to fulfil its responsibilities. For the Government of Israel he defined the main requirements which would have to be met for the United Nations to confirm that the Israeli withdrawal had been completed in full compliance with resolutions 425 (1978) and 426 (1978). From the Governments of Lebanon and the Syrian Arab Republic he requested full cooperation in the process of identifying on the ground the lines on the Lebanese-Israeli and Lebanese-Syrian boundaries, respectively, to be used for the purpose of confirming the withdrawal. He stressed that only with the support of all parties would it be possible for peace and security to be restored in southern Lebanon.

At the meeting, the President (China) drew the attention of Council members to two letters submitted by the President of the Council of Ministers of Lebanon addressed to the Secretary-General, dated 15 May 2000<sup>18</sup> and 22 May 2000.<sup>19</sup> The President then made a statement on behalf of the Council,<sup>20</sup> by which the Council, *inter alia*:

Welcomed and strongly endorsed the report of the Secretary-General of 22 May 2000;

Welcomed also his intention to take all necessary steps for any eventuality and to enable UNIFIL to confirm that a complete

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<sup>15</sup> S/2000/295, transmitting a letter from the Minister for Foreign Affairs of Lebanon concerning the need to disarm Palestinians in camps in Lebanon.

<sup>16</sup> S/PRST/2000/13.

<sup>17</sup> S/2000/460, submitted pursuant to resolutions 425 (1978) and 426 (1978).

<sup>18</sup> S/2000/443, enclosing documents and a map regarding the position of Lebanon with respect to the Shab'a farms.

<sup>19</sup> S/2000/465, reporting that Israeli helicopters and tanks had opened fire on villagers who had returned to inspect their homes in the villages from which Israeli forces had withdrawn, killing six persons and injuring 22.

<sup>20</sup> S/PRST/2000/18.

withdrawal of Israeli forces from Lebanon had taken place in compliance with resolution 425 (1978);

Endorsed his requirement for confirming the compliance of all parties concerned with resolution 425 (1978);

Called on all parties concerned to cooperate fully in implementing the recommendations of the Secretary-General, to exercise utmost restraint and to cooperate with UNIFIL and the United Nations to ensure the full implementation of its resolutions 425 (1978) and 426 (1978);

Welcomed the decision of the Secretary-General to send his Special Envoy back to the region immediately to ensure that the requirements were met and that all parties concerned cooperated fully with the United Nations in the complete implementation of its resolutions 425 (1978) and 426 (1978).

**Decision of 18 June 2000 (4160th meeting): statement by the President**

At its 4160th meeting, on 18 June 2000, the Council included in its agenda the report of the Secretary-General of 16 June 2000 on the implementation of resolutions 425 (1978) and 426 (1978).<sup>21</sup> In his report, the Secretary-General stated that Israel had met the requirements set out in his report of 22 May 2000 according to resolution 425 (1978), and confirmed that Israeli forces had completed their withdrawal in conformity with the line identified by the United Nations. He noted that Israel's auxiliary force, known as the South Lebanon Army, had been dismantled, and there were no more detainees at Al-Khiam prison. He also observed that the Government of Lebanon had cooperated with the United Nations, quickly re-established its effective authority in the area through the deployment of security forces, and planned to send a force composed of army and internal security personnel upon confirmation of the withdrawal of Israel.

At the meeting, the President (France) made a statement on behalf of the Council,<sup>22</sup> by which the Council, *inter alia*:

Welcomed the report of the Secretary-General of 16 June 2000 and endorsed the work done by the United Nations as mandated by the Security Council, including the Secretary-General's conclusion that as of 16 June 2000 Israel had withdrawn its forces from Lebanon in accordance with resolution 425 (1978) and met the requirements defined in the Secretary-General's report of 22 May 2000;

<sup>21</sup> S/2000/590, submitted pursuant to the report of the Secretary-General of 22 May 2000 (S/2000/460).

<sup>22</sup> S/PRST/2000/21.

Stressed that the redeployment of UNIFIL should be conducted in coordination with the Government of Lebanon and with the Lebanese armed forces as stated in paragraph 21 of the report of the Secretary-General of 16 June 2000.

**Decision of 27 July 2000 (4177th meeting): resolution 1310 (2000)**

At its 4177th meeting, on 27 July 2000, the Council included in its agenda a report of the Secretary-General dated 20 July 2000 on UNIFIL,<sup>23</sup> and a letter dated 24 July 2000 from the Secretary-General addressed to the President of the Security Council.<sup>24</sup> In his report, the Secretary-General stated that the Israeli forces had left, the local Lebanese auxiliary had been disbanded, the guns had fallen silent, and that the fighters of the Lebanese resistance had conducted themselves in a controlled manner. He emphasized that while it was an enormous improvement compared to the past, the situation in the Israel-Lebanon sector fell well short of peace, and the potential for serious incidents still existed.

By his letter dated 24 July 2000, the Secretary-General observed that the Israeli authorities had removed all violations of the line of withdrawal and that the deployment of UNIFIL would take place on 26 July 2000 and be immediately followed by the deployment of the Lebanese unit.

At the meeting, the President (Jamaica) drew the attention of the Council to a letter dated 11 July 2000 from the representative of Lebanon to the Secretary-General.<sup>25</sup> The President further drew the attention of the Council to a draft resolution<sup>26</sup> prepared on the basis of the report of the Secretary-General; it was put to the vote and adopted unanimously and without debate as resolution 1310 (2000), by which the Council, *inter alia*:

Endorsed the understanding, expressed in the report of the Secretary-General of 20 July 2000, that UNIFIL would deploy and function fully throughout its area of operations and that the

<sup>23</sup> S/2000/718, submitted pursuant to resolution 1288 (2000).

<sup>24</sup> S/2000/731.

<sup>25</sup> S/2000/674, in which Lebanon requested that the Security Council extend the mandate of UNIFIL on the basis of the provisions of resolutions 425 (1978) and 426 (1978) and called for the release of the Lebanese who had been detained for years in Israeli jails "without due process of law".

<sup>26</sup> S/2000/741.



Government of Lebanon would strengthen its presence in this area by deploying additional troops and internal security forces;

Decided, in this context, to extend the mandate of UNIFIL for a further period of six months, until 31 January 2001;

Reiterated its strong support for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries;

Requested the Secretary-General to continue consultations with the Government of Lebanon and other parties directly concerned on the implementation of the resolution and to report to the Security Council thereon;

Decided to review the situation, by early November 2000, and to consider any steps it deemed appropriate regarding UNIFIL, on the basis of the report to be submitted by the Secretary-General, the extent of the deployment of UNIFIL and the actions taken by the Government of Lebanon to restore its effective authority and presence in the area.

**Decisions of 30 January 2001 to 30 January 2003: resolutions 1337 (2001), 1365 (2001), 1391 (2002), 1428 (2002) and 1461 (2003)**

At its 4267th, 4354th, 4458th, 4593rd and 4696th meetings,<sup>27</sup> the Security Council adopted, unanimously and without debate, a resolution extending the mandate of UNIFIL on the basis of the reports of the Secretary-General<sup>28</sup> and the requests of Lebanon<sup>29</sup> and Israel.<sup>30</sup> In his reports, the Secretary-General noted that the general situation in southern Lebanon had remained mostly calm and orderly. Nevertheless, tension between Israel and Lebanon remained high and the relative calm along the Blue Line was an uneasy one. The Secretary-General condemned the violations of the Blue Line over the period that had occurred. These included the launching of hostile attacks across the Blue Line and in the Shab'a farms area by Hizbullah; as well as the recurring violations of the Blue Line by Israeli aircraft. Following the incidents, he stressed that each violation of the Blue Line risked an escalation into confrontation. He determined that UNIFIL had essentially completed two of the three parts of the mandate stipulated in resolution 1310 (2000) and noted that UNIFIL had focused on the last part of the mandate, which was the restoration of peace and

security. Pending a comprehensive peace, UNIFIL had sought at least to maintain the ceasefire along the Blue Line through patrols and observation from fixed positions and close contact with the parties, with a view to correcting violations and preventing the escalation of incidents.

By the resolutions adopted during this period,<sup>31</sup> the Council renewed the mandate of UNIFIL for subsequent six-month periods, the last expiring on 31 July 2003; reiterated its strong support for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries; and condemned all acts of violence and expressed concern over the violations of the withdrawal line. The Council also requested that the Secretary-General continue his consultations with the Government of Lebanon and other parties directly concerned on the implementation of those resolutions and report to the Security Council thereon.

**Decision of 31 July 2003 (4802nd meeting): resolution 1496 (2003)**

At its 4802nd meeting, on 31 July 2003, the Council included in its agenda the report of the Secretary-General dated 23 July 2003 on UNIFIL.<sup>32</sup> In his report, the Secretary-General observed that the UNIFIL area of operation had generally remained calm since the last report, but that tension between Israel and Lebanon still remained high. On 21 January, a breach of the ceasefire occurred when Hizbullah fired mortar rounds at an Israel Defense Forces position; one Lebanese civilian was killed and two civilians were injured by Israel Defense Forces fire. He stated that the air incursions by Israel had provoked and intimidated the population of Lebanon and were at variance with Israel's otherwise full compliance with resolution 425 (1978). The firing of anti-aircraft weapons by Hizbullah across the Blue Line was a violation and placed the civilians of both Lebanon and Israel at risk, as well as UNIFIL personnel. The Secretary-General noted that the Government of Lebanon had demonstrated its capacity to increase its authority throughout southern Lebanon, complying with resolution 425 (1978).

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<sup>27</sup> Held on 30 January 2001, 31 July 2001, 28 January 2002, 30 July 2002 and 30 January 2003, respectively.

<sup>28</sup> S/2001/66, S/2001/714, S/2002/55, S/2002/746 and S/2003/38.

<sup>29</sup> S/2001/14, S/2001/677, S/2001/734, S/2002/40, S/2002/739 and S/2003/36.

<sup>30</sup> S/2001/55.

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<sup>31</sup> Resolutions 1337 (2001), 1365 (2001), 1391 (2002), 1428 (2002) and 1461 (2003).

<sup>32</sup> S/2003/728, submitted pursuant to resolution 1461 (2003).

At the meeting, the President (Spain) drew the attention of the Council to two letters from the representative of Israel addressed to the Secretary-General, dated 2 June 2003<sup>33</sup> and 24 July 2003.<sup>34</sup> The President further drew attention to two letters from the representative of Lebanon addressed to the Secretary-General, dated 2 July 2003<sup>35</sup> and 9 July 2003.<sup>36</sup>

<sup>33</sup> S/2003/603, noting that the Government of Lebanon had failed to comply with its international obligations under resolutions 425 (1978), 426 (1978), 1310 (2000) and 1337 (2001) to eliminate terrorism from its territory, namely ending the ongoing violations of the Blue Line by the terrorist organization Hizbullah.

<sup>34</sup> S/2003/758, reporting that Hizbullah had fired missiles across the Blue Line on 21 July 2003, resulting in three injured civilians; stating that the Government of Lebanon had not satisfied its obligations under the norms of international law and Security Council resolutions; and alleging that the Government of Lebanon had relinquished control of southern Lebanon to Hizbullah.

<sup>35</sup> S/2003/685, requesting an extension of the mandate of UNIFIL for a further interim period of six months.

<sup>36</sup> S/2003/698, transmitting a statistical breakdown of alleged Israeli violations of Lebanese sovereignty during the month of June 2003 and stating that such acts posed a threat to the stability of the region by promoting a climate of tension.

At the same meeting, the President drew the attention of the Council to a draft resolution submitted by France;<sup>37</sup> it was put to the vote and adopted unanimously and without debate as resolution 1496 (2003), by which the Council, *inter alia*:

Decided to extend the mandate of UNIFIL until 31 January 2004; and reiterated its strong support for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries;

Called on the parties to ensure that UNIFIL was accorded full freedom of movement in the discharge of its mandate throughout its area of operation as outlined in the Secretary-General's report; reiterated its call on the parties to continue to fulfil the commitments they had given to respect fully the withdrawal line identified by the United Nations, to exercise utmost restraint and to cooperate fully with the United Nations and UNIFIL;

Condemned all acts of violence, expressed great concern about the serious breaches and the air, sea and land violations of the withdrawal line, and urged the parties to put an end to those violations and to abide scrupulously by their obligation to respect the safety of UNIFIL and other United Nations personnel;

Requested the Secretary-General to continue consultations with the Government of Lebanon and other parties directly concerned on the implementation of the resolution and to report thereon to the Council before the end of the present mandate as well as on the activities of UNIFIL and the tasks carried out by the United Nations Truce Supervision Organization.

<sup>37</sup> S/2003/778.

### **33. The situation in the Middle East, including the Palestinian question**

#### **Decision of 7 October 2000 (4205th meeting): resolution 1322 (2000)**

By letters dated 2 October 2000 to the President of the Security Council, the representative of Iraq, in his capacity as Chairman of the Group of Arab States and on behalf of the members of the League of Arab States,<sup>1</sup> and the representative of Malaysia, in his capacity as Chairman of the Group of Islamic States and on behalf of the Non-Aligned Movement,<sup>2</sup> requested an urgent meeting of the Council to discuss the Israeli aggression against Haram al-Sharif in occupied Jerusalem and subsequent wave of Israeli

attacks against Palestinian civilians in the occupied Palestinian territories, including Jerusalem. Similarly, in a letter of the same date, the representative of South Africa, in his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement, also requested an urgent meeting of the Council to respond to the critical situation in occupied East Jerusalem, other parts of the occupied Palestinian territory and parts of Israel.<sup>3</sup>

By a letter dated 2 October 2000 to the President of the Council, the Permanent Observer of Palestine called for an immediate meeting of the Council to consider the Israeli aggression against Haram al-Sharif

<sup>1</sup> S/2000/928.

<sup>2</sup> S/2000/929 and S/2000/935.

committed on 28 September 2000 and the continuing use of excessive lethal force against Palestinian civilians. He stated that this constituted a grave breach of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949, and called for Council action in fulfilment of its primary responsibility for the maintenance of international peace and security.<sup>4</sup>

At its 4204th meeting,<sup>5</sup> held on 3, 4 and 5 October 2000 in response to the requests contained in the above-mentioned letters, the Council included the letters in its agenda. The President (Namibia) drew the attention of the Council to a letter dated 29 September 2000 from the Permanent Observer of Palestine,<sup>6</sup> in which was reported that the “provocative” visit to Haram al-Sharif, the third holiest site of Islam, by the leader of Israel’s Likud party, Ariel Sharon, had aggravated existing tensions, resulting in serious clashes between Palestinian civilians and Israeli security forces, and proving detrimental to the ongoing Middle East peace process. The observer asked the Council to condemn the acts of violence by the Israeli security forces and compel those forces to withdraw from Haram al-Sharif and from the rest of East Jerusalem as well as from other Palestinian cities.

At the meeting, statements were made by all Council members and the representatives of Algeria, Bahrain, Cuba, Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malta, Mauritania, Morocco, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, South Africa, Spain, the Sudan, the Syrian Arab Republic, Turkey, the United Arab Emirates, Viet Nam and Yemen, as well as the Permanent Observer of Palestine, the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, and the Permanent Observers for the League of Arab States (LAS), the Organization of the Islamic Conference (OIC) and the Organization of African Unity.

The representative of Palestine stated that the “provocative” visit of Ariel Sharon had led to massive

protests by Palestinian civilians as well as by Arabs in Israel, which had been severely repressed by Israeli security forces, perhaps in order to force the Palestinian leadership to accept Israel’s demands regarding the peace process. He stressed that the Security Council had a very specific responsibility to put an immediate end to Israel’s brutal campaign and to the occupying Power’s violation of international law, including the Fourth Geneva Convention and relevant Security Council resolutions, as well as of the commitments undertaken in the peace accords.<sup>7</sup>

The representative of Israel commented that the escalation of hostilities had been initiated by the Palestinians through a series of earlier incidents. He added that during Ariel Sharon’s visit live fire emanated from the crowds and Israeli security only returned fire when absolutely necessary. Overall, he said that responsibility for the escalation of violence rested with the Palestinian Authority, as Palestinian security forces had violated agreements with Israel regarding the use of weapons.<sup>8</sup>

During the debate, speakers unanimously affirmed their support for the peace process, recognized that violence was weakening the process and called on the parties to exercise restraint. They expressed their hope that a meeting scheduled in the next few days between the President of the Palestinian Authority, Yasser Arafat, and the Prime Minister of Israel, Ehud Barak, in Paris and Sharm el-Sheikh would produce positive results.

Most speakers regretted the use of force against the Palestinians and reminded Israel of its obligation to respect the Fourth Geneva Convention. However, a large number of speakers openly denounced Israel’s violation of international humanitarian law,<sup>9</sup> and

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<sup>7</sup> S/PV.4204, pp. 3-4.

<sup>8</sup> *Ibid.*, pp. 5-6.

<sup>9</sup> S/PV.4204, p. 7 (France); p. 10 (Malaysia); p. 15 (Tunisia); and p. 16 (Namibia); S/PV.4204 (Resumption 1), p. 5 (Pakistan); p. 6 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 8 (Kuwait); p. 9 (Qatar); p. 11 (Bahrain); p. 13 (Syrian Arab Republic); p. 15 (Islamic Republic of Iran); p. 16 (Saudi Arabia); p. 17 (Cuba); p. 18 (Yemen); p. 19 (Iraq); p. 20 (Mauritania); and p. 22 (League of Arab States (LAS)); S/PV.4204 (Resumption 2), p. 3 (Libyan Arab Jamahiriya); p. 4 (Sudan); p. 6 (Oman); p. 7 (United Arab Emirates); p. 10 (Lebanon); and p. 14 (Malta).

<sup>3</sup> S/2000/934.

<sup>4</sup> S/2000/930.

<sup>5</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to Article 41 of the Charter.

<sup>6</sup> S/2000/921.

stressed that the use of force against the Palestinians had been excessive and disproportionate.<sup>10</sup> A majority of speakers also considered Ariel Sharon's visit a provocation, undermining the peace process, and many condemned it.<sup>11</sup>

Many speakers also called for the implementation of all Council resolutions on the Israeli/Palestinian conflict, in particular resolutions 242 (1967) and 338 (1973) regarding the withdrawal of Israeli occupation from all Arab territory, and reaffirmed their support for the inalienable rights of the Palestinian people.<sup>12</sup>

Several speakers called for the establishment of an international commission or appropriate inquiry to establish facts of the events and determine responsibility.<sup>13</sup> The representative of the United States

said that his country would chair a meeting of Israeli and Palestinian security officials for the purpose of fact-finding as soon as conditions permitted.<sup>14</sup> The representative of Egypt called on the Council to investigate the events that had occurred.<sup>15</sup>

A number of speakers expressed their views on how the Council should respond. A few of them specifically evoked the Council's responsibility to put an end to Israeli actions and protect Palestinian civilians.<sup>16</sup> Others emphasized that the Council should create an atmosphere conducive to the restoration of the peace process.<sup>17</sup> Some requested a series of specific measures, including that the Council guarantee the non-entry by Israeli forces into Haram al-Sharif and Palestinians' freedom to carry out religious practices in Haram al-Sharif; condemn Ariel Sharon's provocation and Israeli actions in the Palestinian territories; hold the Israeli government accountable and call for compensation to Palestinian civilians for their losses; call on Israel to respect international humanitarian law; put pressure on Israel to engage seriously in the peace process; force Israel to withdraw from all occupied territories; call for an international investigation; reaffirm that Al-Quds is part of the Palestinian territories occupied in 1967, and adopt the draft resolution circulated by the Non-Aligned Movement.<sup>18</sup>

The representative of Kuwait made a specific reference to Israeli violations against Palestinian children, which were in contradiction with Council resolution 1261 (1999) on children and armed conflict.<sup>19</sup>

<sup>10</sup> S/PV.4204, p. 7 (France); p. 8 (Bangladesh); p. 9 (Netherlands); p. 10 (Malaysia); p. 11 (Russian Federation, Ukraine); p. 12 (Argentina); p. 13 (Jamaica); p. 14 (China); p. 15 (Canada, Tunisia); p. 16 (Namibia); and p. 19 (South Africa); S/PV.4204 (Resumption 1), p. 3 (Algeria); p. 5 (Pakistan); p. 6 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 8 (Kuwait); p. 10 (Bahrain); p. 11 (Syrian Arab Republic); p. 15 (Islamic Republic of Iran); p. 17 (Cuba); p. 21 (LAS); and p. 22 (Turkey); S/PV.4204 (Resumption 2), p. 4 (Indonesia); p. 9 (Morocco); p. 11 (Nepal, Viet Nam); p. 12 (Organization of African Unity); and p. 13 (Spain).

<sup>11</sup> S/PV.4204, p. 7 (France); p. 9 (Netherlands); p. 10 (Malaysia); p. 11 (Russian Federation); p. 14 (China); p. 15 (Tunisia); p. 16 (Namibia); p. 17 (Egypt); and p. 19 (South Africa); S/PV.4204 (Resumption 1), p. 3 (Algeria); p. 4 (Pakistan); p. 5 (Jordan); p. 6 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 8 (Kuwait); p. 9 (Qatar); p. 10 (Bahrain); p. 11 (Syrian Arab Republic); p. 20 (Mauritania); p. 14 (Islamic Republic of Iran); p. 16 (Saudi Arabia); p. 17 (Cuba); p. 18 (Yemen); p. 19 (Iraq); and p. 21 (LAS); S/PV.4204 (Resumption 2), p. 4 (Sudan, Indonesia); p. 6 (Oman, United Arab Emirates); p. 8 (Organization of the Islamic Conference (OIC)); p. 9 (Morocco); p. 10 (Lebanon); and p. 13 (Spain).

<sup>12</sup> In General Assembly resolution 3236 (XXIX) of 22 November 1974, the inalienable rights of the Palestinian people are defined as the right to self-determination without external interference; the right to national independence and sovereignty; and the right of Palestinians to return to their homes and property from which they had been displaced and uprooted.

<sup>13</sup> S/PV.4204, p. 8 (European Union, Bangladesh); p. 16 (Tunisia, Mali); S/PV.4204 (Resumption 1), p. 8 (Kuwait); p. 10 (Qatar); p. 17 (Saudi Arabia); p. 20 (Mauritania); p. 21 (LAS); and p. 22 (Turkey);

S/PV.4204 (Resumption 2), p. 7 (United Arab Emirates); p. 11 (Nepal); p. 13 (Spain); and p. 14 (Malta).

<sup>14</sup> S/PV.4204, p. 7.

<sup>15</sup> *Ibid.*, p. 18.

<sup>16</sup> S/PV.4204, p. 10 (Malaysia); p. 15 (Tunisia); and p. 18 (Egypt); S/PV.4204 (Resumption 1), p. 8 (Kuwait); p. 13 (Syrian Arab Republic); p. 15 (Islamic Republic of Iran); p. 16 (Saudi Arabia); p. 18 (Yemen); and p. 21 (LAS); S/PV.4204 (Resumption 2), p. 3 (Libyan Arab Jamahiriya); p. 4 (Sudan); and p. 10 (Lebanon).

<sup>17</sup> S/PV.4204, p. 7 (United States); p. 11 (Russian Federation); p. 15 (Canada); and pp. 15-16 (Tunisia); S/PV.4204 (Resumption 2), p. 10 (Lebanon).

<sup>18</sup> S/PV.4204, p. 18 (Egypt); S/PV.4204 (Resumption 1), pp. 8-9 (Kuwait); p. 10 (Qatar); and pp. 13-14 (Syrian Arab Republic); S/PV.4204 (Resumption 2), p. 4 (Sudan).

<sup>19</sup> S/PV.4204 (Resumption 1), p. 8.

The representatives of Iraq and Cuba stated that the Council was one-sided on this issue and therefore it was unable to fulfil its responsibility to maintain international peace and security.<sup>20</sup>

Finally, the representative of Algeria complained that Council members during previously held consultations had discussed at length whether to meet in public and whether to invite non-Council members to speak. He complained that there were attempts to restrict access to the Council despite the fact that any State had the right to speak in a Council debate.<sup>21</sup>

Towards the end of the debate, taking the floor a second time, the representative of Israel emphasized that his country was not solely responsible for the current situation. He also strongly refuted contentions that the visit of Ariel Sharon had been part of a plot by the Israeli government to assert sovereignty over Temple Mount. He said that Temple Mount was the foremost holy place in Judaism and that the visit had been in compliance with the principles of Israeli democracy.<sup>22</sup>

The representative of Palestine contended that recent attempts to resume the peace process through meetings between the two sides in Paris and in Sharm el-Sheikh had not led anywhere in part because Israel had refused the creation of a commission of inquiry. He added that the exercise of Israeli democracy could not be used as an excuse on occupied land. He deplored the fact that Israel had not accepted responsibility in the killing of innocent civilians and that, consequently, a commission of inquiry needed to be established to reveal the truth.<sup>23</sup>

At the 4205th meeting, on 7 October 2000, a draft resolution submitted by Bangladesh, Jamaica, Malaysia, Mali, Namibia, Tunisia and Ukraine<sup>24</sup> was put to the vote. It was adopted by 14 votes, with 1 abstention (United States), as resolution 1322 (2000), by which the Council, *inter alia*:

Deplored the provocation carried out at Haram al-Sharif in Jerusalem on 28 September 2000, and the subsequent

violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties;

Called upon Israel, the occupying Power, to abide scrupulously by its legal obligations and its responsibilities under the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;

Called for the immediate cessation of violence, and for all necessary steps to be taken to ensure that violence ceased, that new provocative actions were avoided, and that the situation returned to normality in a way which promoted the prospects for the Middle East peace process;

Stressed the importance of establishing a mechanism for a speedy and objective inquiry into the tragic events of the last few days with the aim of preventing their repetition, and welcomed any efforts in this regard; and called for the immediate resumption of negotiations within the Middle East peace process on its agreed basis with the aim of achieving an early final settlement between the Israeli and Palestinian sides.

**Decision of 18 December 2000 (4248th meeting):  
rejection of a draft resolution**

By a letter dated 21 November 2000, the representative of the Libyan Arab Jamahiriya, in his capacity as Chairman of the Group of Arab States, stated that the continuing escalation by Israeli forces of their aggression against the Gaza Strip constituted collective punishment against Palestinians and threatened the stability of the region, and therefore requested an urgent meeting of the Council to consider the protection of Palestinians.<sup>25</sup>

At its 4231st meeting,<sup>26,27</sup> held on 22 November 2000 in response to that request, the Council included the above-mentioned letter in its agenda. Statements were made by all Council members and the representatives of Cuba (in his national capacity and in his capacity as Acting Chairman of the Committee of the Exercise of the Inalienable Rights of the Palestinian People), Egypt, Israel, Jordan, the Libyan Arab

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<sup>20</sup> *Ibid.*, p. 17 (Cuba); and p. 19 (Iraq).

<sup>21</sup> S/PV.4204 (Resumption 1), p. 3. For more information, see chap. I, part I, with regard to rules 1-5 of the provisional rules of procedure; and chap. III, part I, with regard to the basis of invitations to participate in the proceedings.

<sup>22</sup> S/PV.4204 (Resumption 2), pp. 14-15.

<sup>23</sup> *Ibid.*, pp. 16-17.

<sup>24</sup> S/2000/963.

<sup>25</sup> S/2000/1109.

<sup>26</sup> At the 4217th and 4218th meetings, both held in private on 10 November 2000, the Council members had constructive discussions with the Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian Authority, Yasser Arafat, and with the representative of Israel, respectively.

<sup>27</sup> For more information on the discussion at this meeting, see chap. XII, part II, sect. A, case 18, with regard to Article 24 of the Charter.

Jamahiriya (on behalf of the Group of Arab States) and South Africa (on behalf of the Non-Aligned Movement) and the Permanent Observer of Palestine.

The President of the Council (Netherlands) drew attention to a letter from the Permanent Observer of Palestine dated 20 November 2000,<sup>28</sup> denouncing the massive Israeli bombardments of Gaza that began on that date, emphasizing that Palestine had been calling on the Council since 25 October 2000 to end the Israeli campaign and protect Palestinians, and deploring the fact that the Council had not acted since the adoption of resolution 1322 (2000).

In his statement, the representative of Palestine described the serious escalation of violence by Israel, stating that those actions were in contravention of the Fourth Geneva Convention as well as previous Council resolutions. He denounced Israel for continuing the policy of settlements, thereby imposing a stalemate on the peace process. Israel had also tried to back out of the Sharm el-Sheikh agreement and had impeded the work of the fact-finding committee.<sup>29</sup> He then pleaded for the establishment of a United Nations observer force to provide international protection for Palestinian civilians under occupation, regardless of Israel's approval, and said that Yasser Arafat had already met with the Council and requested a force of 2,000 observers. He then welcomed a Council agreement

reached on 17 November 2000 to entrust the Secretary-General with conducting consultations on this issue.<sup>30</sup>

The representative of Israel described a series of terrorist bombings which had killed Israeli civilians. He deplored the fact that Yasser Arafat had refused the peace proposed to him at Camp David in July 2000 and raised doubts about Palestinians' willingness to maintain their commitment to restrain terrorist elements. He also said that the international community was biased as it never expressed outrage at Palestinian violations. Finally, he emphasized that there was no need for an international force and that in calling for it, the Palestinians were merely seeking to depart from the bilateral track mandated by the Oslo agreement.<sup>31</sup>

During the meeting, a number of speakers openly deplored the violence committed by both sides,<sup>32</sup> and most speakers urged the parties to end the current violence and return to peace negotiations. Some particularly emphasized the need for the parties to implement the agreement reached at the Sharm el-Sheikh summit.<sup>33</sup> While condemning the targeting of civilians on both sides, the representative of Egypt also said that the presence of Israeli settlers on Palestinian territory and the Israeli economic blockade imposed on the Palestinians were making the situation tenser and he called upon the Council to adopt a draft resolution to be introduced by the Non-Aligned Movement.<sup>34</sup>

The deliberations also focused on following up on previous Council decisions, in particular implementation of resolution 1322 (2000), which was emphasized by a few speakers.<sup>35</sup> They also unanimously brought their support to the fact-finding committee mandated in resolution 1322 (2000) and

<sup>28</sup> S/2000/1107.

<sup>29</sup> For more details about the Sharm el-Sheikh summit meeting of the Prime Minister of Israel, Ehud Barak, and the President of the Palestinian Authority, Yasser Arafat, on 17 October 2000, and the agreement reached there, see the letter dated 17 October 2000 from the representative of the United States to the Secretary-General (S/2000/1001), transmitting the statement made by the President of the United States on the conclusion of the summit. The leaders had agreed that (1) both sides would issue public statements calling for an end to the violence and take concrete measures to immediately return to the situation which existed prior to the current crisis; (2) the United States would develop with the Israelis and Palestinians in consultation with the United Nations a committee of fact-finding on the recent violent events; and (3) that the United States would consult with the parties within two weeks about how to move forward. On 20 October 2000, the Foreign Minister of Israel addressed a letter to the Secretary-General (S/2000/1007) regarding Israel's compliance with the understanding reached at Sharm el-Sheikh.

<sup>30</sup> S/PV.4231, pp. 2-5.

<sup>31</sup> *Ibid.*, pp. 5-7.

<sup>32</sup> *Ibid.*, p. 8 (United States); p. 9 (Russian Federation); p. 11 (Bangladesh); p. 12 (United Kingdom); p. 15 (Argentina, Ukraine); p. 17 (Canada, Netherlands); p. 20 (South Africa on behalf of the Non-Aligned Movement); and p. 21 (Egypt).

<sup>33</sup> *Ibid.*, p. 7 (United States); p. 10 (France on behalf of the European Union, Mali); p. 12 (United Kingdom, Jamaica); p. 15 (Argentina); and p. 17 (Canada).

<sup>34</sup> *Ibid.*, pp. 21-22.

<sup>35</sup> *Ibid.*, p. 12 (Jamaica); p. 13 (Tunisia); p. 15 (Ukraine); p. 20 (South Africa on behalf of the Non-Aligned Movement); and p. 23 (Cuba in the capacity of Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People).

presided over by United States Senator George Mitchell, and stressed the need for its speedy start. The representative of the Libyan Arab Jamahiriya stated that the conclusions reached by the committee should be submitted to the International Criminal Court.<sup>36</sup>

Almost all speakers supported the efforts of the Secretary-General to consult with the parties and explore the proposal to deploy a United Nations observer or protection force, in particular the four priority objectives that he had defined at the Council meeting on 17 November 2000. The representative of Namibia pointed out that the establishment of an observer force was in line with Council resolution 904 (1994).<sup>37</sup> However, several speakers stressed the need for the consent of both sides.<sup>38</sup> The representative of the United States added that the parties had to come to an agreement on their own and then have the Council endorse it if necessary.<sup>39</sup> The representative of the Netherlands insisted that the activities of the Council must not be allowed to interfere with the work of the Secretary-General and of the fact-finding commission.<sup>40</sup>

At its 4248th meeting,<sup>41</sup> on 18 December 2000, statements were made by all Council members as well as the representative of Israel and the Permanent Observer of Palestine. The President of the Council (Russian Federation) drew attention to a letter from the Permanent Observer of Palestine dated 18 December 2000 requesting participation in the meeting.<sup>42</sup> He then said that the Council had before it a draft resolution submitted by Bangladesh, Jamaica, Malaysia, Mali, Namibia and Tunisia,<sup>43</sup> by which the Council would

express its determination to establish a United Nations force of military and police observers in the occupied Palestinian territories, with the aim of contributing to implementation of the Sharm el-Sheikh agreement, the cessation of violence and enhancing security for Palestinian civilians.

At the outset, the representative of Israel expressed satisfaction at the recent renewal of contacts between Israel and the Palestinians, and their upcoming meeting in Washington, D.C. He then called the draft resolution a blatant attempt to abuse the goodwill of the international community and obscure the strategic choice made by the Palestinians. He stressed this resolution would send a message to the Palestinians that there was no need to negotiate with Israel. He added that a protection force was unnecessary because the Palestinian Authority had the means to protect its civilians, and he strongly urged Council members not to support the draft resolution.<sup>44</sup>

The representative of Namibia, on behalf of the Non-Aligned Movement, pointed to the urgent need to establish a protection force for Palestinians because of the continued violence. He believed that Council action was not subject to peace negotiations, and that a United Nations force would in fact be beneficial to the peace process. Finally, he said that the non-aligned caucus had had useful exchanges with France and the United Kingdom during negotiations on the draft resolution.<sup>45</sup> Most of these points were echoed by the sponsors of the draft resolution, with the representatives of China and the Ukraine also giving their support. The representative of the Ukraine, however, recognized that the deployment of such a force would be impossible without the cooperation of Israel.<sup>46</sup>

Other members argued that the draft resolution was ill-timed, in the light of the ongoing efforts of the Secretary-General to have both parties accept the force and of the resumption of bilateral negotiations.<sup>47</sup> The representative of the Netherlands, in particular, expressed disappointment that the Council was being forced to vote on this text.<sup>48</sup> The representative of the

<sup>36</sup> *Ibid.*, p. 20.

<sup>37</sup> By resolution 904 (1994), para. 3, the Council called for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory, including, *inter alia*, a temporary international or foreign presence, which was provided for in the Declaration of Principles (S/26560), within the context of the ongoing peace process.

<sup>38</sup> S/PV.4231, p. 8 (United States); p. 12 (United Kingdom); p. 16 (Malaysia); and p. 17 (Canada).

<sup>39</sup> *Ibid.*, p. 8.

<sup>40</sup> *Ibid.*, pp. 17-18.

<sup>41</sup> At the 4233rd and 4234th meetings, both held in private on 27 November 2000, the Council members had constructive discussions with the Ministerial Committee of the OIC and with the representative of Israel, respectively.

<sup>42</sup> S/2000/1206.

<sup>43</sup> S/2000/1171.

<sup>44</sup> S/PV.4248, pp. 2-4.

<sup>45</sup> *Ibid.*, p. 5.

<sup>46</sup> *Ibid.*, pp. 6-7 (Malaysia); pp. 7-8 (China); p. 8 (Ukraine); p. 8 (Mali); and pp. 9-10 (Jamaica).

<sup>47</sup> *Ibid.*, p. 6 (France); p. 7 (Netherlands); pp. 8-9 (Argentina); p. 10 (United Kingdom); pp. 10-11 (Canada); and p. 11 (United States, Russian Federation).

<sup>48</sup> *Ibid.*, p. 7.

United Kingdom said that his country remained ready to engage on a proposal that could find consensus.<sup>49</sup> The representative of the United States stressed that his country would have cast a veto if the draft resolution had had a chance of being adopted.<sup>50</sup>

The representative of Palestine deplored the fact that the Council had been unable to protect Palestinian civilians. He pointed out that, although the sponsors of the draft resolution had been flexible and agreed to make changes in the text to gather a consensus, the position of Council members had not changed. He had therefore asked the sponsors to submit the draft resolution to a vote regardless of the result of the voting, in order to show the Council its responsibilities. He added that Israel's approval should never be a precondition for the Council's assumption of its responsibilities.<sup>51</sup>

The draft resolution was put to the vote and received 8 votes in favour (Bangladesh, China, Jamaica, Malaysia, Mali, Namibia, Tunisia, Ukraine) and 7 abstentions (Argentina, Canada, France, Netherlands, Russian Federation, United Kingdom, United States), and was not adopted, owing to the failure to obtain the required number of votes.

**Decision of 27 March 2001 (4305th meeting):  
rejection of a draft resolution**

By a letter dated 13 March 2001,<sup>52</sup> the representative of the United Arab Emirates, on behalf of the Group of Arab States, requested a meeting of the Council to examine the situation in the occupied Palestinian territories following the escalation of Israel's repressive tactics against the Palestinians, and to consider the establishment of a United Nations protection force.

At its 4295th meeting,<sup>53</sup> held on 15 and 19 March 2001 in response to that request, the Council included the above-mentioned letter in its agenda. Statements were made by all Council members and the representatives of Algeria, Bahrain, Cuba, Egypt,

Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco, New Zealand, Pakistan, Qatar, Saudi Arabia, South Africa (on behalf of the Non-Aligned Movement), the Sudan, the Syrian Arab Republic, Sweden (on behalf of the European Union), the United Arab Emirates and Yemen, the Permanent Observer of Palestine, the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the Permanent Observer of the OIC and the Deputy Permanent Observer of LAS.<sup>54</sup>

The President of the Council (Ukraine) drew attention to two letters, dated 9 March and 12 March 2001, from the Permanent Observer of Palestine,<sup>55</sup> refuting Israel's allegations that the Palestinian Authority was violating commitments made in 1993 to renounce terrorism, denouncing the deteriorating situation, and calling for a meeting of the Council. The President also drew attention to a letter dated 14 March 2001 from the representative of Malaysia on behalf of the Group of Islamic States,<sup>56</sup> urging the Council to set up a force to protect Palestinian civilians.

In his statement, the representative of Palestine deplored the increasing Israeli campaign against the Palestinians in violation of resolution 1322 (2000) including, inter alia, the excessive use of force; deliberate killings of civilians in violation of international humanitarian law; destruction of the Palestinian economy; restrictions in the movement of persons and goods; collective punishment; and the non-transfer of taxes collected for the Palestinian Authority. He also stressed that the confiscation of territory and the building of settlements had continued even after the start of the peace process. He insisted that the Council had a responsibility to stop violence and save the peace process. He mentioned that the latest round of peace talks at Taba, Egypt, between the two sides had achieved reasonable progress, and regretted that the new Israeli government was now reluctant to negotiate from the point reached then, and he expressed alarm at Israel's preference for the

<sup>49</sup> Ibid., p. 10.

<sup>50</sup> Ibid., p. 11.

<sup>51</sup> Ibid., pp. 12-13.

<sup>52</sup> S/2001/216.

<sup>53</sup> At the 4292nd and 4293rd meetings, both held in private on 14 March 2001, Council members had constructive discussions with the Permanent Observer of Palestine following a request made on 14 March in a letter to the Council (S/2001/222) and with the Deputy Prime Minister and Minister for Foreign Affairs of Israel, respectively.

<sup>54</sup> The representative of Belgium was invited to participate but did not make a statement.

<sup>55</sup> S/2001/209 and S/2001/226.

<sup>56</sup> S/2001/231.



negotiation of interim arrangements, as opposed to focusing on a final settlement.<sup>57</sup>

The representative of Israel again rejected the proposal for a United Nations protection force, contending that the presence of United Nations observers would create an incentive for the Palestinians to continue the violence. He noted that his country's repressive policies were in response to terrorism and that only a concerted effort to control Palestinian violence would enable Israel to work again to improve the quality of their mutual coexistence. Finally, he emphasized that the Council should not intervene but should rather support the parties in their quest for peace.<sup>58</sup>

A majority of speakers strongly rejected Israel's policies and called on Israel to immediately put an end to them.<sup>59</sup> Almost all speakers demanded the end of the economic blockade against the Palestinian people, and a few specifically requested the international community to provide humanitarian and economic assistance to the Palestinians.<sup>60</sup>

Speakers unanimously recognized that the renewed violence was jeopardizing the peace process and that its resumption was crucial, although the representative of Algeria pointed out that the peace process appeared unlikely to resume any time soon.<sup>61</sup> Some specifically urged both parties to put an end to hostilities.<sup>62</sup> Other speakers encouraged the Secretary-

General to continue supporting the peace process,<sup>63</sup> and emphasized that it was the role of the Council to think about proposals that would facilitate contacts between the parties, including confidence-building measures.<sup>64</sup>

Most speakers called on the Council to reconsider the proposal to establish a protection force in the occupied territories which had been rejected by the Council in December 2000, and for the adoption of a Non-Aligned Movement draft resolution currently circulating.<sup>65</sup> They also argued that the death of Palestinians could have been prevented if a protection force had been established. The representative of Egypt stated in particular that Israel had escalated its brutal treatment of Palestinians since the new government took office, under the pretext of security threats. He mentioned a recent report of the Human Rights Commission on human rights violations in Palestinian territories<sup>66</sup> and urged the Council to consider the recommendations contained in it.<sup>67</sup> In the same vein, the representative of South Africa recalled that the United Nations Special Coordinator for the Middle East Peace Process, in a report issued in February 2001, had found that repressive measures against the Palestinians had had dramatic consequences for the economy and increased the level of poverty.<sup>68</sup> Three

<sup>57</sup> S/PV.4295, pp. 3-6.

<sup>58</sup> *Ibid.*, pp. 6-9.

<sup>59</sup> *Ibid.*, pp. 3-6 (Palestine); p. 10 (United Arab Emirates); and p. 11 (Tunisia); S/PV.4295 (Resumption 1), p. 3 (France); p. 10 (Mali); p. 17 (Egypt); p. 19 (Jordan); p. 20 (Yemen, Saudi Arabia); p. 23 (Malaysia); p. 24 (Bahrain); p. 25 (Algeria); pp. 27-28 (Libyan Arab Jamahiriya); p. 29 (Qatar); p. 32 (Sudan); p. 33 (South Africa); p. 34 (Kuwait); and p. 35 (Iraq); S/PV.4295 (Resumption 2), p. 4 (Syrian Arab Republic); p. 6 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 8 (Islamic Republic of Iran); p. 12 (Lebanon, OIC); and p. 14 (LAS).

<sup>60</sup> S/PV.4295 (Resumption 1), pp. 10-11 (Mali); p. 13 (Bangladesh); p. 14 (Jamaica); p. 26 (Japan); and p. 30 (Sweden); S/PV.4295 (Resumption 2), p. 7 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People).

<sup>61</sup> S/PV.4295 (Resumption 1), p. 25.

<sup>62</sup> S/PV.4295 (Resumption 1), p. 3 (France); p. 5 (China); p. 6 (United States, United Kingdom); p. 7 (Norway); p. 9 (Colombia); p. 12 (Singapore); p. 14 (Jamaica);

p. 15 (Ukraine); p. 26 (Japan); p. 30 (Sweden on behalf of the European Union); and p. 33 (South Africa on behalf of the Non-Aligned Movement); S/PV.4295 (Resumption 2), p. 4 (New Zealand).

<sup>63</sup> S/PV.4295 (Resumption 1), p. 4 (France, China); p. 5 (United States); p. 7 (Norway); and p. 9 (Ireland).

<sup>64</sup> S/PV.4295 (Resumption 1), p. 4 (France); pp. 6-7 (United Kingdom); p. 7 (Norway); p. 8 (Ireland); p. 10 (Mali); and p. 11 (Mauritius).

<sup>65</sup> S/PV.4295, p. 10 (United Arab Emirates); and p. 11 (Tunisia); S/PV.4295 (Resumption 1), p. 8 (Ireland); p. 10 (Colombia, Mali); p. 11 (Mauritius); p. 12 (Singapore); p. 14 (Jamaica); p. 18 (Egypt); p. 19 (Jordan); p. 21 (Yemen); p. 22 (Saudi Arabia, Malaysia); p. 24 (Bahrain); p. 25 (Algeria); p. 28 (Libyan Arab Jamahiriya); p. 29 (Qatar); p. 32 (Sudan); p. 33 (South Africa); and p. 34 (Kuwait); S/PV.4295 (Resumption 2); p. 3 (Pakistan); p. 5 (Syrian Arab Republic); p. 7 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 9 (Islamic Republic of Iran, Cuba); p. 10 (Mauritania); p. 11 (Morocco); p. 12 (Lebanon); p. 13 (OIC); p. 14 (LAS); and p. 15 (Indonesia).

<sup>66</sup> E/CN.4/2001/121, dated 16 March 2001.

<sup>67</sup> S/PV.4295 (Resumption 1), p. 17.

<sup>68</sup> *Ibid.*, pp. 32-33.

speakers stressed that Council resolutions on the protection of civilians in armed conflict needed to be implemented.<sup>69</sup>

While almost all speakers were in favour of the proposal to establish a protection force in the occupied territories, some reiterated the argument made in December that preliminary support from both Israel and the Palestinians was necessary.<sup>70</sup> France in particular stated that the mechanism would be good to ease tensions, but could be effective only if it was part of a larger goal to reduce violence and resume negotiations.<sup>71</sup> The representative of Singapore suggested that the Council could task the Secretary-General to consult with the parties to determine an implementation framework. He also suggested the Council dispatch a mission to the region in order to continue useful dialogue with the parties.<sup>72</sup>

The representative of the United States insisted that the Council's role was to encourage the parties to end violence and restore confidence, especially since both sides said they wanted to resume dialogue. He stated that the establishment of a protection force was inopportune at that time and asserted that his country would ensure that the Council did not adopt a resolution that lacked the support of both parties.<sup>73</sup>

Many speakers made reference to the private meeting of the Council held the previous day with the Minister for Foreign Affairs of Israel,<sup>74</sup> and welcomed Israel's new engagement with the Council,<sup>75</sup> as well as Israel's promise to ease economic restrictions on Palestinians.<sup>76</sup>

At the 4305th meeting,<sup>77</sup> held on 27 March 2001, the President (Ukraine) drew attention to a draft resolution submitted by Bangladesh, Colombia, Jamaica, Mali, Mauritius, Singapore and Tunisia,<sup>78</sup> in which the Council, *inter alia*, would urge the resumption of negotiations within the Middle East peace process; express grave concern at Israeli settlement activities; call on the parties to end the closures of Palestinian territories and take additional confidence-building measures; request the Secretary-General to consult with the parties on steps to implement the resolution; and express its readiness to set up an observer force to protect Palestinian civilians. He also drew attention to two letters, dated 26 March and 27 March 2001, from the representative of Israel,<sup>79</sup> detailing terrorist acts recently perpetrated by Palestinians and calling on the President of the Palestinian Authority to restore security. At the meeting, the representatives of Bangladesh, China, France, Ireland, Norway, the Russian Federation, Ukraine, the United Kingdom and the United States made statements, as did the representative of Israel and the Permanent Observer of Palestine.

The draft resolution was put to the vote and received 9 votes in favour (Bangladesh, China, Colombia, Jamaica, Mali, Mauritius, Russian Federation, Singapore, Tunisia) to 1 against (United States), with 4 abstentions (France, Ireland, Norway, United Kingdom) and was not adopted owing to the negative vote of a permanent member. The representative of Ukraine did not participate in the voting.

During the meeting, some Member States expressed support for the draft resolution,<sup>80</sup> while others said they agreed with the idea of a protection force in the region but explained that they had to abstain because unanimity had not been achieved on the text and the timing of the vote was therefore not appropriate. They however emphasized their readiness to continue working on the issue.<sup>81</sup>

<sup>69</sup> *Ibid.*, p. 12 (Singapore); p. 15 (Jamaica); and p. 24 (Bahrain).

<sup>70</sup> *Ibid.*, p. 3 (Russian Federation); p. 4 (France, China); p. 5 (United States); p. 6 (United Kingdom); p. 7 (Norway); p. 16 (Ukraine); and p. 31 (Sweden on behalf of the European Union).

<sup>71</sup> *Ibid.*, p. 4.

<sup>72</sup> *Ibid.*, p. 12.

<sup>73</sup> *Ibid.*, pp. 5-6.

<sup>74</sup> 4293rd meeting.

<sup>75</sup> S/PV.4295 (Resumption 1), p. 9 (Ireland); p. 12 (Singapore); p. 13 (Bangladesh); and p. 16 (Ukraine).

<sup>76</sup> *Ibid.*, p. 8 (Ireland).

<sup>77</sup> For more information on the discussion at this meeting, see chap. IV, part IV, sect. B, case 3, with regard to voluntary abstention, non-participation or absence in relation to Article 27 (3) of the Charter.

<sup>78</sup> S/2001/270.

<sup>79</sup> S/2001/278 and S/2001/280.

<sup>80</sup> S/PV.4305, pp. 3-4 (Bangladesh); p. 5 (China); and p. 7 (Russian Federation).

<sup>81</sup> *Ibid.*, p. 6 (France); p. 7 (United Kingdom); p. 8

The representative of Bangladesh stated that during negotiations European members of the Council had presented their own draft resolution, attempting to broaden the scope of the protection force in order to obtain more support. He added that, although discussions on that text were ongoing, the intention had been to adopt a resolution before the Arab summit to be held on 27 and 28 March 2001 so that the Secretary-General could start consultations with the parties; hence the decision by the Non-Aligned Movement to put its own draft to a vote.<sup>82</sup>

The representative of the United States stressed that the draft resolution should not have been put to a vote because there had been no consensus. He also said that his country opposed it because it was unbalanced and unworkable, owing to a lack of agreement between the parties.<sup>83</sup>

The representative of Israel reaffirmed his country's opposition to the establishment of a United Nations force in the region,<sup>84</sup> and the representative of Palestine expressed disappointment at the Council's failure to end the "current tragedy".<sup>85</sup>

#### **Deliberations of 20 and 21 August 2001 (4357th meeting)**

The Council held its 4357th meeting on 20 and 21 August 2001 in response to a letter dated 15 August 2001 from the representatives of Mali and Qatar on behalf of the Group of Islamic States,<sup>86</sup> requesting an urgent Council meeting to consider the deteriorating situation in the occupied Palestinian territories following Israel's occupation and destruction of Palestinian buildings and killing of Palestinian civilians. The letter was included in the agenda.

During the meeting all Council members made statements, as did the representatives of Algeria, Bahrain, Belgium (on behalf of the European Union), Cuba, Cyprus, Djibouti, Egypt, India, Indonesia, the Islamic Republic of Iran, Israel, Iraq, Japan, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Namibia, Oman, Pakistan, Qatar, Saudi Arabia, South Africa (on

(Norway); and p. 9 (Ireland).

<sup>82</sup> *Ibid.*, pp. 3-4.

<sup>83</sup> *Ibid.*, pp. 5-6.

<sup>84</sup> *Ibid.*, p. 9.

<sup>85</sup> *Ibid.*, p. 10.

<sup>86</sup> S/2001/797.

behalf of the Non-Aligned Movement), the Sudan (on behalf of the Group of Arab States), Turkey and Yemen, the Permanent Observer of Palestine, the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the Deputy Permanent Observer of LAS and the Deputy Permanent Observer of OIC.

The President of the Council (Colombia) drew attention to four letters from the Permanent Observer of Palestine,<sup>87</sup> denouncing new crimes committed by Israel in violation of previous peace agreements between the two sides,<sup>88</sup> and calling on the Council to intervene and hold Israeli officials accountable for violations of international humanitarian law. He also drew attention to five letters from the representative of Israel,<sup>89</sup> drawing attention to Palestinian terrorist acts committed against Israelis; calling on the Council to condemn those; deploring the fact that the Palestinian Authority had made no effort to respect the ceasefire and security plan proposed on 1 June 2001 by the Director of the Central Intelligence Agency, George Tenet; and explaining that Israel conducted pre-emptive strikes against terrorist targets that had led to the death of civilians because the targets were situated within civilian areas. He further drew attention to two letters from the representative of Belgium,<sup>90</sup> transmitting European Union statements on the escalation of violence, urging the parties to quickly implement the recommendations in the report of the Sharm el-Sheikh Fact-finding Committee (the Mitchell report)<sup>91</sup> and exhorting the Palestinian Authority to intensify its efforts against terrorism.

<sup>87</sup> S/2001/754, S/2001/783, S/2001/785 and S/2001/798.

The letters were dated 31 July, 13 August, 14 August and 16 August 2001, respectively.

<sup>88</sup> See Declaration of Principles on Interim Self-Government Arrangements (S/26560), annex.

<sup>89</sup> S/2001/768, S/2001/770, S/2001/775, S/2001/780 and S/2001/787. The letters were dated 6 August, 7 August, 8 August, 9 August and 13 August 2001, respectively.

<sup>90</sup> S/2001/790 and S/2001/791. The letters were dated 8 August and 10 August 2001, respectively.

<sup>91</sup> The Council in resolution 1322 (2000) supported the establishment of a mechanism for inquiry into the tragic events in the Palestinian territories of September 2000. In its report, the Fact-finding Committee, headed by former United States Senator George Mitchell, recommended that both parties halt violence, rebuild confidence and resume negotiations. In particular, the Palestinian Authority was required to take measures against terrorism, and the Israeli Government was

In his statement, the representative of Palestine regretted the Council's inability to act since the adoption of resolution 1322 (2000), despite having the issue of protection of civilians in armed conflict on its agenda.<sup>92</sup> He also detailed Israeli "war crimes" including the closure of Palestinian institutions in Jerusalem in contravention with previous Council resolutions. He expressed the Palestinian Authority's full support for the Mitchell Committee's recommendations, but said that Israel's proposal to implement those in stages after a "cooling off" period was impractical. Finally, he expressed hope that the Council would succeed in stopping the bloodshed and even made some proposals to be included in a draft resolution currently before the Council.<sup>93</sup>

The representative of Israel stressed that his country had accepted the Mitchell report, but deplored that his country's unilateral ceasefire had not been met with reciprocal gestures from the Palestinian Authority. He strongly condemned the recent suicide bombings that had killed multiple civilians and underlined Israel's right to self-defence. He strongly rejected the draft resolution before the Council because of its imbalance in favour of the Palestinians. He also recalled that the Mitchell report recommended an incremental series of steps to be implemented through a face-to-face approach, and that therefore there was no need to establish a monitoring mechanism such as the one in the draft resolution.<sup>94</sup>

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required, inter alia, to freeze all settlement construction; end closures and restrictions imposed on Palestinians; restore Palestinian Authority tax revenues; and ensure that security forces refrained from the destruction of infrastructure and that lethal means were not used against Palestinians. Both parties were also required to resume security cooperation, and an international protection force agreed by both parties was recommended. The report is available from <http://eeas.europa.eu/mepp/docs>.

<sup>92</sup> S/PV.4357, pp. 3-6.

<sup>93</sup> Not issued as a document of the Council. According to the representative of Malaysia, the Council, inter alia, would call for the immediate cessation of all acts of violence, provocation and destruction; the return to positions prior to September 2000; the implementation of the recommendations in the Mitchell report; the establishment of a monitoring mechanism to implement the recommendations; and for Israel to reverse all actions taken against Palestinian institutions (S/PV.4357 (Resumption 1), p. 23).

<sup>94</sup> S/PV.4357, pp. 6-10.

During the debate, the Mitchell report received unanimous support as the only road map available. However, many expressed their concern at its lack of implementation, despite agreement by the parties. Most of the debate therefore focused on whether and how the Council could support implementation of the Committee's recommendations. Many speakers endorsed the idea of a third-party monitoring mechanism accepted by both parties, as was proposed by the Group of Eight in a statement adopted in Genoa on 21 July 2001.<sup>95</sup> Only a few speakers expressly called for the adoption of the draft resolution being circulated.<sup>96</sup>

Other proposals included calls on the Council to renew its support for the peace process,<sup>97</sup> as well as for the Secretary-General to be more involved in bringing the parties together.<sup>98</sup> The representative of France acknowledged that the Council could not end the violence or seal peace between the parties, but emphasized that it could facilitate existing initiatives.<sup>99</sup> The representative of the Islamic Republic of Iran also proposed that the Council establish an international criminal tribunal to prosecute Israeli criminals.<sup>100</sup>

A majority of speakers condemned or strongly deplored Israel's repressive measures against the Palestinians, considering them violations of international humanitarian law and of agreements

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<sup>95</sup> Ibid., p. 12 (Jamaica); p. 18 (France, Bangladesh); p. 21 (Tunisia); p. 23 (Mauritius); p. 24 (Ireland); p. 25 (Norway); and p. 26 (Ukraine); S/PV.4357 (Resumption 2), p. 8 (Djibouti); p. 9 (South Africa); p. 15 (Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 17 (Belgium); p. 19 (Japan); p. 23 (Malaysia); and p. 24 (Egypt); S/PV.4357 (Resumption 2), p. 2 (Indonesia); p. 3 (Turkey); p. 8 (Cyprus); and p. 13 (Mexico).

<sup>96</sup> S/PV.4357 (Resumption 1), p. 12 (Pakistan); and p. 23 (Malaysia); S/PV.4357 (Resumption 2), p. 7 (Namibia); and p. 12 (Cuba).

<sup>97</sup> S/PV.4357, p. 11 (Jamaica); p. 15 (United Kingdom); and p. 27 (Colombia); S/PV.4357 (Resumption 1), p. 23 (Malaysia); and p. 24 (Egypt); S/PV.4357 (Resumption 2), p. 10 (Lebanon).

<sup>98</sup> S/PV.4357, p. 11 (Jamaica); p. 15 (China); p. 21 (Singapore); p. 23 (Mauritius); and p. 31 (Algeria); S/PV.4357 (Resumption 1), p. 7 (Namibia); and p. 11 (LAS).

<sup>99</sup> S/PV.4357, p. 17.

<sup>100</sup> S/PV.4357 (Resumption 1), p. 10.

signed between the two parties.<sup>101</sup> They also expressed particular concern at the Israeli occupation of Palestinian public facilities, and this was echoed by the representatives of the United Kingdom and Ukraine.<sup>102</sup> Many speakers also referred to the deteriorating economic situation in the Palestinian territories provoked by Israeli blockades.<sup>103</sup> A majority of speakers also reiterated the need to establish a protection force or to send observers to the region and called for immediate Council action to pressure Israel into ending its “policy of terror”.<sup>104</sup> However, in response to several statements affirming the need for the Council to be united,<sup>105</sup> the representative of Bangladesh and the Deputy Permanent Observer of the League of Arab States emphasized that this argument should not be used to prevent Council action.<sup>106</sup> The representatives of Iraq and Cuba mentioned that the United States was responsible for the Council’s inaction so far.<sup>107</sup>

The representative of the United States questioned the appropriateness and effectiveness of Council intervention. He emphasized that condemning one side or imposing unworkable ideas would not change the reality on the ground. Stressing the necessity for the Palestinian Authority to stop tolerating terrorist acts, and for the Israeli government to alleviate pressure on the Palestinians, he supported the Mitchell recommendations and insisted on the need to work with both sides.<sup>108</sup>

In a further intervention, the representative of Israel took note of the urgent appeal for dialogue between Israelis and Palestinians. He however added that implementation of the recommendations in the Mitchell report could begin only if violence ceased, and affirmed that it was up to the Palestinians to do away with terrorism. International machinery was therefore not needed. He expressed hope for a new beginning in view of an upcoming meeting between the Foreign Minister of Israel and the President of the Palestinian Authority<sup>109</sup>.

The representative of Palestine rejected the logic that a calmer situation would lead to implementation of the Mitchell report and stressed that it was more likely that implementing the recommendations would lead to calm. He also maintained that the announced Israeli-Palestinian meeting would probably not change the situation.<sup>110</sup>

**Decision of 14 December 2001 (4438th meeting):  
rejection of a draft resolution**

The Council held its 4438th meeting<sup>111</sup> on 14 December 2001 in response to a letter dated 13 December 2001 from the representative of Egypt on behalf of the League of Arab States,<sup>112</sup> requesting an immediate meeting of the Council to consider the extremely dangerous situation in the occupied Palestinian territory and to take action in that regard. The letter was included in the agenda.

At the meeting, the President (Mali) drew attention to a draft resolution submitted by Egypt and

<sup>101</sup> S/PV.4357, p. 10 (Mali); p. 18 (Bangladesh); p. 20 (Tunisia); p. 24 (Ireland); p. 28 (Qatar); and p. 30 (Algeria); S/PV.4357 (Resumption 1), p. 3 (Sudan); p. 4 (Saudi Arabia); p. 7 (Djibouti); p. 8 (South Africa); p. 9 (Islamic Republic of Iran); p. 11 (Pakistan); p. 12 (Bahrain); p. 14 (Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 15 (Morocco); p. 18 (Yemen); p. 21 (Mauritania); p. 22 (Malaysia); p. 24 (Egypt); p. 25 (Iraq); p. 27 (Oman); and p. 28 (Libyan Arab Jamahiriya); S/PV.4357 (Resumption 2); p. 2 (Indonesia); p. 4 (OIC); p. 6 (Namibia); p. 9 (Lebanon); and p. 10 (LAS).

<sup>102</sup> S/PV.4357, p. 16 and p. 26, respectively.

<sup>103</sup> S/PV.4357, p. 19 (Bangladesh); p. 22 (Mauritius); p. 26 (Ukraine); S/PV.4357 (Resumption 1), p. 7 (Djibouti); p. 19 (Japan); and p. 26 (Iraq).

<sup>104</sup> S/PV.4357, p. 11 (Mali); p. 12 (Jamaica); p. 20 (Tunisia); p. 28 (Qatar); and p. 31 (Algeria); S/PV.4357 (Resumption 1), p. 3 (Jordan); p. 4 (Sudan); p. 6 (Saudi Arabia); p. 10 (Islamic Republic of Iran); p. 12 (Pakistan); p. 13 (Bahrain); p. 16 (Morocco); p. 18 (Yemen); p. 20 (Kuwait); p. 21 (Mauritania); p. 23 (Malaysia); and p. 27 (Oman); S/PV.4357 (Resumption 2), p. 5 (OIC); p. 7 (Namibia); p. 10 (Lebanon); and p. 11 (LAS).

<sup>105</sup> S/PV.4357, p. 15 (China, United Kingdom); p. 17 (France); p. 21 (Singapore); p. 25 (Norway); p. 27 (Colombia); S/PV.4357 (Resumption 2), p. 7 (Namibia).

<sup>106</sup> S/PV.4357, p. 19 and S/PV.4357 (Resumption 2), p. 11 respectively.

<sup>107</sup> S/PV.4357 (Resumption 1), p. 25, and S/PV.4357 (Resumption 2), p. 12, respectively.

<sup>108</sup> S/PV.4357, p. 13.

<sup>109</sup> S/PV.4357 (Resumption 2), pp. 13-15.

<sup>110</sup> *Ibid.*, pp. 15-16.

<sup>111</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter.

<sup>112</sup> S/2001/1191.

Tunisia,<sup>113</sup> in which the Council would demand, inter alia, the immediate cessation of violence and the return to positions which existed prior to September 2000; condemn all acts of terror; call on the two sides to implement the recommendations in the Mitchell report and to resume peace negotiations; and encourage all concerned to establish a monitoring mechanism to help the parties implement those recommendations.

All Council members made statements, as did the representatives of Belgium (on behalf of the European Union), Brazil, Canada, Cuba, Egypt, the Islamic Republic of Iran, Israel, Malaysia and South Africa (on behalf of the Non-Aligned Movement), the Permanent Observer of Palestine and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

The representative of Palestine deplored a decision by Israel on 12 December 2001 to sever all contacts with the Palestinian Authority, affirming that this meant the end of the negotiation process and could lead to plunge the region into war. He emphasized that the Palestinian Authority had condemned terrorist acts, but recalled that its ability to fight terrorism depended on the capacity of its security apparatus and on the end to Palestinian suffering. He however reaffirmed that violence committed within the Palestinian territories were not acts of terrorism but of resistance against the occupier. Finally, he referred to Israel's grave breaches of international humanitarian law and deplored the Council's inability to act.<sup>114</sup>

The representative of Israel focused on the need to define terrorism by what one does as opposed to the goal one wants to achieve, and strongly deplored the failure and unwillingness of the Palestinian Authority to fight terrorism. He argued that this was the main obstacle to peace in the Middle East. He rejected the draft resolution because it was unbalanced, counterproductive and out of touch with reality.<sup>115</sup>

Speakers unanimously agreed that the only way forward was for the parties to return to the negotiating table and implement the recommendations in the Mitchell report. However, differences of views emerged as to whether the Council should play an active role to stop the current violence and provide support to the parties by establishing a monitoring

mechanism. All speakers supported the draft resolution except the representatives of Israel, Norway, the United Kingdom and the United States. The representatives of Egypt and Tunisia affirmed in particular that a Council resolution was necessary to pressure Israel into resuming peace negotiations.<sup>116</sup>

Another focus of the discussion was security. Speakers unanimously condemned terrorist acts targeting innocent civilians. However, many representatives also criticized Israel's aggressive policies against Palestinians that contributed to further radicalization.<sup>117</sup> The representative of the Russian Federation, in particular, stated that it was not in the interest of Israel to destroy the Palestinian Authority as it was the only legitimate interlocutor,<sup>118</sup> which was echoed by several other speakers.<sup>119</sup> While some speakers emphasized the urgent necessity for the Palestinian Authority to crack down on terrorist elements including Hamas and Islamic Jihad,<sup>120</sup> others reaffirmed that Palestinians had a legitimate right to resist the occupier.<sup>121</sup> The majority of speakers called on both parties to stop the violence and exercise restraint.

The representative of the United States said that his country would reject the draft resolution because it failed to condemn Palestinian terrorist acts, and therefore was unbalanced. He also insisted that the focus should be on working with the parties on the ground to help them establish a ceasefire.<sup>122</sup> Similar concerns were raised by the representative of the United Kingdom,<sup>123</sup> while the representative of

<sup>113</sup> S/2001/1199.

<sup>114</sup> S/PV.4438, pp. 3-5.

<sup>115</sup> Ibid., pp. 17-20.

<sup>116</sup> Ibid., pp. 6-8.

<sup>117</sup> Ibid., p. 6 (Egypt); p. 7 (Tunisia); p. 10 (Ukraine); p. 15 (Bangladesh); p. 20 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 22 (Cuba); p. 23 (Malaysia); and p. 26 (Islamic Republic of Iran).

<sup>118</sup> Ibid., p. 13.

<sup>119</sup> Ibid., p. 14 (Colombia); p. 16 (Norway); p. 23 (Malaysia); p. 27 (Belgium on behalf of the European Union); and p. 28 (France).

<sup>120</sup> Ibid., p. 9 (United Kingdom); p. 10 (Ukraine); p. 11 (United States); p. 13 (Russian Federation); p. 15 (Norway); p. 24 (Canada); p. 27 (Belgium on behalf of the European Union); and p. 29 (Ireland).

<sup>121</sup> Ibid., p. 6 (Egypt); p. 22 (Cuba); and p. 27 (Islamic Republic of Iran).

<sup>122</sup> Ibid., p. 11.

<sup>123</sup> Ibid., p. 10.

Norway evoked the lack of unanimity in the Council as the major obstacle to adopting the draft resolution.<sup>124</sup>

The draft resolution was then put to the vote. It received 12 votes in favour to 1 against (United States), with 2 abstentions (Norway, United Kingdom), and was not adopted owing to the negative vote of a permanent member.

**Decision of 12 March 2002 (4489th meeting):  
resolution 1397 (2002)**

By letters dated 20 February 2002, the Permanent Observer of Palestine and the representative of Yemen in his capacity as Chairman of the Group of the Arab States, respectively, requested an urgent meeting of the Security Council to consider the dangerous situation in the Palestinian territories following the intensification of Israeli military raids against Palestinian cities.<sup>125</sup>

At its 4474th meeting, held on 21 February 2002 in response to those requests, the Council included the letters in its agenda. During the meeting, the Council heard a briefing from the Secretary-General on the situation, following which the President of the Council (Mexico) made a statement in his capacity as President of the Council. The representatives of Israel and Yemen and the Permanent Observer of Palestine were invited to participate but did not make statements.

The President of the Council drew attention to four letters from the representative of Israel,<sup>126</sup> detailing terrorist attacks and the launching of rockets against Israelis, and holding the Palestinian Authority accountable for failing to react. He then referred to four letters from the Permanent Observer of Palestine,<sup>127</sup> concerning Israel's illegal policies and war crimes against Palestinians including blockades, settlement activities, extrajudicial killings, indiscriminate use of force, the military invasion of Palestinian cities and provocative statements.

The Secretary-General, observing that the Israeli-Palestinian conflict risked sliding towards a full-fledged war, contended that it was now necessary to

move beyond a discussion focused on how to implement the Tenet ceasefire plan and the Mitchell report. He reaffirmed the need to tackle security alongside key political issues such as land and economic and social deprivation. He further stressed that the lack of mutual confidence between the two sides made a third party role essential, and indicated that he had asked his Special Coordinator for the Middle East Peace Process to intensify consultations with the parties, members of the Quartet,<sup>128</sup> and regional and international actors.<sup>129</sup>

The President of the Council then stated that the Council supported the work and views of the Secretary-General. He announced that Council members had agreed to hold periodic consultations on the situation in the Middle East based on information provided by the Secretariat and that the Council would hold a public debate soon.<sup>130</sup>

At the 4478th meeting, held on 26 and 27 February 2002, the President (Mexico) recalled his statement that the Council would hold a debate on the basis of the Secretary-General's statement and propose new initiatives. All Council members made statements, as did the representatives of Algeria, Argentina, Australia, Bangladesh, Brazil, Canada, Chile, Cuba, Egypt, India, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Malaysia, Morocco, Pakistan, Saudi Arabia, South Africa, Spain, the Sudan, Tunisia, Turkey, Ukraine and Yemen, the Permanent Observer of Palestine and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.<sup>131</sup>

The representative of Palestine described the recent intensification of Israel's military campaign since September 2000, in particular the establishment of buffer zones around Palestinian cities and the building of a wall to separate East and West Jerusalem. He affirmed his support for the analysis of the situation made by the Secretary-General, recalled the need to implement the Madrid and Oslo peace agreements and urged the Council to react.<sup>132</sup>

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<sup>124</sup> *Ibid.*, p. 16.

<sup>125</sup> S/2002/182 and S/2002/184, respectively.

<sup>126</sup> S/2002/155, S/2002/164, S/2002/174 and S/2002/185. The letters were dated 8, 11, 19 and 20 February 2002, respectively.

<sup>127</sup> S/2002/142, S/2002/146, S/2002/165 and S/2002/175. The letters were dated 1, 5, 13 and 15 February 2002, respectively.

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<sup>128</sup> Composed of the United States, the Russian Federation, the European Union and the United Nations.

<sup>129</sup> S/PV.4474, pp. 2-3.

<sup>130</sup> *Ibid.*, pp. 2-3.

<sup>131</sup> The representative of Oman was invited to participate but did not make a statement.

<sup>132</sup> S/PV.4478, pp. 3-4.

The representative of Israel recalled that his country remained committed to a peaceful settlement based on face-to-face negotiations. He however deplored the fact that his country's commitment to peace had been met by terrorism and urged the Council to exert pressure on the Palestinians to abandon terrorism.<sup>133</sup>

During the debate there was unanimous agreement that both sides needed to stop violence and that a return to the peace process was urgent. Second, most speakers supported the Secretary-General and agreed that immediate progress on the political, security and economic front was needed. Third, there was consensus that the parties needed international assistance to reach these goals, and that all relevant international actors, including the newly established Quartet, as well as regional players had a role to play. A new proposal for a comprehensive peace between Israel and its Arab neighbours based on Council resolutions 242 (1967) and 338 (1973) and on the principle of land for peace, that had been introduced by Crown Prince Abdullah of Saudi Arabia, was widely welcomed. Speakers largely supported the idea of a two-State solution, with the Israeli State and a viable Palestinian State existing side by side in peace and security and within internationally recognized borders.

Most speakers also reaffirmed the need for both parties to implement the Mitchell recommendations and Tenet understandings and to take immediate action to end violence, and many deplored Israel's policy of isolating the President of the Palestinian Authority, Yasser Arafat.

Almost all speakers called for some Council action in fulfilment of its responsibility in the maintenance of peace and security. The representative of Malaysia revived the idea of a United Nations mission to monitor the situation, ease tensions and maintain peace and security on the ground.<sup>134</sup> This was echoed by many other speakers, who added that a mission should also be tasked to protect Palestinian civilians.<sup>135</sup> The representative of Mexico stated that the United Nations could also explore confidence-building mechanisms, as well as promote humanitarian

activities.<sup>136</sup> The representative of the United States said that his country was committed to helping the parties move forward, but that Council action at this time would not be helpful.<sup>137</sup>

At its 4488th meeting,<sup>138</sup> on 12 March 2002, the Council heard a briefing by the Secretary-General. He stated that the situation in the region was the worst in 10 years, and urged the Palestinians to stop all acts of terror as it was harming their cause by weakening international support. He called on Israel to end the illegal occupation, stop the bombing of civilian areas, the assassinations and the daily humiliation of Palestinians. He also welcomed the Saudi Arabia peace initiative.<sup>139</sup>

At its 4489th meeting, on 12 March 2002, the Council voted on a draft resolution submitted by the United States.<sup>140</sup> It was adopted by 14 votes, with 1 abstention (Syrian Arab Republic), as resolution 1397 (2002), by which the Council, inter alia:

Affirmed the vision of a region where two States, Israel and Palestine, lived side by side within secure and recognized borders, stressed the need for all concerned to ensure the safety of civilians, and welcomed the diplomatic efforts by the United States, the Russian Federation, the European Union and the United Nations Special Coordinator to bring about peace in the Middle East;

Demanded the immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction;

Called upon the Israeli and Palestinian sides and their leaders to cooperate in the implementation of the Tenet work plan and recommendations contained in the Mitchell report with the aim of resuming negotiations on a political settlement;

Expressed support for the efforts of the Secretary-General and others to assist the parties to halt the violence and to resume the peace process; and decided to remain seized of the matter.

The representative of the Syrian Arab Republic stated that the draft resolution was weak because it did not address the Israeli occupation, nor did it call for the resumption of the peace process based on previous Council resolutions. It also failed to call on Israel to

<sup>133</sup> Ibid., pp. 20-22.

<sup>134</sup> S/PV.4478 (Resumption 1), p. 3.

<sup>135</sup> S/PV.4478, p. 6 (Mauritius); p. 28 (Algeria); and p. 35 (Morocco); S/PV.4478 (Resumption 1), p. 8 (Islamic Republic of Iran); p. 15 (Yemen); and p. 11 (Iraq).

<sup>136</sup> S/PV.4478 (Resumption 1), p. 20.

<sup>137</sup> S/PV.4478, pp. 11-12.

<sup>138</sup> The representative of Israel and the Permanent Observer of Palestine both participated in the meeting.

<sup>139</sup> S/PV.4488, pp. 2-3.

<sup>140</sup> S/2002/259.



implement the principle of land for peace, and to respect the Fourth Geneva Convention<sup>141</sup>.

**Decision of 30 March 2002 (4503rd meeting):  
resolution 1402 (2002)**

The 4503rd meeting of the Council was held on 29 and 30 March 2002 in response to the requests contained in letters dated 29 March 2002 from the representative of Jordan in his capacity as Chairman of the Group of Arab States and from the representative of Qatar in his capacity as Chairman of the Islamic Summit Conference,<sup>142</sup> to consider the dangerous situation in the occupied Palestinian territories. The Council included the letters in its agenda.

The President of the Council (Norway) drew attention to a letter dated 29 March 2002 from the Permanent Observer of Palestine,<sup>143</sup> deploring the assault against the compound of the President of the Palestinian Authority, Yasser Arafat, and the military invasion of other Palestinian cities, and calling on the Council to take action. During the meeting, all Council members made statements, as did the representatives of Algeria, Cuba, Djibouti, Egypt, India, the Islamic Republic of Iran, Iraq, Israel, Jordan, the Libyan Arab Jamahiriya, Morocco, Pakistan, Qatar, Saudi Arabia, Spain (on behalf of the European Union), Tunisia and Turkey, the Permanent Observer of Palestine and the Secretary-General.

The Secretary-General first welcomed the endorsement on 28 March 2002 by all Arab leaders, during the Arab League summit in Beirut, of the peace initiative of the Crown Prince of Saudi Arabia. He also praised Council resolution 1397 (2002) as a significant resolution on the Middle East. He added that the parties could achieve the two-State vision through the implementation of the recommendations in the Mitchell report, and urged the Council to consider how to implement the resolution.<sup>144</sup>

The representative of Palestine stated that the Palestinian Authority had condemned a recent terrorist action in Netanya and had acknowledged that terrorism did not serve the Palestinian cause. He pointed out that Yasser Arafat had declared his willingness to implement the Israeli-Palestinian ceasefire and the

Tenet security plan. He also called on the Council to demand that Israeli forces withdraw from Palestinian towns and referred to a text circulated to Council members from the Palestinian observer mission to that end.<sup>145</sup>

The representative of Israel replied that his country had taken clear steps to implement the Mitchell report and had accepted a compromise proposal presented by the Special Envoy of the United States, Anthony Zinni, to implement the Tenet plan. He deplored the fact that the Palestinians were continuing to use terrorist tactics and expressed his country's intention to continue to uproot terrorist networks in the Palestinian territories.<sup>146</sup>

Almost all Council members appealed for an immediate end of violence and reaffirmed the need to implement resolution 1397 (2002). They also supported efforts to bring about a resumption of negotiations by the United States Envoy, and called for a ceasefire and for the implementation of the Tenet and Mitchell plans. The representative of Spain said he remained convinced that a third party monitoring mechanism could help the parties and affirmed the European Union's readiness to participate.<sup>147</sup>

Speakers unanimously affirmed their support for the Arab peace initiative and reiterated that President Arafat should not be harmed. The representative of the United States emphasized that terrorism had led to the current grave situation, but warned Israel to carefully consider the consequences of its military campaign.<sup>148</sup>

The representative of the Syrian Arab Republic said Israel's actions were the main cause for the current turmoil, and he called on the Council to condemn them.<sup>149</sup> This was echoed by many other speakers who expressed their hope that the Council would call on Israel specifically to exercise restraint and to withdraw from all Palestinian territory.<sup>150</sup>

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<sup>145</sup> *Ibid.*, pp. 3-5.

<sup>146</sup> *Ibid.*, pp. 5-7.

<sup>147</sup> *Ibid.*, p. 25.

<sup>148</sup> *Ibid.*, pp. 11-12.

<sup>149</sup> *Ibid.*, pp. 17-18.

<sup>150</sup> *Ibid.*, p. 20 (Algeria); p. 21 (Libyan Arab Jamahiriya, Egypt); p. 23 (Qatar, Djibouti); p. 26 (Jordan, Iraq); p. 27 (Islamic Republic of Iran); p. 29 (Tunisia); p. 31 (Morocco); and p. 33 (Cuba, Saudi Arabia).

<sup>141</sup> S/PV.4489, pp. 2-3.

<sup>142</sup> S/2002/331 and S/2002/329, respectively.

<sup>143</sup> S/2002/330.

<sup>144</sup> S/PV.4503, pp. 2-3.

The Council then voted on a draft resolution submitted by Norway.<sup>151</sup> It was adopted by 14 votes (the Syrian Arab Republic did not participate in the voting) as resolution 1402 (2002), by which the Council, *inter alia*:

Expressed concern at the recent suicide bombings in Israel and the military attack against the headquarters of the President of the Palestinian Authority; and reiterated its demand in resolution 1397 (2002) for an immediate cessation of all acts of violence;

Called upon both parties to move immediately to a meaningful ceasefire;

Called for the withdrawal of Israeli troops from Palestinian cities, including Ramallah; and called upon the parties to cooperate fully with the Special Envoy, Anthony Zinni, and others, to implement the Tenet security work plan as a first step towards implementation of the recommendations contained in the Mitchell report, with the aim of resuming negotiations on a political settlement.

Although the representative of Israel welcomed the reference to the Tenet and Mitchell plans, he maintained that the resolution asked his country to withdraw without also requesting the Palestinian Authority to eradicate terrorism.<sup>152</sup> The representative of the Syrian Arab Republic explained that his country had not voted because the draft resolution did not take into consideration the outcome of the Arab League summit of 28 March 2002, and because his country had already abstained on resolution 1397 (2002).<sup>153</sup>

#### **Decision of 4 April 2002 (4506th meeting): resolution 1403 (2002)**

The 4506th meeting of the Council<sup>154,155</sup> was held on 3 and 4 April 2002 in response to requests contained in letters dated 1 April 2002 from the representative of Tunisia on behalf of the Group of Arab States<sup>156</sup> and dated 2 April 2002 from the representative of South Africa in his capacity as Chair

<sup>151</sup> S/2002/333.

<sup>152</sup> S/PV.4503, p. 35.

<sup>153</sup> *Ibid.*, p. 36.

<sup>154</sup> At the 4504th and 4505th meetings, both held in private on 2 April 2002, Council members had constructive discussions with the representative of Israel and the Permanent Observer of Palestine, respectively.

<sup>155</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part III, sect. B, with regard to Article 41; and part IX, sect. B, with regard to Article 51.

<sup>156</sup> S/2002/336.

of the Coordinating Bureau of the Non-Aligned Movement,<sup>157</sup> to respond to the critical situation in the occupied Palestinian territories. The Council included the letters in the agenda.

All Council members made statements, as did the representatives of Algeria, Argentina, Bahrain, Bangladesh, Bhutan, Brazil, Canada, Chile, Costa Rica, Cuba, Cyprus, Djibouti, Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco, Namibia, New Zealand, Oman, Pakistan, Qatar, Saudi Arabia, South Africa, Spain, the Sudan, the United Republic of Tanzania, Tunisia, Turkey, Ukraine, the United Arab Emirates and Yemen, as well as the Secretary-General, the Permanent Observer of Palestine, and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

The representative of Palestine strongly objected to the fact that Israel had rejected a ceasefire, continued to kill Palestinians, reoccupied certain Palestinian cities and had not lifted the siege of President Arafat's headquarters. He referred to a draft resolution prepared by the Arab Group demanding immediate implementation of resolution 1402 (2002) and called on the Council to adopt it. He also said that an international third party presence to assist the two sides in implementing the resolution was desirable.<sup>158</sup>

The representative of Israel responded that his country's concessions had been met with more Palestinian suicide bombings in Israel. He said that although his country had recognized the positive elements of resolutions 1397 (2002) and 1402 (2002) and of the Mitchell and Tenet plans, it had no choice but to exercise self-defence. He called for an immediate ceasefire and urged the Council to adopt a resolution calling on the Palestinians to cease bombings. He also said that his country was assessing the United States demand that Israeli troops be withdrawn from Palestinian cities.<sup>159</sup>

Most speakers unanimously called for implementation of resolutions 1397 (2002) and 1402 (2002); called for an immediate ceasefire; urged the withdrawal of Israeli troops from occupied territories as a prerequisite for peace and outlined the need to

<sup>157</sup> S/2002/342.

<sup>158</sup> S/PV.4506, pp. 3-5.

<sup>159</sup> S/PV.4506, pp. 5-6 and S/PV.4506 (Resumption 2), p. 2.

restore freedom of movement for President Arafat; and called for cooperation of the parties with the United States Special Envoy. Recent initiatives by the Quartet were also expressly supported by a few speakers.<sup>160</sup> The representative of the United States emphasized that his country had introduced resolution 1397 (2002) and was supportive of other resolutions, and that his country continued to work on their implementation with the parties.<sup>161</sup>

In addition, several speakers specifically supported the establishment of a third party monitoring mechanism to monitor and guarantee implementation of agreements between the parties.<sup>162</sup> Many others revived the idea of dispatching an international observer or a peacekeeping force to supervise Israeli withdrawal, separate the parties and provide protection to civilians.<sup>163</sup> The representative of South Africa suggested that the Council visit the region to obtain a first-hand impression of events on the ground,<sup>164</sup> which was echoed by the representatives of Malaysia, Bangladesh and Cameroon.<sup>165</sup> Finally, the representative of Mexico went a step further by suggesting that, once a ceasefire was in place and political dialogue had resumed, the Council consider, *inter alia*, the implementation of disarmament programmes and the collection of arms obtained by illicit groups; the verification of security arrangements;

the adoption of confidence-building measures; the establishment and protection of violence-free zones; and on-the-spot verification of implementation of provisions of international humanitarian law.<sup>166</sup>

The Council then voted on a draft resolution;<sup>167</sup> it was adopted unanimously as resolution 1403 (2002), by which the Council, *inter alia*:

Demanded the implementation of resolution 1402 (2002) without delay;

Welcomed the mission of the United States Secretary of State to the region, as well as efforts by others, in particular the special envoys from the United States, the Russian Federation and the European Union, and the United Nations Special Coordinator, to bring about a comprehensive, just and lasting peace to the Middle East; and requested the Secretary-General to follow the situation and keep the Council informed.

**Decision of 10 April 2002 (4511th meeting):  
statement by the President**

The 4510th meeting of the Council<sup>168,169</sup> was held on 8 and 9 April 2002 in response to the request contained in a letter dated 6 April 2002 from the representative of Tunisia in his capacity as Chairman of the Group of Arab States,<sup>170</sup> to consider Israeli criminal actions in the refugee camps of Jenin and Nablus. The Security Council included the letter in its agenda.

During the meeting, all Council members made statements, in addition to the representatives of Algeria, Bahrain, Canada, Cuba, Ecuador, Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jordan, the Republic of Korea, Kuwait, the Libyan Arab Jamahiriya, Lebanon, Malaysia, Mauritania, Morocco, Nepal, Oman, Pakistan, the Philippines, Qatar, South Africa, Spain, the Sudan, Tunisia, Turkey, the United Arab Emirates and Yemen, and the Permanent Observer of Palestine.<sup>171</sup>

<sup>160</sup> S/PV.4506, p. 8 (Ukraine); p. 10 (Spain on behalf of the European Union); and p. 22 (United Arab Emirates); S/PV.4506 (Resumption 1), p. 7 (Bangladesh); p. 22 (Cyprus); p. 29 (Ireland, United Kingdom); p. 30 (Singapore); p. 33 (France); p. 38 (Mexico); and p. 40 (Russian Federation); S/PV.4506 (Resumption 2), p. 5 (Secretary-General).

<sup>161</sup> S/PV.4506 (Resumption 1), pp. 31-32.

<sup>162</sup> S/PV.4506, p. 8 (Ukraine); p. 10 (Spain); p. 17 (South Africa); and p. 25 (Brazil); S/PV.4506 (Resumption 1), p. 6 (Namibia); p. 7 (Bangladesh); p. 8 (Indonesia); p. 14 (Oman); p. 21 (New Zealand); and p. 22 (Cyprus); S/PV.4506 (Resumption 2), p. 6 (Secretary-General).

<sup>163</sup> S/PV.4506, p. 7 (Tunisia); p. 10 (Spain); p. 13 (Yemen); p. 19 (Saudi Arabia); pp. 23-24 (Malaysia); and p. 25 (Brazil); S/PV.4506 (Resumption 1), p. 3 (Cuba, Jordan); p. 4 (Kuwait); p. 7 (Bangladesh); p. 8 (Indonesia); p. 9 (Morocco); p. 16 (Bahrain, Sudan); p. 20 (Qatar); p. 21 (New Zealand); p. 23 (Lebanon); p. 25 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 33 (France); p. 37 (Mauritius); and p. 39 (Guinea).

<sup>164</sup> S/PV.4506, p. 16.

<sup>165</sup> *Ibid.*, p. 24 (Malaysia); S/PV.4506 (Resumption 1), p. 7 (Bangladesh); and p. 35 (Cameroon).

<sup>166</sup> S/PV.4506 (Resumption 1), p. 38.

<sup>167</sup> S/2002/347.

<sup>168</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part III, sect. B, with regard to Article 41; and part IX, sect. B, with regard to Article 51.

<sup>169</sup> At the 4508th and 4509th meetings, both held in private on 8 April 2002, the Council members had constructive discussions with the representative of Israel and the Permanent Observer of Palestine, respectively.

<sup>170</sup> S/2002/359.

<sup>171</sup> The representative of Saudi Arabia was present but did

While the representative of Palestine urged Israel to end its military operations and withdraw from recently reoccupied cities as had been requested by the United States, and called again for an international presence on the ground, the representative of Israel responded that withdrawal would have to be accompanied by a Palestinian ceasefire and an end of terrorist tactics. They both referred to the need to implement resolution 1402 (2002).<sup>172</sup>

The representative of the United States stated that his country's envoy had held talks with the parties and focused on the need for an immediate ceasefire, Israeli withdrawal and implementation of the Tenet security plan.<sup>173</sup> Most speakers reaffirmed the need for Israel to withdraw, and reiterated that Israel's fight against terrorism did not entitle it to violate international law in the name of self-defence.

New concerns were raised regarding the deteriorating humanitarian situation in the Palestinian territories. The representatives of France and Singapore specifically pointed out that medical assistance was not reaching Palestinians because of Israeli restrictions.<sup>174</sup> Other representatives focused on Israel's breaches of international humanitarian law and called on the Council to hold it accountable. The representative of Mauritius, in particular, urged Israel to comply with the Office of the United Nations High Commissioner for Human Rights to facilitate a fact-finding mission on human rights violations in the occupied Palestinian territories requested by the Commission on Human Rights.<sup>175</sup>

While the representatives of Palestine and Kuwait supported another Council resolution,<sup>176</sup> the representatives of the United States and the United Kingdom said it was more important to focus on implementing existing ones.<sup>177</sup>

not make a statement.

<sup>172</sup> S/PV.4510, pp. 2-5.

<sup>173</sup> Ibid., p. 6.

<sup>174</sup> Ibid., p. 13 and p. 17, respectively.

<sup>175</sup> Ibid., p. 11. For the request of the Commission on Human Rights, see *Officials Records of the Economic and Social Council, 2002, Supplement No. 3* (E/2002/23), chap. II, sect. A, resolution 2002/1.

<sup>176</sup> Ibid., p. 4 and p. 22, respectively.

<sup>177</sup> Ibid., p. 6 and p. 15, respectively.

At the 4511th meeting,<sup>178</sup> the President (Russian Federation) made a statement on behalf of the Council,<sup>179</sup> by which the Council:

Supported the Joint Statement issued in Madrid on 10 April 2002 by the Secretary-General, the Minister for Foreign Affairs of the Russian Federation, the Secretary of State of the United States, the Minister for Foreign Affairs of Spain and the High Representative for Common Foreign and Security Policy of the European Union;<sup>180</sup> and called upon the Government of Israel, the Palestinian Authority and all States in the region to cooperate with the efforts to achieve the goals set out in the Joint Statement and insisted on the immediate implementation of resolutions 1402 (2002) and 1403 (2002).

#### **Decision of 19 April 2002 (4516th meeting): resolution 1405 (2002)**

The 4515th meeting of the Council<sup>181</sup> was held on 19 April 2002 in response to the request by the representative of Tunisia in his capacity as Chairman of the Group of Arab States contained in a letter dated 17 April 2002,<sup>182</sup> to consider the lack of implementation of Council resolutions by Israel, and to take immediate measures. The Council included the letter in its agenda.

At the meeting, all Council members made statements, as did the representatives of Algeria, Bangladesh, Brazil, Canada, Cuba, Egypt, India, Indonesia, Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, the Republic of Korea, Kuwait, Malaysia, Mauritania, Mongolia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, South Africa, Spain, the Sudan, Tunisia and the United Arab Emirates, as well as the Permanent Observer of Palestine.

The representative of Palestine referred to the continuing Israeli aggression and specifically to massacres of civilians in the Jenin refugee camp. He added that restrictions on access to humanitarian aid in the camp constituted a clear violation of international

<sup>178</sup> The representative of Israel and the Permanent Observer of Palestine participated in the meeting but did not make statements.

<sup>179</sup> S/PRST/2002/9.

<sup>180</sup> S/2002/369, annexed to the presidential statement.

<sup>181</sup> For more information on the discussion at this meeting, see chap. X, part IV, with regard to the interpretation or application of the provisions of Chapter VI of the Charter; chap XI, part I, sect. B, with regard to Article 39; and chap. XI, part IX, sect. B, with regard to Article 51.

<sup>182</sup> S/2002/431.

humanitarian law. He called on the Council to adopt the draft resolution introduced by the Syrian Arab Republic and Tunisia.<sup>183</sup> He then referred to the briefing given by the Secretary-General on the same day, in which he supported the creation by the Council of a multinational force composed of States to be dispatched to the Palestinian territories under Chapter VII of the Charter. He supported this proposal over the one for sending in observers only. Finally, he welcomed the idea of an international conference, on condition that the Quartet participated, that the conference also tackled the Syrian-Israeli track, and that it was based on a comprehensive political vision of peace.<sup>184</sup>

The representative of Israel reiterated that his country was completing the withdrawal from Palestinian cities but maintained that the Palestinians had not yet implemented a ceasefire. He then said that what had happened in Jenin was not a “massacre” but a gun battle between Israeli soldiers and Palestinian terrorists with unfortunate civilian casualties. Finally, he reaffirmed that his country supported the idea of a third-party mechanism composed of American monitors but would only consider an international presence in the context of a comprehensive settlement.<sup>185</sup>

Most delegations supported elements of the draft resolution before the Council, including the demand for Israeli withdrawal, the need for Israel to respect the Geneva Conventions and the establishment of a fact-finding mission to investigate events in Jenin.

Almost all speakers also believed that a third party intervention was needed, and agreed that the only way to bring an end to the violence was to send a multinational force to the region as proposed by the Secretary-General. However, several representatives, including a majority of Council members, insisted that

both parties would have to agree to its presence.<sup>186</sup> Others simply stated that the proposal needed careful consideration.<sup>187</sup>

The representative of the United States focused on the need to alleviate the humanitarian situation in Jenin and pressed Israel to allow humanitarian access. He however reiterated that further Council action was not the best way to meet this objective. He also said that the Secretary of State had obtained an Israeli commitment to wind down its military operations, and a Palestinian statement condemning recent terrorist attacks.<sup>188</sup>

Speaking for the second time, the representative of Palestine pressed for a Council resolution addressing the humanitarian situation and expressed a willingness to set aside the idea of an international presence for the moment and leave the issue to the Secretary-General. He said he was ready to work on a new draft resolution presented by the United Kingdom.<sup>189</sup> The representative of Israel for his part reiterated that his country deeply regretted the death of civilians but maintained that the primary responsibility for their deaths lay with the terrorists.<sup>189</sup>

At the 4516th meeting, on 19 April 2002, the President (Russian Federation) drew attention to a draft resolution submitted by the United States;<sup>190</sup> it was adopted unanimously and without debate as resolution 1405 (2002), by which the Council, *inter alia*:

Emphasized the urgency of access of medical and humanitarian organizations to the Palestinian civilian population; and welcomed the initiative of the Secretary-General to develop accurate information regarding the events in the Jenin refugee camp through a fact-finding team.

<sup>183</sup> S/2002/363, by which the Council would express concern at the humanitarian crisis among the Palestinian people; demand freedom of movement for medical and humanitarian organizations; express shock at the massacre in the Jenin refugee camp; demand the immediate implementation of resolution 1402 (2002) and the lifting of sieges; call for an international presence to provide better conditions on the ground; and request the Secretary-General to investigate the events that occurred in Jenin and report regularly to the Council.

<sup>184</sup> S/PV.4515, pp. 2-5.

<sup>185</sup> *Ibid.*, pp. 5-7.

<sup>186</sup> S/PV.4515, p. 15 (Spain); S/PV.4515 (Resumption 1), p. 2 (Guinea); p. 3 (Bulgaria); p. 4 (Cameroon); p. 6 (France); p. 11 (Ireland, United Kingdom); p. 17 (Norway); and p. 19 (Russian Federation).

<sup>187</sup> S/PV.4515, p. 35 (Japan); and p. 38 (Republic of Korea); S/PV.4515 (Resumption 1), p. 2 (China); p. 8 (Mauritius); p. 9 (Colombia); p. 11 (United Kingdom); p. 14 (Singapore); and p. 17 (Norway).

<sup>188</sup> S/PV.4515 (Resumption 1), pp. 18-19.

<sup>189</sup> *Ibid.*, p. 21.

<sup>190</sup> S/2002/471.

**Decision of 18 July 2002 (4578th meeting):  
statement by the President**

The Council held its 4525th<sup>191</sup> and 4552nd<sup>192,193</sup> meetings on 3 May and 13 June 2002 in response to requests contained in a letter dated 2 May 2002 from the representative of the Sudan in his capacity as Chairman of the Group of Arab States<sup>194</sup> and a letter dated 11 June 2002 from the representative of Bahrain,<sup>195</sup> to consider the situation in the occupied Palestinian territories. The letters were included in the agenda of the meetings.

All Council members made statements, as did the representatives of Argentina, Brazil, Bahrain, Canada, Chile, Cuba, Egypt, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Morocco, Pakistan, Saudi Arabia, South Africa, Spain (on behalf of the European Union), the Sudan, Tunisia, Turkey and the United Arab Emirates, the Permanent Observer of Palestine and the Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

At the meetings, the representative of Palestine strongly deplored the fact that Israel had refused to accept the Jenin fact-finding team which had been set up by the Secretary-General following resolution 1405 (2002). He said that the Secretary-General, in the absence of Israeli cooperation, had decided to disband the team.<sup>196</sup> He regretted that a draft resolution introduced by the Arab Group<sup>197</sup> aiming at imposing

measures on Israel had been rejected by the United States. He referred to a General Assembly resolution condemning Israel's refusal to cooperate with the fact-finding team and requesting the Secretary-General to report to the Assembly on the events in Jenin.<sup>198</sup> He also deplored the Israeli reoccupation of Ramallah and attack on President Arafat's headquarters, stating that Israel's goal was to go back to the situation that prevailed before the Oslo accords.<sup>199</sup>

The representative of Israel said his country had objected to the fact-finding mission because it did not have clear objectives. He strongly criticized the Palestinian Authority's failure to establish a ceasefire and Yasser Arafat's invitation to Hamas and Islamic Jihad, both terrorist groups, to join his Cabinet, and justified Israel's sieges by the fact that Palestinian terrorists had taken over the locations.<sup>200</sup>

During the meetings, most speakers again deplored Israel's recent actions. Some even acknowledged that the Palestinian Authority could not be expected to take measures to combat terrorism while Israel was destroying the means necessary to implement those measures.<sup>201</sup> Speakers almost unanimously regretted Israel's refusal to cooperate with the fact-finding team and many, especially from the Arab Group, said that this contributed to diminishing the Council's credibility and called for the imposition of measures to force Israel to comply. Most representatives from Arab and non-aligned countries, in addition to the representatives of Spain and France,<sup>202</sup> added that this might indicate a desire on the part of Israel to cover up what really happened.

The representative of the United States stated that his country supported the Secretary-General's decision to disband the team (this was echoed by a majority of Council members), and regretted that the Council had been unable to adopt a draft resolution presented by his country expressing support for the Secretary-General. He added that there was no evidence of a massacre in Jenin and that in reality there had been movement

the fact-finding team; and request the Secretary-General to dispatch the team and keep the Council informed.

<sup>198</sup> General Assembly resolution ES-10/10 of 7 May 2002.

<sup>199</sup> S/PV.4525, pp. 2-4; and S/PV.4552, pp. 3-5.

<sup>200</sup> S/PV.4525, pp. 4-7; and S/PV.4552, pp. 5-7.

<sup>201</sup> S/PV.4552, p. 9 (Norway); S/PV.4552 (Resumption 1), p. 2 (Ireland); p. 4 (South Africa); and p. 8 (Mauritius).

<sup>202</sup> S/PV.4525 (Resumption 1), p. 7 (Spain); and p. 34 (France).

<sup>191</sup> For more information on the discussion at this meeting, see chap. X, part II, case 1, with regard to the investigation of disputes and fact-finding under Chapter VI of the Charter.

<sup>192</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39.

<sup>193</sup> At the 4556th meeting, held in private on 20 June 2002, the Secretary-General and the members of the Council had a constructive discussion.

<sup>194</sup> S/2002/510.

<sup>195</sup> S/2002/655.

<sup>196</sup> See the letter from the Secretary-General, dated 1 May 2002 (S/2002/504), describing his efforts to implement Council resolution 1405 (2002) and announcing his intention to disband the team, deploring that the long shadow cast by recent events in Jenin would remain.

<sup>197</sup> S/2002/478, sponsored by the Syrian Arab Republic and Tunisia, by which the Council would demand the immediate implementation of resolutions 1402 (2002) and 1403 (2002); demand that Israel cooperate fully with

towards implementation of Council resolutions by the parties. Finally, he reaffirmed the goals of the Quartet: restoring security; addressing urgent humanitarian needs; and promoting negotiations towards a settlement.<sup>203</sup>

The discussion also centered on whether the Council should take further action to ensure implementation of previous resolutions. Many speakers said that the Council should not abdicate its moral responsibility to clarify what happened in Jenin and should still seek other ways to establish the facts.<sup>204</sup> At the 4552nd meeting, several speakers said they looked forward to receiving the Secretary-General's report on Jenin pursuant to General Assembly resolution ES-10/10.<sup>205</sup>

At the 4578th meeting, on 18 July 2002, the President of the Security Council (United Kingdom) made a statement on behalf of the Council,<sup>206</sup> by which the Council:

Supported the Joint Statement of the Quartet, which was issued in New York on 16 July 2002 by the Secretary-General, the Minister for Foreign Affairs of the Russian Federation, the Secretary of State of the United States, the Minister for Foreign Affairs of Denmark, the High Representative for the Common Foreign and Security Policy of the European Union and the European Commissioner for External Affairs;<sup>207</sup>

Called upon the Government of Israel, the Palestinian Authority and all States in the region to cooperate with the efforts to achieve the goals set out in the Joint Statement and stressed the importance of, and the need to achieve, a comprehensive, just and lasting peace in the Middle East, based on all its relevant resolutions, the Madrid terms of reference and the principle of land for peace.

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<sup>203</sup> S/PV.4525 (Resumption 1), pp. 22-25; and S/PV.4552 (Resumption 1), p. 9.

<sup>204</sup> S/PV.4525, p. 7 (Sudan); and p. 9 (Tunisia); S/PV.4525 (Resumption 1), p. 3 (Jordan); pp. 4-5 (Malaysia); pp. 7-8 (South Africa); p. 11 (United Arab Emirates); p. 14 (Morocco); p. 19 (Lebanon); p. 20 (Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 24 (Guinea); p. 26 (Colombia); p. 31 (Syrian Arab Republic); p. 32 (Mexico); p. 33 (Norway); and p. 34 (France).

<sup>205</sup> S/PV.4552, p. 3 (Palestine); p. 14 (Morocco); S/PV.4552 (Resumption 1), p. 18 (Singapore); p. 25 (Islamic Republic of Iran); p. 27 (Colombia); and p. 29 (Syrian Arab Republic).

<sup>206</sup> S/PRST/2002/20.

<sup>207</sup> Annexed to the statement of the President.

### **Decision of 24 September 2002 (4614th meeting): resolution 1435 (2002)**

The Council held its 4588th meeting<sup>208</sup> on 24 July 2002, in response to the request contained in a letter dated 23 July 2002 from the representative of Saudi Arabia in his capacity as Chairman of the Group of Arab States,<sup>209</sup> to consider the continued Israeli military aggression against Palestinians and immediately adopt measures to implement previous Council resolutions.

All Council members made statements, as did the representatives of Bahrain, Chile, Cuba, Denmark, Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Jordan, Kuwait, Malaysia, Pakistan, Saudi Arabia, South Africa, the Sudan, Tunisia and Yemen, and the Permanent Observer of Palestine, the Permanent Observer of the League of Arab States and the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.<sup>210</sup>

The representative of Palestine complained that Israel had continued to escalate "war crimes", citing in particular the bombing of an apartment building in Gaza City, which had killed 15 civilians and wounded more than 150 people, and which Israel had declared a "targeted killing". He also objected to the continuing practice of collective punishment against Palestinians by Israel, in particular air strikes, the reoccupation of Palestinian cities, and severe restrictions on the movement of persons, all of which were creating a humanitarian crisis. He insisted that any talk about the restructuring of the Palestinian Authority in view of statehood was meaningless while Palestine was still under occupation. He also welcomed the international consensus on the two-State solution, reiterated the need for a comprehensive approach, and urged the Council to be more proactive.<sup>211</sup>

The representative of Israel reiterated that his country's actions were part of an ongoing effort to fight terrorism. He stressed that the target of the attack mentioned by the representative of Palestine was one

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<sup>208</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; and part IX, sect. B, with regard to Article 51.

<sup>209</sup> S/2002/828.

<sup>210</sup> The representative of Tunisia participated in the meeting but did not make a statement.

<sup>211</sup> S/PV.4588, pp. 3-5.

of the “most prolific and brutal terrorists in the history of the Middle East”. He expressed regret that Palestinian civilians had been killed, and stated that Israeli forces had not anticipated the extent of the collateral damage, and if they had the operation would not have been carried out. Nonetheless, he stressed that Palestinian terrorists continued, in contravention of international norms, to situate themselves among civilians in order to use them as human shields. He insisted that responsibility also lay with the Palestinian Authority for failing to curb terrorism and stated that Israel could not be expected to take any action that would increase the risk to Israeli civilians. He however assured the Council that an internal investigation was being conducted.<sup>212</sup>

Speakers almost unanimously condemned the Israeli attack, emphasizing that air attacks against populated areas were unacceptable. Most representatives from the Arab Group described the attack as a “war crime” and said that this was a proof that Israel was not interested in the peace process.<sup>213</sup> Other speakers condemned Palestinian terrorism as well as Israel’s disproportionate use of force.<sup>214</sup>

The representative of the United States, while calling on the need to address the action of Palestinian terrorist groups, expressed his country’s concern about Israeli actions that endangered civilians. He also expressed concern for the humanitarian situation and urged Israel to restore economic activity in the Palestinian areas. He finally stated that previous Council decisions already formed an adequate basis to achieve a negotiated solution and that at this point the focus should be on diplomatic efforts.<sup>215</sup>

Some speakers reiterated the need to tackle political, security and humanitarian issues in parallel, as affirmed by the Quartet.<sup>216</sup> Another theme at the meeting was the civil and security reform of Palestinian institutions. Many speakers highlighted the

need for international support through the Task Force on Palestinian Reform and looked forward to the development of specific plans. They also insisted that Israel needed to take concrete steps to support the emergence of a viable Palestinian State including the easing of restrictions.<sup>217</sup> However, the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People said that the three-year programme for the establishment of a Palestinian State introduced by the President of the United States on 24 June 2002 gave no clear steps towards that goal and placed requirements on the Palestinians while failing to demand that Israel end the occupation.<sup>218</sup>

At its 4613th meeting, on 20 September 2002, the Council heard a briefing by the Special Coordinator for the Middle East Peace Process. In his briefing, the Special Coordinator reported on the recent Quartet activities and on the mounting humanitarian crisis. He said that Quartet members intended to make it clear to Israel that freedom of movement for Palestinian people and goods needed to be insured, that it had to withdraw from areas occupied since September 2000, end targeted killings and freeze settlements activity. Without security improvements and humanitarian delivery, there could only be limited progress on institutional reform. Finally, the Quartet also agreed on a three-phased road map for achieving a two-State solution within three years, and on the establishment of a third-party mechanism to monitor progress.<sup>219</sup>

The 4614th meeting of the Council<sup>220</sup> was held on 23 and 24 September 2002 in response to requests contained in letters dated 20 September 2002 from the Permanent Observer of Palestine<sup>221</sup> and from the representative of the Syrian Arab Republic<sup>222</sup> to consider the escalation of Israeli military aggression against Palestinians. The Council included the letters in its agenda.

<sup>212</sup> Ibid., pp. 5-7.

<sup>213</sup> Ibid., p. 14 (Syrian Arab Republic); p. 21 (Egypt); p. 22 (Jordan); p. 25 (Islamic Republic of Iran); p. 26 (LAS); pp. 27-28 (Iraq); p. 29 (Sudan); p. 24 (Indonesia); and p. 35 (Yemen).

<sup>214</sup> Ibid., pp. 8-9 (France); p. 9 (Ireland); p. 10 (Norway); p. 11 (Russian Federation); p. 20 (United Kingdom); pp. 21-22 (Chile); and p. 24 (Denmark).

<sup>215</sup> Ibid., pp. 16-17.

<sup>216</sup> Ibid., pp. 9-10 (Ireland); p. 12 (Singapore); p. 17 (Mexico); and p. 24 (Denmark).

<sup>217</sup> Ibid., pp. 10-11 (Norway); p. 11 (Russian Federation); p. 15 (Singapore); p. 16 (United States); p. 20 (United Kingdom); p. 24 (Denmark); and p. 29 (Japan).

<sup>218</sup> Ibid., p. 31.

<sup>219</sup> S/PV.4613.

<sup>220</sup> For more information on the discussion at this meeting, see chap. I, part I, sect. A, case 1, with regard to special cases concerning the application of rules 1-5 of the provisional rules of procedure; and chap. XI, part I, sect. B, with regard to Article 39 of the Charter.

<sup>221</sup> S/2002/1055.

<sup>222</sup> S/2002/1056.



At the meeting, all Council members made statements, in addition to the representatives of Algeria, Bahrain, Bangladesh, Cuba, Cyprus, Denmark (on behalf of the European Union), Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jordan, the Libyan Arab Jamahiriya, Malaysia, Mauritania, Morocco, Nepal, Pakistan, Qatar, Saudi Arabia, South Africa, the Sudan, Tunisia and Turkey, the Permanent Observer of Palestine, the Secretary-General, the Permanent Observer of the League of Arab States, the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and the Permanent Observer of the African Union.

The President of the Council (Bulgaria) drew attention to a letter dated 19 September 2002 from the representative of Israel<sup>223</sup> referring to new terrorist attacks against Israeli civilians and calling on the international community to strongly condemn the Palestinian terror campaign. He also drew attention to a letter from the Permanent Observer of Palestine dated 20 September 2002,<sup>224</sup> protesting that Israel had reoccupied the compound of the President of the Palestinian Authority in Ramallah.

The Secretary-General strongly condemned the recent terrorist attacks and called on the Palestinians to bring an end to them. He also said that the Quartet had agreed that efforts to reform the Palestinian security apparatus should be done in the context of an overall plan that also addressed political, economic, institutional and humanitarian dimensions. However, he stressed the difficulty for the Palestinians to combat terrorism while their security infrastructures, institutions and basic services were being destroyed. He said that Israel needed to understand that there would be no lasting security without a political settlement, and that the Palestinians should know that there would be no settlement without lasting security for Israel.<sup>225</sup>

The representative of Palestine urged the Council to adopt a resolution demanding that Israel withdraw from President Arafat's headquarters and take action to end the humanitarian crisis. He added that the only way to end the tragedy was to pursue a comprehensive approach, which included a "genuine and effective"

international presence on the ground that could be in the form of a sufficient group of official observers or in the establishment of a multinational force.<sup>226</sup>

The representative of Israel responded that the Palestinian Authority should resolutely combat terrorism and establish itself as the only party with the authority to use force. He added that Council resolutions that failed to request the dismantling of terrorist organizations and condemn suicide bombings were not just unhelpful but also counterproductive.<sup>227</sup>

The representative of the United States affirmed that his country was intensively engaged to calm the situation. He condemned terrorist bombings but also acknowledged that the further destruction of Palestinian civilian and security infrastructures would not improve Israel's security situation.<sup>228</sup>

All Council members in addition to Denmark (on behalf of the European Union) condemned terrorist attacks, urged Israel to immediately withdraw from Yasser Arafat's compound and put an end to the blockade on Palestinian cities.<sup>229</sup> They emphasized that the current security context undermined progress on Palestinian reform. They expressed their strong support for the Quartet and the road map, and most agreed with the Secretary-General's point that progress should be based on the parallel pursuit of humanitarian, security, and political tracks (in particular, a return to peace negotiations), as well as reciprocity. In particular, some Council members reaffirmed the need to establish a third-party mechanism to insure implementation by both parties.<sup>230</sup> The representative of Mauritius stated that the first priority after the Palestinian elections of January 2003 should be a declaration of statehood for the Palestinians, with provisional borders.<sup>231</sup>

Most non-members of the Council also supported the work of the Quartet, but focused their statements on condemning Israeli actions. The representative of Egypt, in particular, stated that Israel could not overcome the will of the Palestinians to resist

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<sup>223</sup> S/2002/1049.

<sup>224</sup> S/2002/1052.

<sup>225</sup> S/PV.4614, pp. 2-4.

<sup>226</sup> *Ibid.*, pp. 4-7.

<sup>227</sup> *Ibid.*, pp. 7-9.

<sup>228</sup> *Ibid.*, p. 10.

<sup>229</sup> *Ibid.*, pp. 9-23; S/PV.4614 (Resumption 1), p. 9 (Denmark).

<sup>230</sup> S/PV.4614, p. 12 (France); p. 16 (Mexico); and p. 21 (Singapore).

<sup>231</sup> *Ibid.*, p. 17.

occupation.<sup>232</sup> A few of them reaffirmed the need to establish a civilian protection mechanism<sup>233</sup> or a multilateral force.<sup>234</sup>

Speakers also unanimously expressed concern at the humanitarian situation as exposed in the report of the Personal Humanitarian Envoy of the Secretary-General Catherine Bertini, and some specifically called for the implementation of the recommendations contained in it, in particular that Israel facilitate immediate access by humanitarian agencies in the affected areas.<sup>235</sup>

Finally, many speakers mentioned a draft resolution introduced by the Syrian Arab Republic<sup>236</sup> in which the Council would demand a complete cessation of violence and the withdrawal of Israel from Palestinian cities.<sup>237</sup>

At the end of the meeting, on 24 September 2002, a draft resolution submitted by Bulgaria, France, Ireland, Norway and the United Kingdom<sup>238</sup> was put to the vote. It was adopted by 14 votes with 1 abstention (United States), as resolution 1435 (2002), by which the Council, *inter alia*:

Reiterated its demand for the complete cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction;

Demanded that Israel immediately cease measures in and around Ramallah including destruction of Palestinian civilian and security infrastructure;

Demanded also expeditious withdrawal of Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000;

<sup>232</sup> *Ibid.*, p. 23.

<sup>233</sup> S/PV.4614 (Resumption 1), p. 8 (Malaysia); and p. 10 (Tunisia).

<sup>234</sup> S/PV.4614, p. 24 (Egypt, Bangladesh); S/PV.4614 (Resumption 1), p. 6 (Islamic Republic of Iran); p. 8 (Malaysia); p. 19 (Algeria); and p. 27 (African Union).

<sup>235</sup> S/PV.4614, p. 11 (Norway); p. 14 (Ireland); pp. 15-16 (Colombia); p. 17 (Mauritius); p. 22 (Singapore, Bulgaria); S/PV.4614 (Resumption 1), p. 14 (Pakistan); p. 16 (India); p. 20 (Indonesia); and p. 23 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People).

<sup>236</sup> S/2002/1057.

<sup>237</sup> S/PV.4614, p. 19 (Syrian Arab Republic); p. 25 (South Africa). S/PV.4614 (Resumption 1), p. 4 (Bahrain); p. 8 (Malaysia); p. 11 (Tunisia); p. 20 (Qatar); p. 25 (Iraq); and p. 28 (Mauritania).

<sup>238</sup> S/2002/1063.

Called upon the Palestinian Authority to meet its commitment to ensure that those responsible for terrorist acts were brought to justice by it; called upon Israel and the Palestinian Authority to cooperate with the Quartet, recognizing the importance of the initiative endorsed at the Arab League Summit held in Beirut in March 2002.

After the adoption, the representative of the United States stated that, contrary to the draft resolution his country had previously introduced, the resolution had failed to explicitly condemn the terrorist groups and those who provided them with political cover, support and safe haven, which was why his delegation had abstained.<sup>239</sup>

#### **Decision of 20 December 2002 (4681st meeting): rejection of a draft resolution**

At its 4645th and 4668th meetings, on 12 November and 16 December 2002, the Council heard briefings by the Under-Secretary-General for Political Affairs and the Special Coordinator for the Middle East Peace Process, respectively.

The Council was informed that, despite the formation of a new Palestinian Cabinet, Israeli-Palestinian violence was ongoing. Terrorist attacks were damaging to the Palestinian cause but, at the same time, Israel had to respect international humanitarian law in confronting terrorism. In particular, the killings of United Nations staff members by the Israel Defense Forces were strongly deplored. The humanitarian situation continued to deepen as Israel had made little efforts to implement its commitments to improve the situation. The expansion of settlements and the erection of a new security wall were detrimental to a peaceful solution, and the absence of an electoral legislative framework would certainly hamper the scheduled Palestinian elections in January 2003. Finally, the gap between the deteriorating situation on the ground and the growing consensus about the two-State solution constituted a paradox which needed to be tackled. To that end, a detailed plan on how to move forward, prepared by the Quartet, was expected.<sup>240</sup>

At the 4681st meeting, on 20 December 2002, the President of the Council (Colombia) drew attention to a draft resolution introduced by the Syrian Arab

<sup>239</sup> S/PV.4614 (Resumption 2), p. 2.

<sup>240</sup> S/PV.4645, pp. 2-6 and S/PV.4668, pp. 2-5.

Republic<sup>241</sup>, by which the Council would condemn the killing of United Nations employees and destruction of a World Food Programme warehouse by the Israel Defense Forces; demand that Israel comply with the Geneva Conventions and refrain from the excessive and disproportionate use of force; and request the Secretary-General to inform the Council on any developments on that regard. During the meeting, the representatives of Bulgaria, France, Ireland, Israel, Norway, the Syrian Arab Republic and the United States, and the Permanent Observer of Palestine made statements.

The representative of the United States stated that, because the draft resolution did not urge action by all concerned to minimize threats to the United Nations, his country would veto it. He expressed regret that the sponsors of the draft resolution did not want to engage on the alternative proposal the United States had submitted.<sup>242</sup>

The representative of Bulgaria said his country would abstain because of a lack of unanimity. The representatives of Norway, France, and Ireland stated it would have been quite appropriate for the Council to adopt the draft resolution and remind Israel of the need to fully respect international humanitarian law.<sup>243</sup> The representatives of Palestine and the Syrian Arab Republic deplored the fact that, despite international consensus on the issue, protection given to Israel by one permanent member of the Council was allowing Israel to flout international humanitarian law.<sup>244</sup>

The representative of Israel expressed regret at the killing, and said that his country was engaged in a thorough investigation and that the findings would be made available to the relevant authorities.<sup>245</sup>

The draft resolution was put to a vote and received 12 votes in favour to 1 against (United States), with 2 abstentions (Bulgaria, Cameroon), and was not adopted, owing to the negative vote of a permanent member.

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<sup>241</sup> S/2002/1385.

<sup>242</sup> S/PV.4681, pp. 2-3.

<sup>243</sup> *Ibid.*, p. 3 (Bulgaria, France, Norway); and pp. 3-4 (Ireland).

<sup>244</sup> *Ibid.*, pp. 4-5 (Palestine); and P. 6 (Syrian Arab Republic).

<sup>245</sup> *Ibid.*, pp. 5-6.

### **Deliberations of 16 January 2003 to 19 August 2003 (4885th, 4704th, 4722nd, 4741st, 4757th, 4773rd, 4788th and 4810th meetings)**

At its 4685th, 4704th, 4722nd,<sup>246</sup> 4741st, 4757th, 4773rd, 4788th and 4810th meetings, on 16 January, 13 February, 19 March, 16 April, 19 May, 13 June, 17 July and 19 August 2003 respectively, the Council heard briefings by the Under-Secretary-General for Political Affairs,<sup>247</sup> the Assistant Secretary-General for Political Affairs,<sup>248</sup> and the Special Coordinator for the Middle East Peace Process.<sup>249</sup> No other statements were made during the meetings.

The briefings focused mainly on implementation by the parties of the Quartet's three-phase road map for achieving a negotiated settlement of the Israeli-Palestinian conflict. Under the road map's guiding principle of parallelism, progress was to be pursued on all issues at the same time and monitored on the basis of the parties' compliance with specific performance benchmarks. The first phase required the parties to implement a complete ceasefire, improve humanitarian conditions, promote Palestinian institution-building and halt all settlement construction. The road map was officially presented to the parties on 30 April 2003 but its broad lines had already been defined in December 2002.<sup>250</sup>

At the briefings, it was reported to the Council that the level of violence initially continued with Palestinian terrorist attacks and Israel's disproportionate use of force against Palestinian cities until a ceasefire was finally announced on 30 June 2003 with the help of the Egyptian government. In July the security situation slightly improved, but there were violations of the ceasefire in August.

Many remaining challenges were however highlighted and Israel was called on, *inter alia*, to remove settlement outposts and freeze settlement activities; put an end to the construction of the security

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<sup>246</sup> For more information on the discussion at the 4722nd meeting, see chap. XI, part IX, sect. B, with regard to Article 51 of the Charter.

<sup>247</sup> At the 4685th, 4704th and 4773rd meetings.

<sup>248</sup> At the 4741st and 4810th meetings.

<sup>249</sup> At the 4722nd, 4757th and 4788th meetings.

<sup>250</sup> The development of the road map was a lengthy process which began with the meeting of the Quartet Principals in New York in September 2002, at the initiative of the Secretary-General; for the text, see S/2003/529.

wall in the West Bank; stop demolishing Palestinian homes; release more Palestinian prisoners; and help strengthen the new Palestinian government by easing restrictions. The Palestinian Authority was urged to intensify efforts to achieve full security control over its areas; the fact that all security forces were yet to be regrouped under the authority of the Interior Minister, owing to restrictions on mobility imposed by Israel, was deplored. Travel restrictions, including on United Nations personnel, and periodic closures of the Rafah crossing into Gaza had also led to the deteriorating humanitarian and socio-economic situation in the Palestinian territories.

Some positive developments were noted, including on the reform of the Palestinian Authority with the designation of Mahmoud Abbas as the first Palestinian Prime Minister. In addition, the parties had both endorsed the road map during the summit meeting held at Aqaba on 4 June 2003 at the initiative of the United States. The peace process was then revived and Israeli and Palestinian leaders started to meet on a regular basis. The Special Coordinator for the Middle East Peace Process emphasized that a resumption of negotiations on both the Syrian and Lebanese tracks as early as January 2004 would help the Palestinian-Israeli track.<sup>251</sup>

**Decision of 16 September 2003 (4828th meeting): rejection of a draft resolution**

The 4824th meeting of the Council was held on 15 September 2003 in response to the request contained in a letter dated 12 September 2003 from the representative of the Sudan in his capacity as Chairman of the Group of Arab States,<sup>252</sup> to consider the continuing escalation against the Palestinian people. The Council included the letter in its agenda, the letter also contained a draft resolution reiterating the demand for the cessation of violence, demanding that Israel cease any threat to the safety of the President of the Palestinian Authority, expressing full support for the efforts of the Quartet and calling for implementation of the road map by the two sides.

During the meeting, all Council members made statements, as did the representatives of Algeria, Argentina, Australia, Bahrain, Bangladesh, Brazil, Canada, Cuba, Egypt, India, Indonesia, Israel, Italy (on

behalf of the European Union), Japan, Jordan, Malaysia (on behalf of the Non-Aligned Movement), Morocco, Nepal, Norway, Saudi Arabia, South Africa, the Sudan, Tunisia, Turkey and the United Arab Emirates, the Permanent Observer of Palestine, the Special Coordinator for the Middle East Peace Process, the Permanent Observer of the League of Arab States, and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.<sup>253</sup>

The Special Coordinator for the Middle East Peace Process first briefed the Council on the situation on the ground. He reported that the ceasefire had been broken with three suicide bomb attacks against Israelis, killing 38 people, and he called on the Palestinian Authority to bring the planners of those attacks to justice. While recognizing Israel's right to defend itself, he re-emphasized that Israel had to comply with international humanitarian law. Recent violence, coupled with lack of implementation of the road map, had resulted in the stalling of the peace process.<sup>254</sup>

The representative of Palestine called on the Council to take immediate measures against Israel's decision to "remove Yasser Arafat" and to help revive the road map with the establishment of a monitoring mechanism and the sending of international troops in the region.<sup>255</sup> The representative of Israel reaffirmed that his country strongly believed that Yasser Arafat was an obstacle to peace because of his encouragement of terrorism.<sup>256</sup>

Council members unanimously deplored the renewed violence and a majority of them urged both parties to resume implementation of the road map. The representative of the Syrian Arab Republic, echoed by the majority of other speakers, condemned Israel's continued policy of aggression, called on Israel to withdraw from occupied territories and recommit itself to the road map, and asked the Council to compel Israel to put an end to violations of international law.<sup>257</sup> The Israeli decision to expel President Arafat was also widely rejected. Many specifically called on Israel to revoke this decision.<sup>258</sup>

<sup>251</sup> S/PV.4788, p. 6.

<sup>252</sup> S/2003/880.

<sup>253</sup> The representative of Canada was also present but did not make a statement.

<sup>254</sup> S/PV.4824, pp. 3-7.

<sup>255</sup> *Ibid.*, pp. 7-9.

<sup>256</sup> *Ibid.*, pp. 9-12.

<sup>257</sup> *Ibid.*, p. 15.

<sup>258</sup> *Ibid.*, p. 13 (China); p. 17 (Mexico); p. 20 (Germany);

The representative of Spain focused on the fragility of the mechanism contained in the road map, and the need for it to be interpreted according to the context. He added that the political perspective of the road map was ambiguous and needed to be supported by both parties. He said that the Secretary-General needed to revitalize the end goals of the road map so that both Israel's security and the viability of the future Palestinian State would be included.<sup>259</sup> This was echoed by the representative of Australia, who stated that credible guarantees for the security of Israelis were key to success of the road map.<sup>260</sup>

Several speakers proposed specific solutions to the crisis, including organizing an international conference,<sup>261</sup> establishing a monitoring mechanism,<sup>262</sup> deploying an interposition force,<sup>263</sup> or sending observers to the region.<sup>264</sup> A few speakers expressly supported the draft resolution presented by the Arab Group,<sup>265</sup> and the representative of France said that his country was prepared to work on the basis of that text.<sup>266</sup> The representative of Algeria called for the adoption of another draft resolution presented by Angola on behalf of the Non-Aligned Movement.<sup>267</sup>

The representative of the United States said that the Council had to take a clear stand against terrorist groups and that his country would only support a draft resolution that condemned terrorist acts and called for the dismantling of terrorist infrastructure. He added that his country did not support either the elimination of Yasser Arafat or his forced exile.<sup>268</sup>

p. 22 (Spain); p. 24 (Guinea); S/PV.4824 (Resumption 1), p. 9 (Bangladesh); and p. 21 (Nepal).

<sup>259</sup> S/PV.4824, pp. 22-23.

<sup>260</sup> S/PV.4824 (Resumption 1), p. 13.

<sup>261</sup> S/PV.4824, p. 19 (France).

<sup>262</sup> *Ibid.*, p. 19 (France); S/PV.4824 (Resumption 1), p. 15 (South Africa); pp. 19-20 (Tunisia); and p. 21 (Norway).

<sup>263</sup> S/PV.4824, p. 19 (France).

<sup>264</sup> *Ibid.*, p. 22 (Spain).

<sup>265</sup> *Ibid.*, p. 24 (Guinea); S/PV.4824 (Resumption 1), p. 13 (Italy).

<sup>266</sup> S/PV.4824, p. 19.

<sup>267</sup> S/PV.4824 (Resumption 1), p. 5.

<sup>268</sup> S/PV.4824, p. 25.

At its 4828th meeting,<sup>269</sup> on 16 September 2003, the Council again included in its agenda the letter dated 12 September 2003 from the representative of the Sudan. The President (United Kingdom) drew attention to a draft resolution submitted by Pakistan, South Africa, the Sudan and the Syrian Arab Republic,<sup>270</sup> by which, *inter alia*, the Council would reiterate demand for the complete cessation of all acts of violence; demand that Israel desist from any act of deportation and cease any threat to the safety of the President of the Palestinian Authority; express its support for the Quartet; call for increased efforts to implement the road map by the two sides; and underline the importance of the next Quartet meeting in New York. The draft resolution was put to the vote and received 11 votes in favour and 1 against (United States), with 3 abstentions (Bulgaria, Germany, United Kingdom), and was not adopted owing to the negative vote of a permanent member.

The representatives of Bulgaria, Chile, France, Germany, Israel, Pakistan, Spain, the Syrian Arab Republic, the United Kingdom and the United States and the Permanent Observer of Palestine then made statements.

The representative of the United States maintained that the draft resolution had failed to incorporate a robust condemnation of terrorism and of specific terrorist groups, and a call for the dismantlement of infrastructures that support these groups.<sup>271</sup> Likewise, the representative of the United Kingdom stated that the draft resolution was not sufficiently balanced.<sup>272</sup> The representative of Bulgaria said that the Council should have made more efforts to reach a consensus.<sup>273</sup> The representative of Germany stated that despite the abstention his country's position remained that Israel's decision to expel Yasser Arafat was detrimental to the peace process.<sup>274</sup>

The remaining speakers expressed regret at the fact that the resolution had not obtained consensus and

<sup>269</sup> For more information on the discussion at this meeting, see chap. III, part II, sect. A, case 8, with regard to the stage at which those invited to participate are heard; and chap. VI, part I, sect. C, case 1, with regard to practice in relation to Article 12 of the Charter.

<sup>270</sup> S/2003/891.

<sup>271</sup> S/PV.4828, p. 2.

<sup>272</sup> *Ibid.*, pp. 6-7.

<sup>273</sup> *Ibid.*, p. 5.

<sup>274</sup> *Ibid.*, p. 3.

reaffirmed that the Israeli decision to expel Mr. Arafat was against the law and politically counterproductive.<sup>275</sup>

**Decision of 14 October 2003 (4842nd meeting):  
rejection of a draft resolution**

The 4841st meeting of the Council<sup>276</sup> was held on 14 October 2003 in response to the request contained in a letter dated 9 October 2003 from the representative of the Syrian Arab Republic in his capacity as Chairman of the Group of Arab States,<sup>277</sup> to consider the illegal Israeli settlement activities and Israel's construction of an expansionist wall in the occupied Palestinian territories. The Council included the letter in its agenda; the letter included a draft resolution, by which the Council would, *inter alia*, reaffirm the two-State solution; reiterate its opposition to settlement activities in the occupied Palestinian territories; and decide that the construction of the wall was illegal under international law and that it must be ceased and reversed.

All Council members made statements, as did the representatives of Argentina, Bahrain, Brazil, Cuba, Egypt, Indonesia, the Islamic Republic of Iran, Israel, Italy (on behalf of the European Union), Japan, Jordan, Lebanon, the Libyan Arab Jamahiriya, Malaysia, Nepal, New Zealand, Norway, Qatar, Saudi Arabia, South Africa, the Sudan, Tunisia, Turkey, the United Arab Emirates and Yemen, the Permanent Observer of Palestine, the Permanent Observer of LAS, the Deputy Permanent Observer of OIC, and the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

The President of the Council (United States) drew attention to two letters dated 9 October 2003 from the representatives of Malaysia<sup>278</sup> and the Islamic Republic of Iran,<sup>279</sup> conveying the support of the Non-Aligned Movement and OIC, respectively, to the Arab Group's request.

The representative of Palestine stressed that indiscriminate killings of Palestinians and the construction of an expansionist wall in the occupied Palestinian territories including East Jerusalem constituted war crimes. He deplored the confiscation of Palestinian land for that aim and asserted that Israel's goal was to conquer more land.<sup>280</sup> The representative of Israel replied that the wall was intended to prevent, non-violently, the passage of terrorists into Israel and that this ultimately would lead to an atmosphere conducive to peaceful negotiations. He added that in the absence of Palestinian compliance with Council resolutions asking it to dismantle terrorist infrastructures, Israel had no other option. He pointed out that international humanitarian law allowed for territory to be requisitioned for security purposes and that compensation matching the property value was being provided.<sup>281</sup>

Most Council members reiterated their condemnation of terrorist acts but also expressed their deep concern for the construction of the wall. They recognized that it was illegal, had negative humanitarian consequences, was contrary to the road map and called into question the two-State solution. Some Council members called for resolute Council action.<sup>282</sup> The representative of the Russian Federation specifically called for the adoption of a resolution that would approve the road map. The Russian Federation, France and China supported the convening of an international conference on the Middle East and the establishment of a monitoring mechanism to ensure implementation of the road map by the parties.<sup>283</sup> The representative of Bulgaria however stated that condemning this specific aspect of the overall picture in the Middle East would not contribute to the resumption of the peace process.<sup>284</sup> This was echoed by the representative of the United States, who also noted that ending terrorism must be the priority and that any resolution would have to take into account the bigger picture. He added that his country understood Israel's security concerns but urged it to consider the

<sup>275</sup> *Ibid.*, p. 3 (Pakistan); p. 4 (France, Chile, Syrian Arab Republic); and p. 5 (Spain).

<sup>276</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to Article 51 of the Charter.

<sup>277</sup> S/2003/973.

<sup>278</sup> S/2003/974.

<sup>279</sup> S/2003/977.

<sup>280</sup> S/PV.4841, pp. 3-6.

<sup>281</sup> *Ibid.*, pp. 7-12.

<sup>282</sup> *Ibid.*, p. 13 (Syrian Arab Republic); p. 16 (Mexico, Chile); p. 17 (Guinea); p. 19 (France); p. 21 (Angola); and p. 22 (Pakistan).

<sup>283</sup> *Ibid.*, p. 15 (Russian Federation); p. 19 (France); and p. 20 (China).

<sup>284</sup> *Ibid.*, p. 15.

consequences of building the wall so that it did not prejudice the outcome of a peace agreement.<sup>285</sup>

The representative of the Syrian Arab Republic reiterated that the construction of the wall was aimed at creating Palestinian enclaves and at consolidating Israel's annexation of vast areas of the West Bank and East Jerusalem. He called on the Council to condemn Israel and make it clear that these practices were contrary to international law. He expressed his fear that the absence of Council action would hurt the Council's credibility.<sup>286</sup> This was echoed by the majority of other speakers and non-Council members.

Some other speakers, while expressing concern for the construction of the wall, also reiterated the need for the Palestinian Authority to resolutely fight terrorism.<sup>287</sup>

The representative of Palestine, speaking for the second time, rejected Israel's vision that Palestinian territories were not occupied but "disputed" and noted the failure to explain why the wall was being built deep inside Palestinian territory and not on the armistice line of 1949.<sup>288</sup>

At its 4842nd meeting, held on 14 October 2003, the Council again included in its agenda the letter dated 9 October 2003 from the representative of the Syrian Arab Republic. The President (United States) drew attention to a draft resolution submitted by Guinea, Malaysia, Pakistan and the Syrian Arab Republic,<sup>289</sup> by which the Council would decide that the construction of the wall was illegal and had to be reversed.

The draft was put to a vote and received 10 votes in favour to 1 against (United States), with 4 abstentions (Bulgaria, Cameroon, Germany, United Kingdom), and was not adopted owing to the negative vote of a permanent member.

Statements were then made by the representatives of the United States and Israel and the Permanent Observer of Palestine.

The representative of the United States stated that the draft resolution was unbalanced and asserted that a Council resolution focused on the fence would not further peace in the region.<sup>290</sup> While the representative of Palestine deplored the fact that the Council had been unable to take a firm stand on the expansionist wall and said that it was urgent to find a way to redress this within the framework of the United Nations system, the representative of Israel contended that the draft resolution was biased as it failed to draw attention to Palestinian terrorism which was the very cause of Israeli defence measures.<sup>291</sup>

**Decision of 19 November 2003 (4862nd meeting): resolution 1515 (2003)**

At its 4846th<sup>292</sup> and 4861st meetings, on 21 October 2003 and 19 November 2003, respectively, the Council heard briefings by the Under-Secretary-General for Political Affairs.

The Under-Secretary-General noted that actions taken by both sides had the effect of deepening the sense of mistrust between them. As a result, violence continued and the peace process was stalled. He called on the parties to return to the negotiations with the help of the international community. He also reiterated his condemnation of terrorism and asked the Palestinian Authority, especially the newly appointed Prime Minister, to make more efforts to establish law and order. Likewise, he called on Israel to cease the use of disproportionate and indiscriminate force in civilian areas, to reverse its policy of settlement expansion, to implement a settlement freeze and halt the construction of the wall as requested by the General Assembly.<sup>293</sup> Finally, he condemned the deterioration of the humanitarian situation due to severe restrictions on the movement of humanitarian goods and aid workers.<sup>294</sup>

At the 4862nd meeting, on 19 November 2003, the President (Angola) drew attention to a draft resolution submitted by Bulgaria, Chile, China, France, Germany, Guinea, Mexico, the Russian Federation,

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<sup>285</sup> *Ibid.*, pp. 23-24.

<sup>286</sup> *Ibid.*, pp. 12-13.

<sup>287</sup> *Ibid.*, pp. 32-33 (Japan); p. 37 (Argentina); p. 40 (Turkey); p. 42 (Italy); p. 43 (Norway); and p. 44 (New Zealand).

<sup>288</sup> *Ibid.*, p. 49.

<sup>289</sup> S/2003/980.

<sup>290</sup> S/PV.4842, p. 2.

<sup>291</sup> *Ibid.*, p. 3.

<sup>292</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to Article 51 of the Charter.

<sup>293</sup> General Assembly resolution ES-10/13 of 21 October 2003.

<sup>294</sup> S/PV.4846, pp. 2-5, and S/PV.4861, pp. 2-5.

Spain and the United Kingdom;<sup>295</sup> it was adopted unanimously and without debate as resolution 1515 (2003), by which the Council, *inter alia*:

Endorsed the Quartet performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict;<sup>296</sup>

Called upon the parties to fulfil their obligations under the road map in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security.

#### **Deliberations of 12 December 2003 (4879th meeting)**

At its 4879th meeting, on 12 December 2003, the Council heard a briefing by the Special Coordinator for the Middle East Peace Process.

The Special Coordinator said that despite a lack of diplomatic progress there had been relative calm on the ground. He welcomed the reaffirmation by both parties of their commitments toward the implementation of the road map, applauded civil society initiatives aimed at bringing Israelis and

Palestinians together, and considered resolution 1515 (2003) an extremely positive step. He however cautioned against recent Israeli proposals to undertake a unilateral withdrawal of certain parts of the occupied Territories. He noted that while the Israeli withdrawal from southern Lebanon had been cited as a precedent, that withdrawal had not been carried out under Security Council supervision and with intense support from the United Nations Secretariat and in negotiation with both parties. On the other hand, a truly unilateral withdrawal would contain problematic elements, as it might be perceived by some that only terror and violence could create change, and that it was not necessary to arrive at a peaceful settlement through negotiations underpinned by international legitimacy. He reaffirmed the need for a step-by-step approach assisted by confidence-building measures and the need to address territory and terror as core issues. Finally, he referred to new proposals for providing financial assistance to the Palestinian Authority to compensate for economic losses and the dire humanitarian situation.<sup>297</sup>

<sup>295</sup> S/2003/1100.

<sup>296</sup> S/2003/529, annex.

<sup>297</sup> S/PV.4879.

## **34. Items relating to Iraq**

### **A. The situation between Iraq and Kuwait**

#### **Decision of 31 March 2000 (4123rd meeting): resolution 1293 (2000)**

At its 4120th meeting,<sup>1</sup> on 24 March 2000, the Security Council included in its agenda a report of the Secretary-General dated 10 March 2000.<sup>2</sup> In his report, the Secretary-General observed that, at the outset of the implementation of the “oil-for-food” programme in 1997, the rate of deterioration of basic infrastructure had been accelerating, exacerbating the overall poor

nutritional status of the population and undermining public health. Consequently, this required efficient procurement and distribution systems and a broader range of inputs, financed at a much higher level than had been initially envisaged. However, the time frame required to halt deterioration of the humanitarian situation had proved to be much longer than anticipated because of the serious funding shortfall due to unexpectedly low oil prices. Despite the difficulties and shortcomings that had been identified in the report, the programme had provided substantial assistance in all sectors to address pressing humanitarian needs affecting the lives of the Iraqi people. However, a determined effort needed to be made by all parties concerned to collaborate effectively with a view to making further improvements in the implementation of the programme. To the end, he made a number of technical recommendations to the Government of Iraq and to the Security Council Committee established by resolution 661 (1990) concerning the situation between

<sup>1</sup> During this period, in addition to the meetings covered in this section, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Iraq-Kuwait Observation Mission pursuant to resolution 1353 (2001), annex II, sects. A and B. The meetings were held on 2 October 2001 (4386th), 2 October 2002 (4617th), 2 April 2003 (4733rd) and 1 July 2003 (4781st).

<sup>2</sup> S/2000/208, submitted pursuant to paragraphs 28 and 30 of resolution 1284 (1999) and paragraph 5 of resolution 1281 (1999).



Iraq and Kuwait. He noted that despite the measures adopted to improve the funding level and widen the scope of the programme, its full potential had not been attained because of the numerous difficulties encountered. Accordingly, he appealed again to all those concerned to intensify their efforts in order to enable the programme to address more effectively the difficult conditions under which the Iraqi people continued to live.

At the meeting, the President drew attention to a letter dated 22 March 2000 from the Chairman of the Security Council Committee established by resolution 661 (1990), concerning the situation between Iraq and Kuwait, transmitting the report of the Committee pursuant to paragraph 10 of resolution 1281 (1999).<sup>3</sup> Following a briefing by the Secretary-General on the humanitarian aspects of resolution 1284 (1999), statements were made by all members of the Council, as well as the Director of the United Nations Children's Fund (UNICEF).

In his briefing, the Secretary-General noted that while the original form of the oil-for-food programme had been subject to tight restrictions, as a result of decisions made by the Council over the previous three years, the list of items Iraq had been allowed to import had been considerably expanded and liberalized, and the ceiling on oil exports entirely eliminated. He stressed that although the recent rise in the price of oil had increased the value of exports, the oil industry in Iraq was seriously hampered by a lack of spare parts and equipment, which threatened the income of the programme in the long term. Therefore, he recommended a significant increase in the allocation of resources under the programme for the purchase of spare parts for the oil industry. He urged the Government of Iraq to take all necessary steps to ensure the effective and prompt distribution of the imported items. However, he stressed that even if the programme was implemented perfectly, it was possible that it would prove insufficient to satisfy the population's needs. The Council therefore needed to

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<sup>3</sup> S/2000/242. The report covers the Committee's major activities during the first 90-day period of phase VII of the oil-for-food programme, including information on the sale of petroleum and petroleum products; the processing of contracts for the supply of humanitarian products to Iraq; and efforts to expedite the approval process for contracts for sending oil spare parts and equipment to Iraq in accordance with existing procedures.

keep the effectiveness and impact of the programme constantly under review and take further steps to improve it if necessary. He concluded by saying that the humanitarian situation in Iraq posed a "serious moral dilemma" for the United Nations. He expressed particular concern over the report prepared by UNICEF and the Iraqi Ministry of Health that indicated that, in the centre and south of Iraq, infant mortality and morbidity had increased dramatically and reached unacceptable levels. In that context, he was happy to hear that the Committee was ready to give the Secretariat a list of drugs and other medical supplies which the Secretariat under resolution 1284 (1999) would be able to approve on its own authority. He maintained that while the Council needed to seek every opportunity to alleviate the suffering of the population, everyone needed to realize that the people of a State which was the object of sanctions would always, in some degree, be victims, both of their own Government and of the measures taken against it. The only satisfactory outcome of any such situation was for the State in question to return to full compliance with the decisions of the Council, so that the sanctions could be ended quickly.<sup>4</sup>

All speakers stressed the need to improve the deteriorating humanitarian situation in Iraq by improving the oil-for-food programme. Most speakers also stressed the need for Iraq to accept resolution 1284 (1999), which offered a path towards the suspension and lifting of sanctions. Most members of the Council expressed concern over the state of the oil infrastructure in Iraq and the resulting decline in production capability.

Several speakers endorsed the recommendation of the Secretary-General to increase the allocation to \$600 million to finance the procurement of oil spare parts and equipment for phases VI and VII to offset permanent damage to the oil-bearing structures in Iraq.<sup>5</sup> A number of speakers stressed that every effort needed to be made to reduce the number and the length of holds on humanitarian and other contracts.<sup>6</sup> Some

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<sup>4</sup> S/PV.4120, pp. 2-3.

<sup>5</sup> *Ibid.*, p. 20 (Canada); p. 21 (Tunisia); p. 24 (Ukraine); S/PV.4120 (Resumption 1), p. 2 (Jamaica); p. 4 (United Kingdom); p. 6 (Namibia); p. 7 (Malaysia); p. 11 (Argentina); and p. 12 (Bangladesh).

<sup>6</sup> S/PV.4120, p. 20 (Canada); p. 22 (Tunisia); p. 23 (Mali); p. 24 (Ukraine); S/PV.4120 (Resumption 1), p. 2 (Jamaica); p. 7 (Malaysia); p. 11 (Argentina); and p. 12 (Bangladesh).

speakers called for regular and comprehensive assessments of the impact of sanctions.<sup>7</sup> Several speakers also called for an end to the “no-fly zones”.<sup>8</sup>

The representative of the Netherlands noted that there was a striking contrast between the report of the Secretary-General, which provided information on the progress made in meeting the humanitarian needs of the Iraqi people, and the alarming messages received from various quarters calling for swift and decisive action to halt and reverse the long-standing humanitarian emergency in Iraq. He asserted, however, that the two observations were not incompatible. The humanitarian programme was implemented within the context of a sanctions regime and should not be confused with a development programme. He maintained that the sanctions regime would come to an end as soon as the Government of Iraq met its obligations under the relevant Security Council resolutions. He observed that while it was “futile” to try to present the position of the Council as a “unified stand”, there was a remarkable degree of consensus on the fact that Iraq had yet to convince the international community that it had really abandoned its dream of developing weapons of mass destruction. He noted that Iraq was “the only country in modern history that had not only attempted to develop all categories of weapons of mass destruction — nuclear, biological and chemical” but had actually used such weapons against a foreign enemy and its own citizens. On the issue of the holds placed on contracts, he maintained that while credit was due to those delegations which possessed both the required resources and the political will to scrutinize all contacts for dual-use potential, his delegation considered the amount of applications placed on hold “intolerably high”, and stressed that a more sustained effort to reduce the amount was required.<sup>9</sup>

The representative of the Russian Federation averred that the report of the Secretary-General showed clearly that the scale of the “humanitarian catastrophe” in Iraq was inexorably leading to the “disintegration of the very fabric of civil society”. The “total impoverishment of the population” had led to a

situation where an entire generation of Iraqis had been “physically and morally crippled”. He maintained that the blocking by certain delegations of humanitarian contracts in the Committee continued to pose a serious threat to the implementation of the humanitarian programme. Completely “artificial pretexts” were being trumped up in order to place on hold contracts to deliver needed equipment to rehabilitate electrical power stations, medical equipment, vehicular transport and communications resources. He maintained that the artificial nature of the situation was illustrated by the fact that contracts from certain countries were put on hold, whereas requests for deliveries of similar goods from other countries were endorsed without problem. He called on the delegations concerned to review their approach. He also opined that the socio-economic and humanitarian situation in Iraq was worsening because civilian facilities in Iraq were constantly the targets of air strikes by the United States and the United Kingdom, in the unilaterally established “no-flight zones”. He stated that 42 per cent of the air strikes had resulted in human casualties, including a number of civilians. He asserted that the claims that the air strikes were not directed against civilian targets, or that they were in retaliation for actions by Iraqi anti-aircraft defences, did not “hold water”, as the data showed that facilities unrelated to anti-aircraft defence systems were being hit. The air strikes created a negative political backdrop for efforts to resume cooperation between the United Nations and the Government of Iraq, including on disarmament.<sup>10</sup>

The representative of the United States stressed that, given the long pattern of unacceptable behaviour by the Government of Iraq, including public rejection of resolution 1284 (1999), sanctions were the leverage that the international community had to get Iraq to comply with Security Council resolutions. He acknowledged that, because Iraq had continued to evade its obligations, sanctions had continued for an unimagined period. However, the Government of Iraq’s refusal to fulfil its responsibilities to care for and feed its own people had also been unimagined and still remained hard to comprehend. Iraq had consistently underspent on education, under-ordered foodstuffs and had never met the minimum calorie and protein targets set by the Secretary-General. While no one denied that poor oilfield management practices and lack of spare parts had resulted in critical circumstances for oil

<sup>7</sup> S/PV.4120, p. 22 (Tunisia); S/PV.4120 (Resumption 1), p. 7 (Namibia); p. 10 (Malaysia); and p. 12 (Bangladesh).

<sup>8</sup> S/PV.4120, p. 19 (China); and S/PV.4120 (Resumption 1), p. 9 (Malaysia).

<sup>9</sup> S/PV.4120, pp. 3-5.

<sup>10</sup> *Ibid.*, pp. 5-7.

production capacity, at the same time, Iraq had converted container ports into oil depots and had brought on line new facilities to export petroleum products in order to steal money via smuggling. He maintained that the abuses in Iraq, including warehousing of supplies, the wilful neglect of specific humanitarian sectors, the under-ordering of medicines and nutritional supplements, the siphoning off of goods to agents of the regime, the illegal re-exportation of humanitarian supplies, the establishment of front companies, the payment of kickbacks to manipulate and gain from oil-for-food contracts, were all well documented. Moreover, it was difficult to measure the impact of Iraqi obstruction on the broadest scale. For example, the fact that the Government of Iraq refused to divulge or make transparent financial figures and statistics made it difficult, if not impossible, to judge the general economic situation. He stressed that despite the manipulation by the Government of Iraq, the oil-for-food programme worked admirably, and about 90 per cent of the goods requested were approved. Describing his country's policy on reviewing and approving contracts, he stated that the review of contracts was guided by two principles: preventing Iraq from acquiring the means to again threaten regional stability and improving the humanitarian situation. He stated that the United States had about 1,000 contracts on hold out of more than 10,000 received, and for more than one third his delegation was waiting on information from the supplier about the goods, the end use or the end user. Other items were held because they had the potential for dual-use as components of weapons of mass destruction; were on the resolution 1051 (1996) list;<sup>11</sup> were linked to companies that have operated or were operating in violation of sanctions; or had irregular financial terms. He also admitted that there were 339 contracts on hold because his delegation had not yet reviewed additional information received, and stressed that the United States was tightening its procedures with a goal of quicker response times and examining the review criteria with the aim of focusing on holds on the items of most serious concern. However, he stressed that the best way to reduce the holds was to provide a guarantee that contracted goods went to approved purposes, which

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<sup>11</sup> In resolution 1051 (1996), the Council referred to items to be notified by the United Nations Special Commission or the International Atomic Energy Agency under the plans for monitoring and verification approved by resolution 715 (1991).

could be achieved through better monitoring arrangements. Regarding the no-fly zones, the representative noted that they had been established to alleviate the most egregious examples of attacks by the Government of Iraq on the vulnerable population groups, including indiscriminate bombardment of civilian settlements, in the north and south, and that their enforcement had prevented wholesale genocide.<sup>12</sup>

The representative of France maintained that society in Iraq was "being destroyed", and, while the Government of Iraq bore a heavy share of the initial blame for the disastrous situation, the Council could no longer disregard its own responsibility in the matter, which was indisputable and increasingly condemned by international public opinion. He stressed that only the suspension of civilian sanctions, in the context of implementing resolution 1284 (1999), and then lifting them completely once conditions had been fulfilled, would allow the economy to start growing again. Meanwhile, the members of the Council had a responsibility to improve the Iraq programme. On the question of holds, while acknowledging that it was legitimate to ensure that goods were not used for prohibited purposes, the number of holds had become unacceptable. In particular, in certain vital sectors, such as electricity, water, agriculture and the oil industry, the rate of holds exceeded 50 per cent, which meant that the humanitarian programme could no longer function in those areas. He regretted the fact that few of the improvements to the programme envisaged in resolution 1284 (1999) that could reduce the number of holds had gone into force.<sup>13</sup>

The representative of China stressed that it was essential to maintain oil production and export capability in Iraq, because it was the basis for implementing the oil-for-food programme. Therefore, it was necessary to have the funds earmarked for the procurement of oil spare parts increased from \$300 million to \$600 million. He also stated that the serious problem of holds on contracts had exacerbated the deplorable humanitarian situation in Iraq. On the question of dual-use items, he asserted that while Council resolutions strictly prohibited the export of any materials or equipment to Iraq for military purposes, there had been no evidence of violations in that regard. Moreover, the Secretary-General, when

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<sup>12</sup> S/PV.4120, pp. 7-14.

<sup>13</sup> *Ibid.*, pp. 14-17.

approving the distribution plans submitted by the Government of Iraq, also carried out a strict examination and check on all items to be procured. Therefore, his delegation believed that all contracts looked at by the Office of the Iraq Programme and submitted to the sanctions Committee should be considered as conforming to all the relevant United Nations stipulations. He complained that despite this, some members still asked exporters for additional information, but then did not respond in an efficient way, causing long delays. Therefore, he called on the relevant Committee members to expedite the release of holds, but also called for improvements in the efficiency of the sanctions Committee, and for enhancing the monitoring capability of the Office of the Humanitarian Coordinator for Iraq to reassure Council members as to the use of goods. He also stressed that the no-fly zones had not been authorized by the Council, and called on all countries concerned to cease all military actions. In conclusion, he maintained that the sanctions would not help solve the problem, and the fundamental solution was in “the timely lifting of sanctions”.<sup>14</sup>

The representative of the United Kingdom, noting the concerns about the number of holds on contracts for Iraq, stated that it was time to put the “problem in perspective”. He stressed that, although it was the “core collective responsibility” of the Council to ensure that Iraq did not import items it could use to rebuild its military or weapons of mass destruction capability, only a small minority of Council members assumed full responsibility for doing that, while the rest of the Council assumed that they would. While his delegation would process its examination contracts “quickly and objectively”, they would not be diverted from preventing Iraq from rearming. He stressed that the biggest cause of holds was simply a lack of information on contracts, as well as the lack of information about the end use. The latter problem could be improved by more effective monitoring and observation in Iraq, where, despite the tripling in size of the programme, the number of United Nations observers had not increased since the programme was created. He noted that the sanctions Committee had heard a briefing from the Multinational Interception Force on its operations in the Gulf and on the enforcement of the Council’s resolutions, which had presented clear evidence that since mid-1999

<sup>14</sup> Ibid., pp. 17-19.

smugglers had stepped up their activities to the point of exporting illegally over 400,000 tons per month of gas oil from Iraq, using the protection of Iranian territorial waters to transport oil to traders in the United Arab Emirates, as well as through other neighbouring States, including Turkey. He stressed that this impacted negatively on the revenues of the oil-for-food programme and urged the neighbouring States to take steps to prevent the trade. Regarding the no-fly zones, he maintained that they had been established in support of resolution 688 (1991), which called on Iraq to end its repression of the civilian population. In his view, the zones were justified under international law, in response to a situation of overwhelming humanitarian necessity. He reiterated that his country’s aircraft targeted only aircraft and ground facilities that target them, and that their actions were limited to proportionate responses and carefully targeted to avoid civilian casualties. He also accused Iraq of inflating military and civilian casualties for propaganda effect.<sup>15</sup>

The representative of Malaysia described the sanctions against Iraq as “the most comprehensive and punitive sanctions ever imposed on a people” and asserted that sanctions had destroyed Iraq as a modern State and decimated its people. The devastating effects of the sanctions testified to the failure of comprehensive sanctions as a policy tool, as such sanctions violated basic human rights. He argued that there should be no linkage between progress in disarming Iraq and the humanitarian efforts by the Council. Calling the continuation of the sanctions regime morally indefensible and incompatible with the spirit and letter of the United Nations Charter, he called for the economic sanctions to be drastically overhauled, eased and de-linked from the military sanctions.<sup>16</sup>

At the conclusion of the meeting, the Director of UNICEF stated that sanctions had been a factor in the rise of child mortality, but not the only one, as the effects of two wars and the failure of the Government of Iraq to invest in social services had also contributed.<sup>17</sup>

At its 4123rd meeting, on 31 March 2000, the Council again included the report of the Secretary-General dated 10 March 2000 in its agenda. The

<sup>15</sup> S/PV.4120 (Resumption 1), pp. 3-6.

<sup>16</sup> Ibid., pp. 7-10.

<sup>17</sup> Ibid., p. 13.

President (Bangladesh) then drew attention to a draft resolution;<sup>18</sup> it was put to the vote and adopted unanimously and without debate as resolution 1293 (2000), by which, acting under Chapter VII of the Charter of the United Nations, the Council, *inter alia*:

Decided, pursuant to paragraphs 28 and 29 of resolution 1284 (1999), that from the funds in the escrow account produced pursuant to resolutions 1242 (1999) and 1281 (1999) up to a total of \$600 million might be used to meet any reasonable expenses, other than expenses payable in Iraq, which followed directly from the contracts approved in accordance with paragraph 2 of resolution 1175 (1998), and expressed its intention to consider favourably the renewal of that provision;

Expressed its willingness to consider expeditiously other recommendations contained in the Secretary-General's report of 10 March 2000, and the provisions of section C of resolution 1284 (1999).

**Decision of 8 June 2000 (4152nd meeting):  
resolution 1302 (2000)**

At its 4152nd meeting,<sup>19</sup> on 8 June 2000, the Council included in its agenda a report of the Secretary-General dated 1 June 2000 on the distribution of humanitarian supplies throughout Iraq<sup>20</sup> and a letter dated 5 June 2000 from the Chairman of the Committee established by resolution 661 (1990) to the President of the Security Council, transmitting a report of the Committee on the implementation of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995).<sup>21</sup>

In his report, the Secretary-General provided an update on the implementation of the oil-for-food programme and made recommendations on how to achieve greater utilization of available resources. He noted that while the programme had been initially instituted as an exception to the sanctions, allowing Iraq to generate a limited amount of funds through the sale of oil for the importation of food and basic medicines, Iraq was currently authorized to export unlimited amounts of oil and to import a wide range of goods to meet the humanitarian needs of its population and to rehabilitate its civilian infrastructure. He maintained that the nutritional and health status of the

Iraqi people continued to be a major concern and reducing current malnutrition levels and improving the health status of the Iraqi people could be achieved by increasing the funding level in the food and health sectors and ensuring the timely contracting of all supplies in quantities sufficient to meet the requirements and targets previously recommended. He stressed that to assist Iraq in improving its distribution systems, it was essential that applications for contracts relating to distribution systems be approved by the Committee expeditiously. He welcomed the ongoing efforts by the Committee to improve its procedures and define its information requirements, which had already allowed for a significant number of contracts previously on hold to be approved. However, he underlined that much more needed to be done to bring about a drastic reduction in the number of holds placed on applications, which were seriously impairing the effective implementation of the programme. He appealed to the members of the Committee to further intensify efforts to review the applications placed on hold in the light of the additional information provided by the Office of the Iraq Programme. He also appealed to the Government of Iraq to provide expeditiously all additional information requested by members of the Committee. In conclusion, he stated that it needed to be borne in mind that the programme was never intended as a substitute for the resumption of normal economic activity, and could not be expected to address the whole range of needs of the Iraqi population.

At the meeting, statements were made by the representatives of China, the Netherlands, the Russian Federation, Tunisia, the United Kingdom and the United States. The President (France) drew attention to a draft resolution submitted by France and the United Kingdom;<sup>22</sup> it was put to the vote and adopted unanimously as resolution 1302 (2000), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12 and subject to paragraph 15 of resolution 1284 (1999), should remain in force for a new period of 180 days beginning at 0001 hours eastern daylight time on 9 June 2000;

Further decided that from the sum produced from the import by States of petroleum and petroleum products originating in Iraq, including financial and other essential transactions related thereto, in the 180-day period referred to in

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<sup>18</sup> S/2000/266.

<sup>19</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to Article 51 of the Charter.

<sup>20</sup> S/2000/520, submitted pursuant to paragraph 5 of resolution 1281 (1999).

<sup>21</sup> S/2000/536.

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<sup>22</sup> S/2000/544.

paragraph 1 of the resolution, the amounts recommended by the Secretary-General in his report of 1 February 1998<sup>23</sup> for the food/nutrition and health sectors should continue to be allocated on a priority basis in the context of the activities of the Secretariat, of which 13 per cent of the sum produced in the period referred to above should be used for the purposes referred to in paragraph 8 (b) of resolution 986 (1995);

Further decided to conduct a thorough review of all aspects of the implementation of the resolution 90 days after the entry into force of paragraph 1 and again prior to the end of the 180-day period, and expressed its intention, prior to the end of that period, to consider favourably renewal of the provisions of the resolution as appropriate, provided that the reviews indicated that those provisions were being satisfactorily implemented;

Decided that from the funds produced pursuant to the resolution in the escrow account established by paragraph 7 of resolution 986 (1995), up to a total of US \$600 million might be used to meet any reasonable expenses, other than expenses payable in Iraq, that followed directly from the contracts approved in accordance with paragraph 2 of resolution 1175 (1998) and paragraph 18 of resolution 1284 (1999).

Following the adoption of the resolution, the representative of Tunisia noted that his delegation had voted in favour even though some provisions did not command complete support. He had hoped that the draft resolution would contain a clear and explicit request for a focused assessment of the sanctions imposed on the Iraqi people and of their effects.<sup>24</sup>

The representative of China also stated that his delegation was not entirely satisfied with the resolution because it did not fully reflect an important element favoured by most States members of the Council, including his Government, which was a request that the Secretary-General conduct an assessment of the impact of the 10 years of sanctions against Iraq, and to submit to the Security Council an objective and comprehensive consolidated report. Noting the invitation in the resolution to the Secretary-General to appoint independent experts to prepare a report, he stated that the text was evasive on the key issue of whether the report should focus on an assessment of the impact of the sanctions and was rather vague about the mandate of the experts.<sup>25</sup>

The representative of the Russian Federation expressed regret that the text of the resolution did not reflect a number of other important proposals to ease the humanitarian crisis in Iraq, such as restoring civil

air communications with Iraq and repaying the debt of Iraq to the United Nations and to other international organizations. Concurring with many other delegations about the need for an in-depth analysis of the impact of sanctions on the humanitarian situation in Iraq, he considered that the wording of the resolution in that connection was rather vague and detached from that specific goal. He stressed that the group of independent experts should deal precisely with the consequences of sanctions and also suggested that if the group of independent experts found that there were other things that did not directly relate to the sanctions issue, those issues needed to be considered as a whole, without any exceptions. In that case, the questions needed to include the negative impact of the bombings by the United States and the United Kingdom against civilian targets and the economic infrastructure of Iraq. He noted that the intensity of those bombings had grown by a factor of 30 since December 1998. Finally, he noted that his delegation also had problems with paragraph 2, which unjustifiably stressed the supply of food and medicine. While those were important goods, areas such as oil and energy and the development of the transport infrastructure were just as important.<sup>25</sup>

The representative of the United Kingdom underlined that nobody was completely satisfied, but compromises were necessary in work on a subject as complex as Iraq. He stressed that the Secretary-General would be guided by the resolution in setting the task for the experts that the Council had asked them to perform, and not by national statements after the adoption of the resolution. Responding to the mention of the no-fly zones, he maintained, echoed by the United States,<sup>26</sup> that at no time had or would the United Kingdom bomb the civilian infrastructure in Iraq. The action that was taken in the no-fly zones was, following Security Council resolution 688 (1991), to protect the civilian population of Iraq from repression by the Government of Iraq. The military action that was taken was purely in response to attacks on the aircraft in the no-fly zones which were patrolling without intent to bomb anybody or anything. He explained that the increase in the use of ordnance over the past 18 months was due to the fact that the Iraqi ground forces and air force had attacked coalition aircraft more than 650 times in that period.<sup>27</sup>

<sup>23</sup> S/1998/90

<sup>24</sup> S/PV.4152, p. 2.

<sup>25</sup> Ibid., p. 3.

<sup>26</sup> Ibid., p. 5.

<sup>27</sup> Ibid., p. 4.

The representative of the Netherlands expressed hope that an analysis by independent experts would shed light on some inexplicable actions on the part of the Iraqi authorities, such as the recurrent practice of the Government of Iraq adopting measures that harmed its own people.<sup>27</sup>

Highlighting the need for a comprehensive consideration of all aspects of the Iraq situations, the representative of the Russian Federation asked the Secretariat to carry out an analysis of what was happening with regard to the implementation of Council resolutions on Iraq and whether what was happening generally in and around Iraq was in accordance with those resolutions. He further stressed that the Council could not continue to pretend, each time it extended the oil-for-food programme, that there was a humanitarian programme and there was the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), while at the same time there were the no-fly zones, non-governmental organizations working in northern Iraq and diplomats crossing the borders of Iraq without visas. He held that, if the Council were to find out about all of those facts and do nothing to collate them, it would not be doing its job, which was to resolve problems relating to the maintenance of peace and security. He stated that the Secretariat had enough authority under the Charter to draw attention to the fact that the problem of Iraq was not being resolved by the Security Council. While the Council was trying to alleviate the symptoms of the disease, it was not addressing the heart of the problem.<sup>28</sup>

The representative of China stressed that whether or not the bombing had deliberately targeted civilians of Iraq, it had brought them suffering and the independent experts appointed by the Secretary-General needed to take this factor into consideration.<sup>29</sup>

**Decision of 5 December 2000 (4241st meeting):  
resolution 1330 (2000)**

At its 4241st meeting, on 5 December 2000, the Council included in its agenda the report of the Secretary-General of 29 November 2000.<sup>30</sup> In his report, the Secretary-General observed that, although

the humanitarian situation in Iraq had generally improved since the inception of the programme, the lives of ordinary Iraqis had not improved commensurately. Under the circumstances, he suggested that the Government of Iraq might wish to consider an increase in the targeting of resources to meet the needs of the most vulnerable groups, including children and the disabled. He also stressed that with increasing funding for the humanitarian component of the programme, the time had come to review the validity of applying procedures and practices originally designed to cover food and medicine to a vastly more complex array of infrastructure and equipment. The Secretary-General had therefore directed the Executive Director of the Iraq Programme to initiate consultations with the Committee and the Government of Iraq with a view to streamlining and improving procedures governing the submission, processing and approval of applications. In conclusion, he reiterated that while the sanctions regime had enjoyed considerable success in its disarmament mission, it had also been deemed responsible for the worsening of a humanitarian crisis as an unintended consequence. He regretted the continuing suffering of the Iraqi people, and expressed hope that the sanctions on Iraq could be lifted sooner rather than later. But that demanded that a way was found to move the Government of Iraq into compliance with Security Council resolutions.

During the meeting, statements were made by the representatives of Argentina, Canada, China, France, Malaysia, the Russian Federation, the United Kingdom and the United States.

The representative of the United Kingdom stated that, while there were measures that his delegation and others would have preferred to see included in the text, the draft resolution represented a reasonable balance of the collective interests of Council members and an important contribution to the work of the programme. He noted that there were a number of technical measures contained in the draft resolution, such as the extension of the so-called “green”, or pre-approved, lists that would ease and improve the implementation of the programme.<sup>31</sup>

The representative of Malaysia drew attention to the problem of holds in the Committee, which had become a major impediment to the smooth running of

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<sup>28</sup> Ibid., pp. 5-6.

<sup>29</sup> Ibid., p. 6.

<sup>30</sup> S/2000/1132, submitted pursuant to paragraph 5 of resolution 1302 (2000).

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<sup>31</sup> S/PV.4241, p. 2.

the programme, with negative consequences on the ground. His delegation strongly supported the appeal of the Secretary-General to all parties concerned to fully cooperate and address the excessive number of holds placed on applications. He noted that many reasons had been given to explain the holds, but while some of them were plausible, many others clearly required the necessary political will on the part of Council members.<sup>32</sup>

The representative of the United States maintained that the oil-for-food programme was meeting the needs of the Iraqi people while denying the Baghdad regime access to funds it would use to further threaten its neighbours. He acknowledged that the programme could be improved, and noted that the changes in the draft resolution his delegation had agreed to reflected their interest in making those improvements. But the most effective change would be for the regime to stop obstruction and implement the relevant humanitarian sections of resolution 1284 (1999), which were intended to improve the operation of the oil-for-food programme.<sup>33</sup>

The representative of Argentina stated that his delegation was convinced that the progress contained in the draft resolution would be reflected in concrete improvement in the humanitarian situation.<sup>34</sup>

The representative of China stressed that in certain areas the draft resolution did not fully reflect his delegation's requests and positions. He noted that the current oil industry situation in Iraq was extremely worrying and could not be sustained. He recalled that the Government of Iraq had proposed the use of a certain amount of cash components in order to maintain and improve oil-producing conditions. However, that had not been appropriately reflected in the draft resolution. He also maintained that many humanitarian projects had been put on hold despite the appeals of the Secretary-General and the cooperation of the contract-submitting countries. He opined that this had not been caused by purely technical reasons, and called upon the countries concerned to prove by their actions that they were sincere in reducing the holds. He stressed that only an early lifting of

sanctions could completely address the humanitarian sufferings of the Iraqi people.<sup>35</sup>

The representative of Canada stated that, on the issue of how to manage the additional 5 per cent of revenue redistributed from the United Nations Compensation Commission,<sup>36</sup> his delegation would have liked to see a separate escrow account established to deliver targeted nutrition programmes to children and pregnant women. With respect to the payment by Iraq of its United Nations dues, he did not support the transfer of humanitarian funds for that purpose.<sup>37</sup>

The representative of France noted that there were several shortcomings in the draft. No decision had been taken about the payment of the arrears of Iraq to the United Nations from the escrow account, which was not a humanitarian account but a bureaucratic instrument, nor had any concrete measures been included to decrease the high level of holds. Finally, he maintained that the Council would have to take a further decision to authorize Iraq to give financial aid to the Palestinians from the escrow account.<sup>38</sup>

The representative of the Russian Federation stressed that the draft did not reflect any of the concerns contained in the report of the Secretary-General, most importantly the continuing problem of contract holds. He stressed that, as a fundamental resolution of the humanitarian crisis would be impossible as long as sanctions were maintained, his delegation was in favour of suspending or lifting the sanctions.<sup>39</sup>

At the same meeting, the President (Russian Federation) drew attention to a draft resolution submitted by the United Kingdom;<sup>40</sup> it was put to the vote and adopted unanimously as resolution 1330 (2000), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12 and subject to paragraph 15 of resolution 1284 (1999), should remain in force for a new period of 180 days beginning at 0001 hours eastern standard time on 6 December 2000;

<sup>32</sup> *Ibid.*, pp. 2-4.

<sup>33</sup> *Ibid.*, pp. 4-5.

<sup>34</sup> *Ibid.*, p. 5.

<sup>35</sup> *Ibid.*, pp. 5-6.

<sup>36</sup> For more information on the Compensation Commission, see chap. V, part I, sect. F.

<sup>37</sup> S/PV.4241, p. 6.

<sup>38</sup> *Ibid.*, pp. 6-7.

<sup>39</sup> *Ibid.*, pp. 7-8.

<sup>40</sup> S/2000/1149.



Further decided that from the sum produced from the import by States of petroleum and petroleum products originating in Iraq, including financial and other essential transactions related thereto, in the 180-day period referred to in paragraph 1 of the resolution, the amounts recommended by the Secretary-General in his report of 1 February 1998 for the food/nutrition and health sectors should continue to be allocated on a priority basis in the context of the activities of the Secretariat;

Decided that from the funds produced pursuant to the resolution in the escrow account established by paragraph 7 of resolution 986 (1995), up to a total of US \$600 million might be used to meet any reasonable expenses, other than expenses payable in Iraq.

**Decision of 1 June 2001 (4324th meeting):  
resolution 1352 (2001)**

At its 4324th meeting, on 1 June 2001, the Council included in its agenda the report of the Secretary-General dated 18 May 2001.<sup>41</sup> In his report, the Secretary-General provided a comprehensive report on the implementation of the oil-for-food programme. He appealed to the Security Council and the Committee to further streamline the cumbersome approval procedures and allow greater latitude so that a wider variety of medicine, health supplies, foodstuffs, as well as materials and supplies for essential civilian needs could be procured and supplied expeditiously. He stressed that such an approach would also reduce the excessive number of holds placed on applications. The Secretary-General provided a number of recommendations for how to streamline the process. He also stressed that it was essential for the Government of Iraq to prioritize its contracting, giving particular attention to the food, health and nutrition sectors. It was also essential for the Government of Iraq to address urgently the problems arising from inordinate delays in submissions of applications and from the submission of non-compliant applications. In conclusion, he stressed that it was incumbent on all parties concerned to take concerted measures to ensure the effective implementation of the humanitarian programme.

At the meeting, the President (Bangladesh) drew attention to a draft resolution;<sup>42</sup> it was put to the vote and adopted unanimously and without debate as

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<sup>41</sup> S/2001/505, submitted pursuant to paragraph 5 of resolution 1330 (2000).

<sup>42</sup> S/2001/545.

resolution 1352 (2001), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to extend the provisions of resolution 1330 (2000) until 3 July 2001;

Expressed its intention to consider new arrangements for the sale or supply of commodities and products to Iraq based on the following principles: (a) that such new arrangements would improve significantly the flow of commodities and products to Iraq, subject to review by the Committee established by resolution 661 (1990); (b) that such new arrangements would improve the controls to prevent the sale or supply of items prohibited or unauthorized by the Council and to prevent the flow of revenues to Iraq outside the escrow account established pursuant to resolution 986 (1995) from the export of petroleum and petroleum products from Iraq.

**Decision of 3 July 2001 (4344th meeting):  
resolution 1360 (2001)**

By a letter dated 15 June 2001 to the President of the Security Council,<sup>43</sup> further to the discussion of the question of Iraq at the informal consultations of the Security Council on 14 June 2001, the representative of the Russian Federation requested, in accordance with rule 2 of the provisional rules of procedure, the convening of an open formal meeting of the Council on the item entitled "The situation between Iraq and Kuwait" in order to consider ways of improving the humanitarian situation in Iraq in the conditions of the negative effect of the sanctions on the population of that country, and also ways of implementing all the Security Council resolutions on Iraq and a post-conflict settlement in the Gulf region.

At its 4336th meeting,<sup>44</sup> on 26 and 28 June 2001, held in response to the request contained in the above-mentioned letter, the Council included the letter in its agenda. The President (Bangladesh) also drew attention to a letter dated 18 June 2001 from the representative of Iraq addressed to the Secretary-General,<sup>45</sup> transmitting a letter from the Deputy Prime Minister of Iraq concerning the extension of the memorandum of understanding of 20 May 1996 between the Government of Iraq and the Secretariat, which had laid the legal and operational groundwork for the implementation of the oil-for-food programme in a

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<sup>43</sup> S/2001/597.

<sup>44</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to Article 41 of the Charter; and part VIII, sect. B, with regard to Article 50.

<sup>45</sup> S/2001/603.

manner that fully respected the sovereignty and territorial integrity of Iraq. The memorandum of understanding also affirmed that the Government of Iraq and the Secretariat were responsible for making any eventual modification to the framework and mode of implementation of the programme. He maintained that resolution 1352 (2001) did two things that were incompatible with these basic facts: it extended the oil-for-food programme for a period of only one month, in violation of the previous practice of six-month extensions; and it expressed the intention of the Council to make radical changes in the concept of the programme and in the operating mechanisms that had been in effect for more than four years. Therefore, Iraq had refused to have anything to do with resolution 1352 (2001), and would refuse to have anything to do with any future resolution of the same nature. He suggested that the circumstances indicated that the United States and the United Kingdom were endeavouring to terminate the memorandum of understanding and the humanitarian programme and replace them with a “so-called regime of smart sanctions” that would impose international tutelage on Iraq for decades to come, would prevent it from using its resources and would ultimately lead to a further deterioration in the humanitarian situation in Iraq. He expressed the hope that the Secretary-General would oppose attempts to use the extension of the humanitarian programme as a facade for securing the adoption of schemes that sought to strengthen the embargo under the cover of the oil-for-food programme, and he stated that Iraq would have nothing to do with any resolution adopted that incorporated the provisions of the draft resolution proposed by the United States and the United Kingdom, regardless of which country sponsored it.

At the meeting, statements were made by all Council members, the representatives of Australia, Bahrain, Canada, Germany, India, Iraq, Italy, Japan, Jordan, Kuwait, the Libyan Arab Jamahiriya, Malaysia, the Netherlands, New Zealand, Norway, Saudi Arabia, Spain, Sweden (on behalf of the European Union<sup>46</sup>), the Syrian Arab Republic, Thailand, Tunisia, Turkey

<sup>46</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

and Yemen, as well as the Permanent Observer of the League of Arab States (LAS).<sup>47</sup>

While expressing concern at the humanitarian problems in Iraq and stressing the need to improve the oil-for-food programme, most speakers noted the need for the Government of Iraq to cooperate on weapons inspections and other issues. Most speakers also noted the unresolved issues of missing nationals and property of Kuwait, and stressed the importance of resolving those outstanding issues. They also stressed the importance of the involvement of the neighbouring countries of Iraq. Many speakers noted the necessity of an effective monitoring programme in Iraq. Several representatives also expressed concern, *inter alia*, over the large numbers of holds on contracts in the Committee, and on the lack of a clear pathway for the lifting of sanctions.

Many representatives called for a comprehensive approach to the question of Iraq and reforms to the oil-for-food programme, which included, *inter alia*, modifying the sanctions regime to reduce restrictions on civilian imports through a goods review list, a “cash component” in all sectors, as well as reduce restrictions on investment and air travel.<sup>48</sup> Several representatives called for the removal or reconsideration of the no-fly zones.<sup>49</sup>

The representative of the United Kingdom stressed that resolution 1284 (1999) remained the policy of the Council and the “only credible way forward”. He stated that there was no good reason to alter that framework, and emphasized that the only reason the resolution had not yet been implemented was because Iraq had refused to do so. He insisted that the series of proposals his delegation had set out were not intended to replace resolution 1284 (1999), but to liberalize the flow of goods and to examine ways to make sure that military-related items were not exported to Iraq. The proposals would move from a situation where no export was allowed unless approved by the Committee to a situation where every export was

<sup>47</sup> The representatives of Austria, Qatar and South Africa were invited to participate but did not make statements.

<sup>48</sup> S/PV.4336 and Corr.1, p. 12 (Tunisia); pp. 13-15 (Norway); pp. 15-16 (Colombia); pp. 16-17 (Ukraine); and pp. 18-19 (Mali); S/PV.4336 (Resumption 1), p. 8 (Germany); and p. 10 (Italy).

<sup>49</sup> S/PV.4336 and Corr.1, p. 11 (China); p. 12 (Tunisia); and p. 33 (Malaysia); S/PV.4336 (Resumption 1), p. 2 (Libyan Arab Jamahiriya); and p. 4 (India).

allowed except for a limited range of items that needed to be reviewed by the Committee on the basis of criteria related to their potential military use. He argued that the changes would improve the flow of goods and dramatically reduce the number of holds, leading to an immediate improvement in the lives of ordinary Iraqis.<sup>50</sup>

The representative of the Russian Federation stated that resolution 1352 (2001) clearly defined the main goal of possible changes in the Iraqi humanitarian programme, which was facilitating trade and economic ties between Iraq and the rest of the world. His delegation had considered various proposals, including the draft resolution submitted by the United Kingdom, but their doubts had grown as to the feasibility of the concept in that draft and its political viability vis-à-vis the prospects for a lasting settlement in Iraq. Specifically, the key elements of the United Kingdom draft appeared to lead, not to easing the very harsh economic situation in Iraq, but rather to tightening sanctions. He noted that many questions had been raised by the proposal for a goods review list for deliveries to Iraq. He stated that the so-called 1051 list was already in effect and a procedure in place for its regular review. However, the authors of the new concept regarded the 1051 list as inadequate and wanted to include in their goods review list goods from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. While that Arrangement, which brought together a limited group of countries on a voluntary basis, was already being applied in practice, inter alia, in respect of Iraq, he held that giving the Arrangement “sanctions status” under Chapter VII would have very serious legal and political consequences. Noting that other aspects of the proposed goods review list would be more prohibitive than the current system, he suggested that its approval could undermine prospects for the industrial development of Iraq. He also pointed out that there was “total silence” on the memorandum of understanding between Iraq and the United Nations, which suggested that the scheme was to be introduced without the consent of the Government of Iraq, which was “utterly unrealistic”. Overall, the concept of the goods review list politicized the humanitarian programme and turned it and UNMOVIC into an instrument for applying sanctions pressure. Moreover, as the proposed draft resolution would be “detrimental

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<sup>50</sup> S/PV.4336 and Corr.1, pp. 4-6.

to averting the humanitarian catastrophe, devastate the Iraqi economy and work again a post-conflict settlement in the Gulf region”, the Russian Federation could not support it. However, the status quo was also unacceptable as resolution 1284 (1999) had too many gaps and ambiguity, which made it unimplementable in its current form. Therefore, his delegation had introduced a proposal that contained clear criteria for suspending and lifting sanctions that were tied to the deployment of an ongoing monitoring and verification system.<sup>51</sup>

The representative of France, noting that his delegations had been proposing reforms of the oil-for-food machinery for more than three years, expressed support for a transfer of jurisdiction from the Committee to the Secretariat, which should reduce the number of holds. However, as easing restrictions on trade would not enable the economy to recover sufficiently, he proposed that foreign investment be authorized. He also stressed the importance of working closely with the neighbouring countries of Iraq by setting up means for cooperation rather than “imposing Chapter VII obligations on them”. In his view, a resolution also needed to liberalize air traffic, require payment by Iraq of arrears to all organizations, and determine rates of assessment on oil sales by Iraq for the benefit of the Compensation Commission. He concluded by stating that his delegation was looking for a way for the Council to regain unity on Iraq and wanted speedy agreement on a system that would enjoy the support of the international community, particularly the neighbours of Iraq.<sup>52</sup>

The representative of the United States remarked that the United Kingdom draft resolution would lift the sanctions on regular civilian commercial trade with the Iraqi people and questioned why at the moment when his Government and others were prepared to make a radical shift, they were attacked by others who despite having pressed for change to the system, sought to “perpetuate the status quo”. He stressed that the review list would not be a “denial list” and goods for civilian use would be approved. In conclusion, he argued that instead of changing the approach of the Council, based on resolution 1284 (1999), the proposals expanded the range of goods available to the civilian population and promoted future implementation by showing the

<sup>51</sup> *Ibid.*, pp. 2-4.

<sup>52</sup> *Ibid.*, pp. 6-8.

Government of Iraq that it had no alternative to cooperation.<sup>53</sup>

The representative of China noted that some Council members had put forward draft resolutions on the new arrangements for Iraq and stressed that the Council needed to seriously consider the drafts in the context of a comprehensive resolution of the Iraq issue. He commented that, during the discussions, his delegation had emphasized that a goods review list should be drawn up based on resolution 1051 (1996) so that, with the exception of the goods on that list, Iraq would be able to import any civilian goods it needed. In addition, the financial controls against Iraq should be relaxed and Iraq allowed to use the funds in the escrow accounts to pay its contributions to international organizations. Foreign companies should be allowed to invest in Iraq; countries should be free to sign service contracts with Iraq; and civil aviation flights should be allowed to resume. He stressed that there needed to be clearly defined criteria for terminating sanctions in order to motivate Iraq to resume its cooperation with the United Nations. Finally, he also stressed that no new arrangement should have a further negative impact on the neighbours of Iraq.<sup>54</sup>

The representative of Ireland noted that the Council needed to ensure that nothing in the measures adopted prevented the development of the normal economic infrastructure in Iraq. In that context, it was important that the list of goods that would be reserved for review by the Committee under the envisaged system was as short and precise as possible. Furthermore, any contract containing an item on the list needed to be carefully reviewed from the point of view of its overall economic importance.<sup>55</sup>

The representative of Kuwait referred to a number of areas in which the Government of Iraq had not worked to ensure the success of the oil-for-food programme, including delays in submission of applications for humanitarian supplies and visas for international personnel. He stated that it was clear that Iraq was “indifferent” to the issues of missing people and property from Kuwait and noted that, at the Arab summit held in Jordan in March 2001, Iraq had rejected

the inclusion of a paragraph in the final declaration guaranteeing the security and sovereignty of Kuwait.<sup>56</sup>

The representative of Jordan noted that his country was one of the countries that continued to endure severe economic consequences as a result of the Security Council sanctions against Iraq, a fact which, in and of itself, should prompt work to eliminate the adverse impact on his country. He informed the Council that his Government had submitted a memorandum to the Secretary-General showing the “gigantic repercussions” for Jordan if the existing agreements between Jordan and Iraq were interrupted. He stressed that any revision of the oil-for-food programme needed to be implementable and enjoy the agreement of all concerned, including Iraq. In conclusion, he maintained that the only way out of the crisis was the lifting of sanctions by the Council, and reviving a comprehensive dialogue between Iraq and the United Nations in order to settle all the outstanding issues from the invasion of Kuwait.<sup>57</sup>

The representative of Malaysia argued that the situation did not justify the continuation of comprehensive sanctions. As the oil-for-food programme was not able to adequately mitigate the effects of the sanctions, a new approach that did not link progress and disarmament with humanitarian efforts was necessary.<sup>58</sup>

The representative of the Libyan Arab Jamahiriya declared that the sanctions against Iraq had become “a crime of genocide” against the Iraqi people and the States that objected to the lifting of the sanctions were also guilty. He noted that, despite the fact that Iraq had largely cooperated with the United Nations and the Council, the sanctions had not been lifted, suspended or lessened. Therefore, calls on Iraq to cooperate with the United Nations, as well as the proposals to modify the sanctions regime, were merely “empty pretext” to maintain those sanctions. He, therefore, called for the immediate lifting of sanctions.<sup>59</sup> The representatives of Yemen and the Syrian Arab Republic also called for an end to sanctions.<sup>60</sup>

The representative of Canada urged all members of the Council to support the draft resolution proposed

<sup>53</sup> Ibid., pp. 8-10.

<sup>54</sup> Ibid., pp. 10-11.

<sup>55</sup> Ibid., pp. 20-21.

<sup>56</sup> Ibid., pp. 24-28.

<sup>57</sup> Ibid., pp. 28-29.

<sup>58</sup> Ibid., p. 32.

<sup>59</sup> S/PV.4336 (Resumption 1), pp. 2-3.

<sup>60</sup> Ibid., p. 11 (Yemen); and p. 12 (Syrian Arab Republic).

by the United Kingdom, and stressed that a united stand by the Council would send a clear message that compliance with sanctions remained the only solution, while divisions in the Council had only encouraged intransigence by Iraq. He noted that Article 24 of the Charter specified that Council members were to act on behalf of the entire United Nations membership,<sup>61</sup> so a threat to veto the draft resolution on the basis of acknowledged national, economic or political consideration damaged the credibility of the Council.<sup>62</sup>

The Permanent Observer of LAS stated that the League called for the lifting of sanctions, but also stressed the need to guarantee the security and stability of Kuwait. The League believed that any solution had to be based on respect for all relevant Security Council resolutions. That did not mean that the sanctions imposed on Iraq would continue “forever” or that they would not be reviewed. The League therefore called for the use of dialogue as a means of dealing with the crisis.<sup>63</sup>

The representative of Iraq stated that the obligations imposed on Iraq under Security Council resolutions were extremely harsh and went beyond customary legal measures to restore international peace and security. This was despite the fact that Iraq had implemented all the obligations enshrined in the relevant resolutions, particularly resolution 687 (1991). In that respect, Iraq had recognized the sovereignty and territorial integrity of Kuwait; fully implemented its commitments concerning the deployment of United Nations observer units; and met the requirements concerning disarmament. He asserted that Iraq had returned all the Kuwaiti properties that it could find and all prisoners of war, as well as continued to cooperate in investigating the fate of missing persons. Moreover, Iraq had also condemned all forms of international terrorism. Despite all of those efforts, the representative maintained that Iraq had faced “all forms of unusual measures”, including the involvement of the Council in the question of the borders between Iraq and Kuwait and an “astoundingly punitive” mechanism for reparations. Regarding disarmament, he maintained that the two bodies involved, the United Nations Special Commission and the International Atomic Energy Agency (IAEA), had served as an

instrument to “realize United States and United Kingdom policies”, which were to perpetuate the blockade imposed on Iraq, although Iraq had implemented its obligations. He criticized the Council for not reacting to the no-fly zones that had been imposed without a Council resolution and that violated the official ceasefire stipulated by resolution 687 (1991). The representative then responded to those who had accused the Government of Iraq of being the principal reason for the failure of the oil-for-food programme to achieve its goals. He stated that the failure to achieve the humanitarian objectives of the programme had been caused by, inter alia, the complexity of the measures adopted by the Council; interference by the United Kingdom and United States, including the use of holds on contracts; “objectionable bureaucracy” in the way contracts were submitted; and inadequate financial management. He continued to detail a number of other “grossly inadequate conditions” in the humanitarian programme, which had come to be the “fat pot for so many parasites”. He then formally called on the Security Council to undertake an appropriate investigation and to publish the results, as well as undertake an external audit of the accounts of the Iraq Programme, as well as the agencies, offices and committees linked to the oil-for-food programme since its inception. Regarding the draft resolution, he stated that the fundamental content entailed a de facto new regime for blockading Iraq. The so-called free trade in civilian goods had been subject to many restrictions and conditions, as well as oversight by a number of bodies, including UNMOVIC, the Committee, and the Office of the Iraq Programme in a way that changed the conditions of the memorandum of understanding. Furthermore, the proposed regime took control of all of Iraq’s financial resources, placed them under United Nations control and disbursed them without any role for the Government of Iraq. He stressed that the rejection of the plan rose “to the level of struggle for national independence, whatever the sacrifices involved”. In conclusion, he declared that from the beginning the goal of the “unjust embargo” had been to change the national political regime in Iraq.<sup>64</sup>

At its 4344th meeting, on 3 July 2001, the Council again included in its agenda the report of the Secretary-General dated 18 May 2001.<sup>65</sup> Statements

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<sup>61</sup> For more information, see chap. XII, part II, sect. A, case 19, with regard to Article 24.

<sup>62</sup> S/PV.4336 (Resumption 1), p. 14.

<sup>63</sup> *Ibid.*, p. 15.

<sup>64</sup> *Ibid.*, pp. 16-31.

<sup>65</sup> S/2001/505, submitted pursuant to paragraph 5 of

were made by the representatives of Tunisia, the United Kingdom and the United States. The President (China) drew the attention of the Council to a draft resolution;<sup>66</sup> it was put to the vote and adopted unanimously as resolution 1360 (2001), by which the Council, acting under Chapter VII of the Charter, inter alia:

Decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12 and subject to paragraph 15 of resolution 1284 (1999), should remain in force for a new period of 150 days beginning at 0001 hours, eastern daylight time on 4 July 2001;

Further decided that from the sum produced from the import by States of petroleum and petroleum products originating in Iraq, including financial and other essential transactions related thereto, in the 150-day period referred to in paragraph 1 of the resolution, the amounts recommended by the Secretary-General in his report of 1 February 1998 for the food/nutrition and health sectors should continue to be allocated on a priority basis in the context of the activities of the Secretariat, of which 13 per cent of the sum produced in the period referred to above should be used for the purposes referred to in paragraph 8 (b) of resolution 986 (1995);

Decided to conduct a thorough review of all aspects of the implementation of the resolution 90 days after the entry into force of paragraph 1 and again prior to the end of the 150-day period, and expressed its intention, prior to the end of the 150-day period, to consider favourably renewal of the provisions of the resolution as appropriate;

Requested the Secretary-General to provide a comprehensive report to the Council 90 days after the date of entry into force of the resolution on its implementation and again at least one week prior to the end of the 150-day period.

The representatives of the United Kingdom and United States expressed regret that the Council had been unable to agree on a new set of arrangements to improve the humanitarian programme, in particular by freeing up the flow of goods into Iraq. They recalled that the principles of the new approach had been endorsed unanimously in resolution 1352 (2001), and that four permanent members of the Council had agreed to the goods review list. They expressed hope that the time the rollover provided would be used to restore the Council consensus on the new approach.<sup>67</sup> The representative of Tunisia also stressed the

resolution 1330 (2000).

<sup>66</sup> S/2001/652.

<sup>67</sup> S/PV.4344, pp. 2-3 (United Kingdom); and p. 3 (United States).

importance of using the rollover period to find a comprehensive solution to the problem.<sup>68</sup>

**Decision of 29 November 2001 (4431st meeting):  
resolution 1382 (2001)**

At its 4431st meeting, on 29 November 2001, the Council included in its agenda the report of the Secretary-General dated 19 November 2001.<sup>69</sup> In his report, the Secretary-General stated that despite its shortcomings the oil-for-food programme continued to make a considerable difference in the daily life of the average Iraqi citizen. However, the programme had continued to suffer because of a number of factors, including the cumbersome procedures involved in formulating the distribution plan; slow contracting for essential supplies by both the Government of Iraq and the United Nations agencies and programmes; and the inordinate delays and irregularities in the submission of applications for such contracts to the Secretariat by both the suppliers and the agencies and programmes concerned. Other difficulties involved delays in the issuance of approval letters for approved applications; in the opening of letters of credit for a large number of approved applications; in the delivery of goods to Iraq by the suppliers; and in granting the required visas and delays in the clearance of imports of essential supplies and equipment, particularly those for the three northern governorates. Programme implementation had also suffered considerably because of the substantial reduction in revenues from oil exports, both because the volume of oil exports under the programme was reduced or suspended by the Government of Iraq and because of the comparatively lower price of oil on the international markets. The Secretary-General also noted that “the unacceptably high level of holds” placed by the Committee had remained almost unchanged. He appealed to all parties to refrain from politicizing the implementation of the programme and instead to concentrate on maximizing its benefits to the people of Iraq.

At the meeting, the President (Jamaica) drew the attention of the Council to a draft resolution,<sup>70</sup> and read out a revision to the text. The draft resolution was then put to the vote and adopted unanimously and without debate as resolution 1382 (2001), by which the

<sup>68</sup> Ibid., pp. 3-4.

<sup>69</sup> S/2001/1089, submitted pursuant to paragraph 5 of resolution 1360 (2001)

<sup>70</sup> S/2001/1123.

Council, acting under Chapter VII of the Charter, inter alia:

Decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12 and subject to paragraph 15 of resolution 1284 (1999), and the provisions of paragraphs 2, 3 and 5 to 13 of 1360 (2001) should remain in force for a new period of 180 days beginning at 0001 hours eastern standard time on 1 December 2001;

Stressed the obligation of Iraq to cooperate with the implementation of the resolution and other applicable resolutions, including by respecting the security and safety of all persons directly involved in their implementation;

Reaffirmed its commitment to a comprehensive settlement on the basis of the relevant resolutions of the Security Council, including any clarification necessary for the implementation of resolution 1284 (1999);

Decided that, for the purposes of the resolution, references in resolution 1360 (2001) to the 150-day period established by that resolution should be interpreted to refer to the 180-day period established pursuant to paragraph 1 of the present resolution.

**Decision of 14 May 2002 (4531st meeting):  
resolution 1409 (2002)**

At the 4531st meeting,<sup>71</sup> on 14 May 2002, the President (Singapore) drew the attention of the Council to a draft resolution submitted by Bulgaria, China, France, Norway, the Russian Federation, the United Kingdom and the United States.<sup>72</sup>

The representative of the Syrian Arab Republic made a statement, in which he noted that his delegation had made a number of proposals on the draft resolution with the goal of, inter alia, ensuring that Iraq was not denied the means for self-defence, or rebuilding its infrastructure. However, despite the fact that those proposals had not been adopted and that his delegation and Arab public opinion supported the lifting of sanctions, he would vote for the resolution out of real concern for the unity of the Council and in an attempt to regain and rebuild its credibility.<sup>73</sup>

The draft resolution was then put to the vote and adopted unanimously as resolution 1409 (2002), by which the Council, acting under Chapter VII of the Charter, inter alia:

Decided that the provisions of resolution 986 (1995), except paragraphs 4, 11, 12, and the provisions of paragraphs 2, 3 and 5 to 13 of resolution 1360 (2001), and subject to paragraph 15 of resolution 1284 (1999) and the other provisions of the present resolution, should remain in force for a new period of 180 days beginning at 0001 hours, eastern daylight time on 30 May 2002;

Decided to adopt the revised Goods Review List<sup>74</sup> and the revised procedures for its application as a basis for the humanitarian programme in Iraq;

Authorized States to permit the sale or supply of any commodities or products other than commodities or products referred to in paragraph 24 of resolution 687 (1991) as it related to military commodities and products, or military-related commodities or products covered by the Goods Review List;

Decided that the funds in the escrow account established pursuant to paragraph 7 of resolution 986 (1995) might also be used to finance the sale or supply to Iraq of those commodities or products that were authorized for sale or supply to Iraq under paragraph 3 of present resolution;

Decided to conduct regularly thorough reviews of the Goods Review List and the procedures for its implementation;

Decided that for the purpose of the resolution, references in resolution 1360 (2001) to the 150-day period established by that resolution should be interpreted to refer to the 180-day period established pursuant to paragraph 1 of the present resolution.

**Decision of 8 November 2002 (4644th meeting):  
resolution 1441 (2002)**

By a letter dated 10 October 2002 addressed to the President of the Security Council,<sup>75</sup> the representative of South Africa, on behalf of the Non-Aligned Movement stressed the urgent need for a peaceful solution to the issue of Iraq in a way that preserved the authority and credibility of the Charter and international law, as well as peace and stability in the region. Noting that consultations were under way in the Council, particularly among the five permanent members, he requested the Council to convene an emergency open debate on Iraq to allow the Council to hear the views of the wider United Nations membership.

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<sup>74</sup> S/2002/515, annex.

<sup>75</sup> S/2002/1132.

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<sup>71</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to Article 51 of the Charter.

<sup>72</sup> S/2002/532.

<sup>73</sup> S/PV.4531, pp. 2-3.

At its 4625th meeting,<sup>76</sup> on 16 and 17 October 2002, the Council included the above-mentioned letter in its agenda. Statements were made by all Council members and the representatives of Albania, Algeria, Angola, Argentina, Australia, Bangladesh, Belarus, Brazil, Cambodia, Canada, Chile, Costa Rica,<sup>77</sup> Cuba, Denmark (on behalf of the European Union<sup>78</sup>), Djibouti, Egypt, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Jamaica, Japan, Jordan, Kuwait, the Lao People's Democratic Republic, Lebanon, the Libyan Arab Jamahiriya, Liechtenstein, Malaysia, Morocco, Nepal, New Zealand, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, South Africa, Sri Lanka, the Sudan, Switzerland, Thailand, Tunisia, Turkey, Ukraine, the United Arab Emirates, Viet Nam, Yemen and Zimbabwe, as well as the Permanent Observers of Palestine, the Organization of the Islamic Conference (OIC), LAS and the Deputy Secretary-General.

The Deputy Secretary-General read a statement by the Secretary-General informing the Council of the decision made by Iraq to allow the return of the United Nations weapons inspectors without conditions. Since then, the Executive Chairman of UNMOVIC and the Director General of IAEA had met with an Iraqi delegation to discuss practical arrangements for the resumption of inspections. He stressed that inspectors needed to have unfettered access, and that a new resolution strengthening the inspectors' hands, so that there were no weaknesses or ambiguities, would be appropriate. He encouraged Council members to work in unison, which would give a greater chance of achieving a comprehensive solution that included the suspension and ending of sanctions, as well as the

timely implementation of other provisions of Council resolutions.<sup>79</sup>

During the course of the meeting, most speakers acknowledged that they were participating in the current debate against the sombre backdrop of potential of war with Iraq. A war, which, they stressed, would have a direct and grave impact on international peace and security. They expressed hope that the debate would lead to a positive and effective consensus on how to move forward on the Iraq question and bring about lasting peace. Recalling the obligation of all States, under the Charter of the United Nations, to implement the decisions of the Council, they agreed that Iraq should immediately implement its obligations and commitments as stipulated by Council resolutions and cooperate fully with UNMOVIC to ensure an effective inspections process.

Many speakers welcomed the decision of the Government of Iraq of 16 September 2002 to accept the unconditional return of United Nations inspectors to its territory. Similarly, they welcomed the agreements reached during the talks in Vienna on 30 September and 1 October 2002. In their view, the Council should seize upon such positive developments by authorizing the immediate return of inspectors to Iraq. They expressed hope that this would open the way for the full implementation of all Council resolutions on Iraq, including those concerning the situation between Iraq and Kuwait, and bring about the lifting of sanctions against Iraq.

Nevertheless, most speakers emphasized that collective international security depended on the commitment of Member States to multilateral cooperation. They stressed that Member States should pursue ways to address the Iraq issue through the United Nations, and seek to preserve international unity. Multilateralism and multilateral institutions remained the best hope for the maintenance of international peace and security.

Some speakers underlined the need for the Council alone to decide what to do should Iraq not comply with the Council resolutions, as only the United Nations could confer international legitimacy on any action, particularly the use of force, against Iraq.<sup>80</sup> Only if it turned out that the inspectors had been

<sup>76</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part III, sect. B, with regard to Article 41; part IV, sect. B, with regard to Article 42; and part IX, sect. B, with regard to Article 51; and chap. XII, part I, sect. A, with regard to Article 1 (2) and sect. E, case 9, with regard to Article 2 (7); and part II, sect. A, case 19, with regard to Article 24 and sect. B, case 20, with regard to Article 25.

<sup>77</sup> In the capacity of Acting Secretary of the Rio Group.

<sup>78</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>79</sup> S/PV.4625 and Corr.1, pp. 3-4.

<sup>80</sup> *Ibid.*, p. 11 (Kuwait); p. 16 (Algeria); and p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 3 (Islamic



prevented from doing their job, and when that had been communicated to the Council should the Council decide on a position to adopt in the face of such a situation.<sup>81</sup> Similarly, several speakers emphasized that no unilateral action would be acceptable.<sup>82</sup>

Regarding the use of force against Iraq, most speakers stressed that it should be considered as a last resort, if at all.<sup>83</sup> A number of other speakers rejected any military action against Iraq.<sup>84</sup> A number of representatives expressed serious concern with concepts such as “regime change” and “pre-emptive strikes”, which had been used by some members, and which they argued posed a fundamental threat to the international security order.<sup>85</sup> In this context, the representative of the Islamic Republic of Iran noted that the concept of “regime change” ran counter to “peoples’ right to self-determination”, and the concept

Republic of Iran); p. 12 (Chile); p. 17 (New Zealand); p. 19 (Argentina); p. 20 (Nigeria); p. 22 (Canada); and p. 26 (Senegal); S/PV.4625 (Resumption 2), p. 2 (Morocco); p. 3 (Brazil); p. 5 (Switzerland); p. 10 (India); p. 12 (Viet Nam); p. 13 (Djibouti); p. 14 (Liechtenstein); p. 16 (Angola); p. 18 (Belarus); p. 25 (Qatar); and p. 27 (Nepal); S/PV.4625 (Resumption 3) and Corr.1, p. 9 (China); p. 15 (Norway); and p. 20 (Ireland).

<sup>81</sup> S/PV.4625 and Corr.1, p. 5 (South Africa); p. 14 (Yemen); p. 16 (Algeria); p. 23 (Tunisia); S/PV.4625 (Resumption 1), pp. 2-3 (Islamic Republic of Iran); p. 4 (Ukraine); p. 7 (League of Arab States); and p. 12 (Chile); S/PV.4625 (Resumption 2), p. 3 (Morocco); and p. 5 (Switzerland); S/PV.4625 (Resumption 3) and Corr.1, p. 5 (Mexico), p. 10 (China); p. 13 (France); and pp. 19-20 (Ireland).

<sup>82</sup> S/PV.4625 and Corr.1, p. 5 (South Africa); and p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 2 (Islamic Republic of Iran); S/PV.4625 (Resumption 2), p. 8 (Lebanon); p. 11 (India); p. 16 (Angola); p. 18 (Belarus); p. 22 (Jamaica); and p. 27 (Nepal).

<sup>83</sup> S/PV.4625 and Corr.1, p. 11 (Kuwait); and p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 12 (Chile); p. 13 (Indonesia); and p. 19 (Argentina); S/PV.4625 (Resumption 2), p. 4 (Brazil); p. 13 (Djibouti); p. 16 (Angola); p. 21 (Cambodia); and p. 27 (Nepal).

<sup>84</sup> S/PV.4625 and Corr.1, p. 14 (Yemen); p. 20 (United Arab Emirates); and p. 23 (Tunisia); S/PV.4625 (Resumption 1), p. 23; S/PV.4625 (Resumption 2), p. 9 (Lebanon); p. 17 (Palestine); and p. 20 (Organization of the Islamic Conference).

<sup>85</sup> S/PV.4625 and Corr.1, p. 14 (Yemen); S/PV.4625 (Resumption 1), p. 2 (Islamic Republic of Iran); S/PV.4625 (Resumption 2), p. 7 (Malaysia); p. 12 (Viet Nam); and p. 23 (Zimbabwe).

of “pre-emptive strike” distorted the conventional understanding of the right of self-defence as codified in the Charter.<sup>86</sup>

On the question of adopting a new resolution on Iraq, several representatives expressed support for a new resolution that would clearly set out the functions and powers of UNMOVIC and provided the strongest possible basis for unconditional and unfettered inspections in Iraq. They argued that only through such inspections could the international community be completely satisfied that Iraq no longer posed a threat to international peace and security.<sup>87</sup> Several speakers stressed that the resolution needed to make clear that non-compliance with the inspection regime would have serious consequences.<sup>88</sup> Other representatives, however, opposed the adoption of any new resolution as Iraq had already agreed to the return of inspectors, and a new resolution would only complicate the issue.<sup>89</sup> The representative of Kuwait requested that the Council ensure that the question of Kuwaiti and third country prisoners held in Iraq be a key element in any Council resolution, arguing that it was the “most propitious” time to break the deadlock on that humanitarian question.<sup>90</sup> The representative of Cuba noted that the draft resolution that was being promoted would make war with Iraq “unavoidable”, as it included an automatic mechanism that would trigger the use of force. The text also included “unworkable” procedures such as having United Nations security forces accompany the inspectors; having representatives of the permanent members of the Security Council participate in the inspection teams, with the same rights accorded other members of the team; the establishment of no-fly/no-drive zones; and an obligation on Iraq to allow inspectors to take out of

<sup>86</sup> S/PV.4625 (Resumption 1), p. 2.

<sup>87</sup> S/PV.4625 and Corr.1, p. 22 (Japan); S/PV.4625 (Resumption 1), p. 11 (Australia); p. 12 (Chile); p. 15 (Denmark); p. 17 (New Zealand); p. 22 (Canada); p. 14 (Liechtenstein); and p. 26 (Senegal); S/PV.4625 (Resumption 3) and Corr.1, p. 4 (Costa Rica); p. 5 (Mexico); p. 15 (Norway); p. 20 (Ireland); p. 25 (Bulgaria); p. 26 (Mauritius); and p. 28 (Cameroon).

<sup>88</sup> S/PV.4625 (Resumption 1), p. 15 (Denmark on behalf of the European Union); p. 16 (Turkey); p. 19 (Argentina); and p. 22 (Canada).

<sup>89</sup> S/PV.4625 and Corr.1, p. 14 (Yemen); and p. 24 (Tunisia); S/PV.4625 (Resumption 1), p. 6 (Libyan Arab Jamahiriya); p. 20 (Oman); p. 25 (Sudan); S/PV.4625 (Resumption 2), and p. 23 (Zimbabwe).

<sup>90</sup> S/PV.4625 and Corr.1, pp. 10-13.

the country Iraqi nationals they wish to interview, along with their families.<sup>91</sup> A number of representatives stressed that if any new resolution was adopted, it should primarily reinforce resolution 1284 (1999) and be focused on the implementation of previous resolutions, and should not include any threat of the use of force, or include “impossible demands” that made implementation less, rather than more, likely.<sup>92</sup> The representative of India also added that while there was a case for tightening the inspections regime, there was also a case for the creation of an enabling environment for compliance within the current framework.<sup>93</sup> The representative of Mexico stressed that the Council needed to preserve its authority to determine the composition, mandate and rules of operation of the inspection teams, as well as the supervision of the implementation of the enforcement measures adopted pursuant to Chapter VII of the Charter. He argued that the “militarization of inspections” could prove to be counterproductive, since it would have the potential to generate situations of confrontation or other kinds of unforeseen incidents. Moreover, the missions should not have armed escorts or the “assistance of representatives of permanent members of the Council”. Since the inspectors would report to the Council, the representative deemed it inappropriate that the inspections regime should be determined exclusively by the five permanent members.<sup>94</sup> The representative of China stressed that a new resolution needed to call for support for UNMOVIC and IAEA, and its contents should be “practical and feasible, in the interests of an appropriate settlement”.<sup>95</sup>

Several speakers drew attention to the Council’s responsibility to apply its decisions evenly and impartially, and not to practice “double standards”. In that regard, they juxtaposed the Iraq question with the situation in the Middle East, including the continued aggression against the Palestinian people by Israel, its failure to implement the resolutions of the Council, and its unhindered possession of weapons of mass destruction. A number of these speakers also noted that any military action against Iraq would undermine

progress in the Israeli-Palestinian peace process.<sup>96</sup> Other representatives expressed regret that the decisions on Iraq were being taken when other Council resolutions, including on the Middle East, remained unimplemented.<sup>97</sup> The representative of Israel responded that the “double standard” was in fact directed against Israel, stressing the differences between the “binding” resolutions adopted on Iraq under Chapter VII and the “interdependent recommendations or statements of principle, adopted under Chapter VI”, that were designed to “move all parties forward in the Middle East”.<sup>98</sup> He noted a number of instances where Israel had “taken significant steps” to implement Council resolutions, despite the fact that the Palestinian Authority had “totally ignored” its obligations in many cases.<sup>99</sup>

A number of speakers commented on the roles of the five permanent members of the Council. The representative of South Africa, speaking on behalf of the Non-Aligned Movement, noted that on the question of a possible resolution on Iraq the significant consultations had been limited to the permanent members of the Council and their capitals, and that there had been suggestions that those members be given new and exclusive roles in dealing with the resolution of the Iraqi issue. He underlined the “special role” the elected members had to play in the Council’s deliberations, bringing “credibility and balance” to decision-making within the Council. Exclusion of the 10 elected members from consultations would only lead to the erosion of the authority and legitimacy of the Council as a whole.<sup>100</sup> This was echoed by a number of speakers who noted that the fact that the 10 non-permanent members had become “mere

<sup>91</sup> S/PV.4625 (Resumption 1), p. 23.

<sup>92</sup> S/PV.4625 (Resumption 2), p. 6 (Malaysia); p. 11 (India); and p. 17 (Palestine).

<sup>93</sup> *Ibid.*, p. 11.

<sup>94</sup> S/PV.4625 (Resumption 3) and Corr.1, pp. 4-5.

<sup>95</sup> *Ibid.*, p. 10.

<sup>96</sup> S/PV.4625 and Corr.1, p. 13 (Yemen); p. 15 (Algeria);

p. 17 (Egypt); p. 19 (Pakistan); p. 20 (United Arab Emirates); and p. 21 (Jordan); S/PV.4625

(Resumption 1), p. 2 (Islamic Republic of Iran); p. 7

(League of Arab States); and p. 24 (Sudan); S/PV.4625

(Resumption 2); p. 8 (Malaysia); p. 9 (Lebanon); p. 17

(Palestine); pp. 18-19 (Saudi Arabia); p. 20

(Organization of the Islamic Conference); p. 24

(Zimbabwe); and p. 25 (Qatar); and S/PV.4625

(Resumption 3) and Corr.1, p. 7 (Syrian Arab Republic).

<sup>97</sup> S/PV.4625 (Resumption 1), p. 18 (New Zealand); p. 21

(Nigeria); and p. 26 (Senegal).

<sup>98</sup> For more information on the discussion at this meeting regarding the binding nature of Council resolutions, see chap. XII, part II, sect. B, case 20.

<sup>99</sup> S/PV.4625 (Resumption 3) and Corr.1, pp. 2-3.

<sup>100</sup> S/PV.4625 and Corr.1, pp. 4-6.

spectators” was wrong and stressed the importance of all members of the Council being involved in deliberations.<sup>101</sup> Referring to “a suggestion to give a special role in the inspection regime” to the permanent members of the Council, the representative of New Zealand argued that despite the permanent members voting privileges and responsibilities, they were not distinct from other members, and introducing a distinction would be “neither constructive nor acceptable”.<sup>102</sup>

The representative of South Africa, speaking on behalf of the Non-Aligned Movement, stated that the situation between Iraq and Kuwait should be addressed comprehensively by the United Nations. Iraq needed to comply with relevant Council resolutions and no Member State should be exempted from carrying out obligations as determined by the Council. He welcomed Iraq’s decision to allow inspectors to return without conditions, and urged the Council to allow their return as soon as possible. Noting that the Non-Aligned Movement had firmly rejected any type of unilateral action against any Member State, he stressed that it would be inconsistent with the Charter if the Council was to authorize the use of military force against Iraq at a time when Iraq had indicated its willingness to abide by Council resolutions.<sup>103</sup>

The representative of Iraq stated that the United States administration had declared “unabashedly” its intentions to invade Iraq, changing the map of the region and “putting their hands on the sources of energy there”. The United States wanted the Council to give it a blank cheque to occupy Iraq as part of a plan to subject the entire world to American hegemony. He maintained that everyone knew that Iraq no longer possessed nuclear, chemical or biological weapons of mass destruction, a fact which had been recognized by IAEA and the Special Commission. He then elaborated on his country’s compliance with resolution 687 (1991) over the years. Nevertheless, he continued, ever since the United States had instructed the Special Commission to leave Iraq in 1998, the people of Iraq had been subjected to military aggression, no-fly zones in blatant violation of the Charter, and sanctions, the

impact of which had been nothing short of a “humanitarian catastrophe”, and which violated Articles 1 (1, 2 and 3), 2 (7), 24 and 55 of the Charter. He recalled that in spite of the declaration by his Government that it would allow the unconditional return of inspectors, the United States had increased its threats against Iraq and called for the imposition of “unfair, impossible and arbitrary conditions on Iraq”, against a background of “war hysteria” in the Government of the United States. He called on the international community to loudly voice their objections to the “aggressive” designs of the United States against Iraq, in order to prevent it from using the Council as a tool to carry out its policy of aggression. Not to do so would have serious repercussions for international peace and security, and would be “the beginning of the end” of the collective security system set out in the Charter and other instruments. He reiterated that Iraq had pledged to cooperate fully with the inspectors and had taken all the necessary practical measures and arrangements to facilitate their return. There was, therefore, “absolutely no need for the adoption of a new Council resolution”.<sup>104</sup>

The Permanent Observer of LAS recalled that Article 2 (4) of the Charter stated that all Member States shall refrain in their international relations from the use of force, and stressed that LAS had completely rejected any strike against Iraq or any threat against the safety and security of any Arab country. He maintained that war with Iraq would open a Pandora’s box — violence and civil war would sweep the entire country, fragmenting it, which would then undermine the entire Arab region. Moreover, it would annul the current world order, the Charter and international law, exposing States “to the danger of attacks on the pretext of preventive measures, leading the entire world back to the era of the League of Nations”.<sup>105</sup>

The representative of the Russian Federation stated that, like all “unbiased observers”, his country had not seen any persuasive evidence that there were weapons of mass destruction in Iraq or programmes to develop them. However, he stressed that the only way of making sure that weapons of mass destruction had been eliminated was to return the inspectors to Iraq, to which Iraq had agreed. Everything was in place for their return and there was no need for delay or for

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<sup>101</sup> S/PV.4625 (Resumption 1), p. 5 (Libyan Arab Jamahiriya); p. 23 (Cuba); and p. 24 (Sudan); S/PV.4625 (Resumption 2), p. 7 (Malaysia); p. 11 (India); and p. 22 (Jamaica).

<sup>102</sup> S/PV.4625 (Resumption 1), p. 18.

<sup>103</sup> S/PV.4625 and Corr.1, pp. 4-6.

<sup>104</sup> S/PV.4625 and Corr.1, pp. 6-10.

<sup>105</sup> S/PV.4625 (Resumption 1), pp. 7-8.

“new decisions”. If the Council wanted to provide further support to UNMOVIC or IAEA, his delegation would be prepared to look at proposals. However, if the proposals were about creating a legal basis for the use of force or for “regime change”, he did not see how the Council could give its consent.<sup>106</sup>

The representative of Nigeria noted that the courage and willingness of the parties to bring their difference to the Council for “deliberation and eventual determination” demonstrated recognition of Article 2 (3), which stipulated that all Members shall settle their international disputes by peaceful means.<sup>107</sup>

The representative of France noted that, while his country did not possess irrefutable proof, there were indications that Iraq had used the absence of weapons inspectors since 1998 to pursue or resume its prohibited programmes, including in the chemical and biological areas. He stated that while France was willing to support measures strengthening the inspection regime if it was necessary to facilitate the work of the inspectors, his country rejected measures that would multiply the risk of incidents without improving effectiveness. He also underlined the importance of the multinational, independent nature of the inspectors. He proposed a two-stage approach: in the first stage the Council would adopt a resolution defining the inspection regime and warn Iraq that new violations would not be tolerated; in the second stage, if UNMOVIC or IAEA observed that Iraq was refusing to cooperate fully, the Council would meet immediately to decide on the appropriate measures to take, “without ruling out anything a priori”. He underlined that only a two-stage approach would preserve the unity of the Council, and any kind of “automaticity” in the use of force would be divisive. Finally, he stressed that the Council also needed to demonstrate fairness by showing Iraq that war was not inevitable if it fulfilled its obligations.<sup>108</sup> The representatives of Switzerland and Mexico also expressed support for the “two-stage” approach.<sup>109</sup>

The representative of Australia stressed that his delegation remained convinced that the Government of Iraq still had ambitions to acquire weapons of mass

destruction, and that it had made continuing attempts to advance its weapons programme, including chemical, biological and nuclear weapons, as well as to extend the range of its ballistic missiles. Noting that Iraq had used weapons of mass destruction in the past, the representative expressed concern that Iraq could threaten its neighbours, or provide terrorist groups with chemical, biological or nuclear weapons.<sup>110</sup>

The representative of Albania agreed that the production of weapons of mass destruction by Iraq continued to be a menace to the international community. He also recalled the difficult position of the Security Council in deciding on the intervention of the international community against the “genocide committed by the criminal regime of Milosevic against the Kosovar Albanians”. He noted that, despite the fact that many States had been undecided on the intervention in a sovereign State, the action of the international community had proved to be right. He stressed that that intervention had not been meant to demonstrate “dominance or a unilateral stand” but to defend “the right of people to live in freedom”. Similarly, the current situation was one where the pre-emptive action of the international community was necessary in order to avert a possible world catastrophe precipitated by the use of weapons of mass destruction by an uncontrolled regime.<sup>111</sup>

The representative of the United Kingdom stressed that his country’s firm objective was the complete disarmament of Iraq in the area of weapons of mass destruction by peaceful means. He maintained that analysis by the United Kingdom, backed up by reliable intelligence, showed that Iraq still had chemical and biological materials, sought to weaponize them, and had active military plans for the deployment of those weapons, as well as had tried to buy multiple components needed for the production of nuclear bombs. He expressed great concern at the evidence that Iraq was trying to hide its weapons and “fool the inspectors” again. His delegation wished to see a strong resolution adopted by the Council that gave Iraq an unequivocal choice between disarmament and inevitable consequences. An essential component of the resolution needed to be giving inspectors the “penetrating strength” to ensure disarmament. He noted that the recent letter from Iraq on practical

<sup>106</sup> S/PV.4625 (Resumption 3) and Corr.1, pp. 21-22.

<sup>107</sup> S/PV.4625 (Resumption 1), pp. 20-21.

<sup>108</sup> S/PV.4625 (Resumption 3) and Corr.1, pp. 12-14.

<sup>109</sup> S/PV.4625 (Resumption 2), p. 5 (Switzerland); and S/PV.4625 (Resumption 3) and Corr.1, p. 5 (Mexico).

<sup>110</sup> S/PV.4625 (Resumption 1), pp. 9-11.

<sup>111</sup> S/PV.4625 (Resumption 2), pp. 19-20.

arrangement for inspections had “brought back the obfuscations of the past” and reinforced the need for strengthened inspections and for practical arrangements to be made legally binding. He promised that any reports from UNMOVIC or IAEA of non-cooperation on the part of Iraq would be discussed in the Council. Finally, responding to the concerns that non-permanent members had been “kept in the dark”, he stressed that none of the permanent members had been in a position to bring a draft resolution and had done no negotiating on a text in New York. He stated that once there was a draft with a prospect of broad acceptance, no Council member would be excluded.<sup>112</sup>

The representative of the United States stressed that there could be no more “toothless resolutions” that Iraq would ignore and that the Council needed to unite in adopting a resolution that made clear the obligations on Iraq, the types of access and authorities that UNMOVIC and IAEA needed to have and the consequences to non-compliance. He noted that there had been clear signs that Iraq was reverting to form, as Iraq had invited inspectors to return without conditions, and then immediately placed conditions, as well as responded to requests for clarity on practical arrangements from UNMOVIC and IAEA with obfuscation. He noted that the Executive Chairman of UNMOVIC and the Director General of IAEA had stated that they would welcome a new resolution that strengthened their hands and allowed for more effective inspections. In conclusion, he recalled that the previous week the House of Representatives and the Senate of the United States had passed a joint resolution that expressed support for the administration’s diplomatic efforts in the Council, and authorized the use of United States armed forces should diplomatic efforts fail. He expressed hope that the Council would succeed, but stressed that if Iraq did not give up its weapons of mass destruction, the United States would lead a global coalition to disarm Iraq.<sup>113</sup>

At the 4644th meeting,<sup>114</sup> on 8 November 2002, at which statements were made by all members of the Council and the Secretary-General, the President (China) drew attention to a draft resolution submitted

by the United Kingdom and the United States;<sup>115</sup> it was adopted unanimously as resolution 1441 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to afford Iraq a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decided to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;

Decided that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq should provide to UNMOVIC, IAEA, and the Council, not later than 30 days from the date of the resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claimed were for purposes not related to weapons production or material;

Decided that Iraq should provide to UNMOVIC and IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including those underground, areas, facilities, buildings, equipment, records, and means of transport which they wished to inspect.

The Secretary-General noted that the resolution set out the obligations of Iraq in clear terms and left no doubt as to how they needed to be fulfilled. He called on Iraq to seize the opportunity and stressed that the manner in which the crisis was resolved would affect the course of peace and security in the coming years throughout the world.<sup>116</sup>

All members of the Council welcomed the unanimous vote and expressed hope that Iraq would comply with the resolution. They noted that the resolution gave UNMOVIC and IAEA stronger authority to carry out their mandate. Many speakers stressed that UNMOVIC and IAEA would carry out their duties with the necessary objectivity and impartiality.

The representatives of the United States and United Kingdom noted that the resolution, which

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<sup>112</sup> S/PV.4625 (Resumption 3) and Corr.1, pp. 7-9.

<sup>113</sup> *Ibid.*, pp. 11-12.

<sup>114</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part IV, sect. B, with regard to Article 42; and part IX, sect. B, with regard to Article 51.

<sup>115</sup> S/2002/1198.

<sup>116</sup> S/PV.4644 and Corr.1, p. 2.

would significantly strengthen the inspection regime, also confirmed that Iraq remained in “material breach” of its disarmament obligations. They confirmed that the resolution contained no “hidden triggers” and no “automaticity” with respect to the use of force, as any breach reported by UNMOVIC, IAEA or a Member State would be taken up by the Council for discussions. However, they stressed that if Iraq chose defiance and concealment they, along with other members of the Council, would ensure that the task of disarmament was completed.<sup>117</sup>

A number of speakers noted that the resolution did not contain any element of “automaticity” with regard to the use of force, and left the response to a failure by Iraq to be decided by the explicit authorization of the Council.<sup>118</sup> The representatives of France, Mexico and China noted that the resolution reflected the “two-stage approach” that they had supported.<sup>119</sup>

The representative of the Russian Federation also noted the following clarifying points: that more than 30 days would probably be needed for Iraq to submit information on non-military programmes in the chemical and biological areas, however, any delay there would not constitute a violation; that nothing in the resolution affected the status of UNMOVIC, of IAEA or of members of their staff, as independent international personnel and the cooperation of Member States with UNMOVIC and with IAEA would be carried out fully in accordance with the status and mandates of those organizations; and that the reference in paragraph 8<sup>120</sup> was to personnel of the United Nations, those of IAEA and to any other personnel whom Members of the United Nations might provide to UNMOVIC or to IAEA on the request of those organizations.<sup>121</sup>

<sup>117</sup> Ibid., pp. 3-4 (United States); and pp. 4-5 (United Kingdom).

<sup>118</sup> Ibid., p. 5 (France); pp. 6-7 (Mexico); p. 7 (Ireland); p. 8 (Russian Federation); p. 9 (Bulgaria); p. 10 (Syrian Arab Republic, Norway); p. 11 (Colombia, Cameroon); and p. 13 (China).

<sup>119</sup> Ibid., p. 5 (France); pp. 6-7 (Mexico); and p. 12 (China).

<sup>120</sup> Paragraph 8 of resolution 1441 (2002) reads: “*Decides also that Iraq shall not commit or threaten hostile acts directed against any representative or personnel of the United Nations or the Agency or of any Member State taking action to uphold any Council resolution.*”

<sup>121</sup> S/PV.4644 and Corr.1, p. 9.

#### **Decision of 25 November 2002 (4650th meeting): resolution 1443 (2002)**

At its 4650th meeting, on 25 November 2002, the Council included in its agenda the report of the Secretary-General dated 12 November 2002 on the implementation of the humanitarian programme in Iraq.<sup>122</sup> In his report, the Secretary-General provided detailed information on the implementation of the oil-for-food programme. He noted the programme could be further enhanced if all parties took the concerted measures necessary for removing the difficulties faced in its implementation, in particular the difficulties stemming from the “dire funding shortfall”. Noting that discussions in the Council were focused on the weapons inspection regime, he, nevertheless, appealed to all to focus attention on the humanitarian dimension.

At the meeting, the President (China) drew attention to a draft resolution submitted by Bulgaria and the United Kingdom;<sup>123</sup> it was adopted unanimously and without debate as resolution 1443 (2002), by which the Council, acting under Chapter VII of the Charter, inter alia, decided to extend the provisions of resolution 1409 (2002) until 4 December 2002, and to remain seized of the matter.

#### **Decision of 4 December 2002 (4656th meeting): resolution 1447 (2002)**

At its 4656th meeting, on 4 December 2002, the Council again included in its agenda the report of the Secretary-General dated 12 November 2002.<sup>122</sup> The President (Colombia) drew the attention of the Council to a draft resolution;<sup>124</sup> it was adopted unanimously and without debate as resolution 1447 (2002), by which the Council, acting under Chapter VII of the Charter, inter alia:

Decided that the provisions of resolution 986 (1995), except those contained in paragraphs 4, 11 and 12, and the provisions of paragraphs 2, 3 and 6 to 13 of resolution 1360 (2001) and subject to paragraph 15 of resolution 1284 (1999) and the other provisions of the present resolution, should remain in force for a new period of 180 days beginning at 0001 hours eastern standard time on 5 December 2002;

<sup>122</sup> S/2002/1239, submitted pursuant to paragraphs 7 and 8 of resolution 1409 (2002).

<sup>123</sup> S/2002/1293.

<sup>124</sup> S/2002/1330.

Decided to consider necessary adjustments to the Goods Review List<sup>125</sup> and the procedures for its implementation, for adoption no later than 30 days from the adoption of the resolution and thereafter to conduct regular, thorough reviews;

Decided that, for the purposes of the resolution, references in resolution 1360 (2001) to the 150-day period established by that resolution should be interpreted to refer to the 180-day period established pursuant to paragraph 1 of the present resolution.

**Decision of 30 December 2002  
(4683rd meeting): resolution 1454 (2002)**

At the 4683rd meeting,<sup>126</sup> on 30 December 2002, at which statements were made by the representatives of China, France, the Russian Federation and the Syrian Arab Republic, the President (Colombia) drew the attention of the Council to a draft resolution submitted by Bulgaria, the United Kingdom and the United States;<sup>127</sup> it was put to the vote and adopted by 13 votes to none, with 2 abstentions (Russian Federation, Syrian Arab Republic) as resolution 1454 (2002), by which the Council, acting under Chapter VII, inter alia:

Approved, for implementation beginning at 0001 hours eastern standard time on 31 December 2002, the adjustments to the Goods Review List specified in annex A to the resolution and the revised procedures for its implementation set forth in annex B;

Decided to conduct a thorough review of the Goods Review List and the procedures for its implementation, and, in this connection, requested the Committee established by resolution 661 (1990) to review the List and recommend the Council necessary additions to, and/or deletions from, the List and procedures;

Directed the Secretary-General, within 60 days, to develop consumption rates and use levels for the implementation of paragraph 20 of annex B to the resolution;

Appealed to all States to continue to cooperate in the timely submission of technically complete applications and the expeditious issuing of export licences.

The representative of the Russian Federation stated that, while it was of key importance that the resolution provided for the possible lifting of sanctions, the consultations on the draft resolution had not enabled the Council to take the proposals of the

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<sup>125</sup> S/2002/515, annex.

<sup>126</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to Article 41 of the Charter.

<sup>127</sup> S/2002/1330.

Russian Federation fully into account. His delegation felt that the wording in the Goods Review List imposed too many restricted and affected goods that were exclusively civilian in nature. In particular, he argued that the limitations on trucking and transport vehicles were unjustifiably harsh. He stated that his delegation had decided not to object to the adoption of the resolution as the List was not a “denial list” but only one that provided for the adoption in the sanctions Committee of decisions on specific contracts.<sup>128</sup>

The representative of the Syrian Arab Republic stated that the cooperation by Iraq with the weapons inspectors and its positive approach to resolution 1441 (2002) should inevitably lead to the lifting of the sanctions, and not to the sanctions regime being complicated by the addition of further restrictions under the pretext that certain goods could be of dual use. In addition, the haste of the negotiations had not allowed his delegation to study the Goods Review List to ensure that it would not have a negative impact on the Iraqi population.<sup>129</sup>

The representatives of France and China expressed support for the resolution, but noted that if there had been more time for negotiations the Council might have been able to come to a unanimous decision. They noted that the Goods Review List might need to be further adjusted so as to better meet the humanitarian needs of Iraq.<sup>129</sup>

**Deliberations of 27 January to 27 March 2003  
(4692nd, 4701st, 4707th, 4709th, 4714th,  
4717th, 4721st and 4726th meetings)**

At the 4692nd meeting, on 27 January 2003, the President (France) invited the Executive Chairman of UNMOVIC and the Director General of IAEA to brief the Council.

The Executive Chairman of UNMOVIC stated that Iraq had cooperated “rather well” with UNMOVIC on matters related to the procedures, mechanisms, infrastructure and practical arrangements to pursue inspections and seek verifiable disarmament. Access had been provided to all sites, although there had been some issues relating to air operations. On the question of substantive cooperation of Iraq in declaring all the programmes of weapons of mass destruction, he noted

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<sup>128</sup> S/PV.4683, pp. 2-3.

<sup>129</sup> Ibid., p. 3.

that, while Iraq had submitted a 12,000-page declaration, a number of unresolved disarmament issues, relating to chemical and biological weapons, as well as missile technology, had not been addressed. The declaration, most of which was a reprint of earlier documents, did not seem to contain any new evidence that would eliminate the questions or reduce their number.<sup>130</sup>

The Director General of IAEA provided an update on the activities of IAEA in Iraq and, while noting that Iraq had not provided new information on certain outstanding questions, concluded that to date they had found no evidence that Iraq had revived its nuclear weapons programme. He stated that barring exceptional circumstances and provided there was proactive cooperation by Iraq, IAEA should be able to provide credible assurance that Iraq had no nuclear weapons programme in the next few months.<sup>131</sup>

Both speakers noted that while resolution 1441 (2002) had given IAEA and UNMOVIC the authority to determine modalities and venues for conducting interviews, all of the people they wished to speak to had refused to be interviewed unless a representative of the Government of Iraq was present. They also stressed the need for more proactive cooperation from the Government of Iraq.

At its 4701st meeting,<sup>132</sup> on 5 February 2003, the Council heard a briefing by the Secretary of State of the United States, following which statements were made by all Council members<sup>133</sup> and the representative of Iraq.<sup>134</sup>

In his briefing, the Secretary of State of the United States provided additional information on what the United States knew about Iraq's weapons of mass

destruction as well as Iraq's involvement in terrorism. In that respect, he provided evidence, including tapes of telephone conversations and satellite images, which, he maintained, showed that Saddam Hussein and his regime were concealing their efforts to produce more weapons of mass destruction. He stated that intelligence had indicated that Iraq was carrying out a systematic effort not only to keep key materials and people from the inspectors but also to conceal actual weapons of mass destruction, both biological and chemical, as well as missiles and other delivery systems banned under Council resolutions. He also maintained that the Government of Iraq had never abandoned its nuclear weapons programme and was actively trying to develop the ability to produce fissile material. He also provided information on the "sinister nexus between Iraq and the Al-Qaida terrorist network" and noted the ongoing human rights violations by the regime. Recalling that resolution 1441 (2002) stated that the failure of Iraq to cooperate with inspectors would constitute a further material breach of Iraq's obligations, he argued that Iraq had clearly failed the test and had placed itself in danger of the serious consequences called for in the resolution.<sup>135</sup>

Most speakers called on Iraq to cooperate fully with the inspectors. Many speakers stressed that only UNMOVIC and IAEA could say to what extent Iraq was complying with the demands of the Council, and suggested continuing inspections. They stressed that the main focus of the Council needed to be on facilitating the inspections process, including by strengthening the inspections regime if necessary.<sup>136</sup> Several speakers welcomed the presentation by the United States but suggested that the information needed to be handed over to UNMOVIC and IAEA for processing, as well as to ask any other States with relevant information to provide it.<sup>137</sup>

The representative of the Russian Federation, responding to the idea that "time was running out for a settlement" stressed that while resolution 1441 (2002) aimed to quickly achieve results, it did not set out any

<sup>130</sup> S/PV.4692, pp. 2-8.

<sup>131</sup> *Ibid.*, pp. 8-12.

<sup>132</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter.

<sup>133</sup> Bulgaria, Chile, China, France, Germany, Mexico, Pakistan, the Russian Federation and Spain were represented by their respective Ministers for Foreign Affairs; the United Kingdom by the Secretary of State for Foreign and Commonwealth Affairs, Cameroon by the Minister of State in charge of External Relations; and Angola by the Vice-Minister for Foreign Affairs.

<sup>134</sup> The Secretary-General, the Executive Chairman of UNMOVIC and the Director General of IAEA were also present at the meeting.

<sup>135</sup> S/PV.4701, pp. 2-17.

<sup>136</sup> *Ibid.*, pp. 17-18 (China); p. 21 (Russian Federation); p. 22 (Cameroon); p. 24 (France); p. 25 (Mexico); p. 26 (Bulgaria); p. 28 (Pakistan); p. 30 (Chile); p. 32 (Angola); p. 33 (Syrian Arab Republic); p. 35 (Guinea); and p. 36 (Germany).

<sup>137</sup> *Ibid.*, p. 21 (Russian Federation); p. 23 (Cameroon); p. 27 (Pakistan); and p. 33 (Syrian Arab Republic).



concrete time frame.<sup>138</sup> The representative of Cameroon suggested that the Council should ask the Secretary-General to go to Iraq to speak with President Saddam Hussein on ways and means to find a peaceful resolution to the crisis.<sup>139</sup> The representative of France proposed strengthening inspections, by, *inter alia*, doubling or tripling the number of inspectors; establishing a body to keep areas already inspected under surveillance; and substantially enhancing the capabilities for coordination and information-processing. He also recommended establishing, with the consent of the inspections team, a realistic time frame for the assessment and elimination of problems.<sup>140</sup>

The representative of the United Kingdom agreed that Iraq was in “material breach” of resolution 1441 (2002), as it had made false statements claiming that it did not have weapons of mass destruction and had provided a veneer of superficial cooperation masking wilful concealment. He stressed that while the United Kingdom did not want war, the logic of resolution 1441 (2002) was inescapable, and if non-cooperation continued, the Council would need to fulfil its responsibilities.<sup>141</sup> The representatives of Bulgaria and Spain noted that the presentation by the United States showed that Iraq remained in “material breach” of Council resolutions.<sup>142</sup> The representative of Spain maintained that the real issue was the lack of will on the part of Iraq to fulfil its obligations, and urged Iraq to take advantage of the last chance that had been offered under resolution 1441 (2002).<sup>143</sup>

The representative of Iraq denied all of the allegations made in the statement by the United States. He reiterated that Iraq possessed no weapons of mass destruction programme, and that it had submitted an accurate declaration. He noted that UNMOVIC and IAEA had found no evidence of any weapons or programme anywhere in Iraq. He also mentioned that analysts at the Central Intelligence Agency had complained that the United States Administration had exaggerated reports on weapons of mass destruction in Iraq and that the United Kingdom had ignored intelligence reports from its own Government stating

that there was no relationship between Iraq and Al-Qaida. He concluded by stressing that the main point of the presentation was to “sell the idea of war”, without legal, moral or political justification.<sup>144</sup>

At its 4707th meeting,<sup>145</sup> on 14 February 2003, the Council heard briefings by the Executive Chairman of UNMOVIC and the Director General of IAEA, following which statements were made by all members of the Council and the representative of Iraq.<sup>146</sup>

The Executive Chairman of UNMOVIC briefed the Council on progress made in the inspections in Iraq. He noted that UNMOVIC had conducted more than 400 inspections covering more than 300 sites. All inspections were performed without notice and access was almost always provided promptly, with no evidence that Iraq knew when inspectors were coming. UNMOVIC had found no weapons of mass destruction, only a small number of empty chemical munitions that should have been destroyed. However, he noted that many proscribed weapons and items remained unaccounted for, and Iraq had a responsibility to provide credible evidence that they had been destroyed. He called on Iraq to provide the necessary cooperation to answer all remaining questions. He also requested that the intelligence agencies of Member States cooperate with UNMOVIC by sharing information that would allow for more effective inspections.<sup>147</sup>

The Director General of IAEA informed the Council that the focus of inspections had moved from the reconnaissance phase into the investigative phase, focused on understanding the activities of Iraq over the past four years. He stressed that to date IAEA had found no evidence of ongoing prohibited nuclear or nuclear-related activities in Iraq, although a number of issues were still under investigation.<sup>148</sup>

<sup>138</sup> *Ibid.*, p. 21.

<sup>139</sup> *Ibid.*, p. 23.

<sup>140</sup> *Ibid.*, pp. 24-25.

<sup>141</sup> *Ibid.*, pp. 18-20.

<sup>142</sup> *Ibid.*, pp. 26-27 (Bulgaria); and p. 29 (Spain).

<sup>143</sup> *Ibid.*, p. 29.

<sup>144</sup> *Ibid.*, pp. 37-39.

<sup>145</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; and part IV, sect. B, with regard to Article 42.

<sup>146</sup> Chile, China, France, Germany, Mexico, Russian Federation, Spain and the Syrian Arab Republic were represented by their respective Ministers for Foreign Affairs; the United Kingdom by the Secretary of State for Foreign and Commonwealth Affairs; and the United States by the Secretary of State.

<sup>147</sup> S/PV.4707, pp. 2-6.

<sup>148</sup> *Ibid.*, pp. 6-9.

Most speakers argued that as substantial progress had been made in the work of the inspectors, the Council needed to continue to support them and give them sufficient time to undertake their task, as set out in resolution 1441 (2002). A number of speakers stressed the importance of strengthening the inspections regime as necessary, and of greater cooperation from Iraq on outstanding issues.<sup>149</sup> Several speakers cautioned that any war in Iraq would have grave consequences for the unity and territorial integrity of Iraq, and would threaten the entire region. Most argued that the use of force was not justified at the present time.<sup>150</sup>

The representative of Spain stated that neither more inspections nor an increase in the means available to inspectors were needed, as the problem was primarily the lack of political will in Iraq. Her delegation was in favour of a solution being found within the Security Council, but if there was not a change of political attitude by Iraq, then the Council would be obliged to assume its responsibilities in the interest of peace and security.<sup>151</sup>

The representative of the United Kingdom maintained that it was clear that Iraq had failed to fully and actively comply with resolution 1441 (2002). He argued that if the Council backed away from a credible threat of force, and if it was not ready to use that force, then the disarmament of Iraq and the maintenance of peace and security by the international community would be much harder.<sup>152</sup>

The representative of the United States stressed that resolution 1441 (2002) was about disarmament and compliance and not “merely a process of inspections that goes on forever without ever resolving the basic problem”. He argued that Iraq had failed to comply with resolution 1441 (2002), and stressed that in the near future the Council would have to consider

“serious consequences” of the kind intended by resolution 1441 (2002).<sup>153</sup>

On the question how much time to allow for inspections, the representative of France noted that war might seem swifter, but that even after the war was won, it would be necessary to build a peace, which would be longer and more difficult than inspections were likely to be.<sup>154</sup>

The representative of Iraq stated that, following the return of inspectors to Iraq, his country had provided everything that might fall within the concept of proactive cooperation, and had been discussing the outstanding issues with UNMOVIC and providing new documentation. However, he emphasized that if the “proactive cooperation” called for by some Council members meant that Iraq had to show weapons of mass destruction, his delegation would have to respond that Iraq did not have such weapons and therefore could not dismantle them. He concluded by appealing to the Council to allow the inspectors to fulfil their role, which would lead to peace and not war, and for the lifting of the embargo on Iraq.<sup>155</sup>

The 4709th meeting of the Council<sup>156,157</sup> was held on 18 and 19 February 2003 in response to the request in a letter dated 6 February 2003 from the representative of South Africa, in his capacity as the Chairman of the Coordinating Bureau of the Non-Aligned Movement,<sup>158</sup> to hold an open debate on the reports presented at the 4707th meeting by the Executive Chairman of UNMOVIC and the Director General of IAEA. The Council included the letter in its agenda. At the meeting, the President (Germany) drew attention to a letter dated 14 February 2003 from the representative of South Africa to the President of the Security Council.<sup>159</sup>

<sup>153</sup> Ibid., pp. 18-21.

<sup>154</sup> Ibid., pp. 11-13.

<sup>155</sup> Ibid., pp. 30-32.

<sup>156</sup> At its 4708th meeting, held in private on 14 February 2003, the Council had a constructive exchange of views with the Executive Chairman of UNMOVIC and the Director General of IAEA.

<sup>157</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part IV, sect. B, with regard to Article 42; and part IX, sect. B, with regard to Article 51.

<sup>158</sup> S/2003/153.

<sup>159</sup> S/2003/183, informing the Council that Iraq had accepted the offer by South Africa to send to Iraq the

<sup>149</sup> Ibid., p. 10 (Syrian Arab Republic); p. 11 (France); p. 14 (Chile); p. 15 (China); p. 22 (Russian Federation); p. 23 (Mexico); p. 24 (Guinea); p. 25 (Pakistan); p. 28 (Angola); p. 29 (Bulgaria); and p. 30 (Germany).

<sup>150</sup> Ibid., p. 10 (Syrian Arab Republic); p. 11 (France); p. 15 (Chile); p. 22 (Russian Federation); p. 25 (Pakistan); p. 26 (Cameroon); p. 28 (Angola); and p. 30 (Germany).

<sup>151</sup> Ibid., pp. 16-17.

<sup>152</sup> Ibid., pp. 17-18.

Statements were made by the representatives of Albania, Algeria, Argentina, Australia, Bahrain, Belarus, Brazil, Canada, Costa Rica, Cuba, Ecuador, Egypt, Fiji, the Gambia, Georgia, Greece (on behalf of the European Union<sup>160</sup>), Honduras, Iceland, India, Indonesia, the Islamic Republic of Iran, Iraq, Japan, Jordan, Kuwait, Latvia, Lebanon, the Libyan Arab Jamahiriya, Liechtenstein, Malaysia, the Marshall Islands, Mauritius, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Paraguay, Peru, Qatar, the Republic of Korea, Saudi Arabia, Serbia and Montenegro, Singapore, South Africa, Sri Lanka, Saint Lucia (on behalf of the Caribbean Community), the Sudan, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, the United Arab Emirates, Uruguay, Uzbekistan, Viet Nam, Yemen and Zimbabwe, as well as the Permanent Observers of the League of Arab States and the Holy See.

Most speakers maintained that the inspection process was working, Iraq was cooperating with UNMOVIC and IAEA, and, as there was no fixed timetable for inspections, they should be continued. They stressed that no information provided thus far would seem to justify the Council abandoning the inspections process and immediately resorting to the threatened “serious consequences”. Most speakers paid tribute to the work done by the Executive Chairman of UNMOVIC and the Director General of IAEA. They also underlined the central role of the Security Council in dealing with Iraq, particularly the exclusive responsibility of the Council in authorizing the use of force or sanctions. Many speakers expressed concern that any military action in Iraq would have far-reaching, destabilizing consequences in the Middle East, and that all diplomatic channels and forms of negotiation should be explored. They also voiced concern about the devastating impact of an armed conflict on the humanitarian situation of the civilian population of Iraq as well as to the regional and global economy.

Several speakers voiced support for strengthening the inspections through an increase in the number of

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experts who led the successful South African programme to destroy nuclear, chemical and biological weapons, as well as the missiles for the delivery of those weapons.

<sup>160</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

inspectors, a stronger mandate or other approach.<sup>161</sup> The representative of Malaysia noted that the Council had never authorized the use of force on the basis of a potential threat of violence. All past authorizations had been in response to actual invasions. Therefore, an attack against Iraq without any credible evidence provided to the international community of the imminent threat it posed was illegal and unjustified.<sup>162</sup>

At the same time, a number of speakers expressed the view that Iraq had not met its obligations pursuant to resolution 1441 (2002) and needed to do so or the Council would have an obligation to act.<sup>163</sup> Several of these delegations stressed, however, that military force needed to be a last resort and used under international legality and with the approval of the Security Council.<sup>164</sup>

Several delegations underlined the importance of the implementation of paragraph 14 of resolution 687 (1991) which called for the declaration of the Middle East as a region free from weapons of mass destruction, a declaration that needed to include the nuclear arsenal of Israel, or otherwise called for the regulation of nuclear weapons programmes in Israel.<sup>165</sup> A number of delegations underlined the need for Baghdad to release prisoners of war, property and missing persons from the time of the invasion of Kuwait.<sup>166</sup>

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<sup>161</sup> S/PV.4709, p. 4 (South Africa); p. 12 (Islamic Republic of Iran); p. 14 (Algeria); p. 16 (Jordan); and p. 22 (Brazil); S/PV.4709 (Resumption 1) and Corr.1, p. 5 (Costa Rica); p. 6 (Switzerland); p. 8 (Indonesia); p. 9 (Malaysia); and p. 12 (Uruguay).

<sup>162</sup> S/PV.4709 (Resumption 1), and Corr.1, p. 10.

<sup>163</sup> S/PV.4709, p. 8 (Kuwait); p. 19 (Australia); p. 23 (Peru); and p. 24 (Japan); S/PV.4709 (Resumption 1) and Corr.1, p. 6 (Switzerland); p. 7 (Republic of Korea); p. 18 (the former Yugoslav Republic of Macedonia); p. 20 (Nicaragua); p. 21 (Albania, Uzbekistan); p. 27 (Iceland); pp. 29-30 (Georgia); p. 31 (Serbia and Montenegro); and p. 32 (Latvia).

<sup>164</sup> S/PV.4709, p. 8 (Kuwait); and p. 23 (Peru); S/PV.4709 (Resumption 1) and Corr.1, p. 6 (Switzerland); p. 27 (Iceland); and p. 32 (Latvia).

<sup>165</sup> S/PV.4709, p. 15 (Algeria, Bahrain); p. 26 (League of Arab States); p. 29 (Yemen); S/PV.4709 (Resumption 1) and Corr.1, p. 11 (Saudi Arabia); p. 24 (United Arab Emirates); and p. 30 (Lebanon).

<sup>166</sup> S/PV.4709, p. 9 (Kuwait); p. 18 (Gambia); p. 29 (Yemen); p. 32 (Argentina, Sudan); and p. 36 (India); S/PV.4709 (Resumption 1) and Corr.1, p. 3 (Qatar); p. 9 (Malaysia); p. 11 (Saudi Arabia); p. 14 (Libyan Arab

The representative of Japan considered it desirable that the Council adopt a new resolution that clearly demonstrated the determined attitude of the international community.<sup>167</sup> The representative of Canada suggested that a deadline for Iraq's compliance be established, as well as for the Government of Iraq to fully implement all its international obligations in accordance with other relevant Council resolutions, which would allow the Council to judge whether Iraq was cooperating on substance and not just on process.<sup>168</sup> The representative of Mauritius maintained that in the event that no tangible progress was seen in the next UNMOVIC report, the Council would have to assume its responsibility and take whatever action necessary.<sup>169</sup>

The representative of Australia held the view that the Council should not wait forever to confront the issue, and that it should move quickly to consider a further resolution that dealt decisively with Iraq's failure to comply with resolution 1441 (2002).<sup>170</sup> The representatives of Albania and the Marshall Islands stated that their delegations understood and supported the commitment of the United States and other nations to avoid the threats of weapons of mass destruction and international terrorism.<sup>171</sup>

The representative of Switzerland reported that his country had recently held a meeting in Geneva to suggest a platform for humanitarian dialogue in the event of armed conflict in Iraq, which would act as a forum for the exchange of views aimed at strengthening existing coordinating mechanisms.<sup>172</sup>

The representative of Iraq reiterated that, as a result of his country's active cooperation with inspectors, all allegations made by the United States and the United Kingdom had been refuted, proving that Iraq possessed no weapons of mass destruction. He called upon all Member States to put an end to the unjust embargo, eliminate the no-fly zones imposed unilaterally by the United States and the United Kingdom, and to heed the call for peace expressed by

Jamahiriya); pp. 23-24 (United Arab Emirates) and pp. 30-31 (Lebanon).

<sup>167</sup> S/PV.4709, p. 24.

<sup>168</sup> S/PV.4709 (Resumption 1) and Corr.1 p. 29.

<sup>169</sup> *Ibid.*, p. 26.

<sup>170</sup> S/PV.4709, p. 19.

<sup>171</sup> S/PV.4709 (Resumption 1) and Corr.1, p. 21 (Albania); and p. 22 (Marshall Islands).

<sup>172</sup> *Ibid.*, p. 6.

millions of people around the world over the past few days.<sup>173</sup>

At its 4714th meeting,<sup>174</sup> on 7 March 2003, the Council included in its agenda the note by the Secretary-General dated 28 February 2003, transmitting the twelfth quarterly report of the Executive Chairman of UNMOVIC.<sup>175</sup> The Executive Chairman concluded that, during the period of time covered, Iraq could have made greater efforts to find any remaining proscribed items or provide credible evidence showing the absence of such items.

At the meeting, the Council heard briefings by the Executive Chairman of UNMOVIC and the Director General of IAEA; statements were made by all members of the Council and representative of Iraq.<sup>176</sup>

In his briefing, the Executive Chairman of UNMOVIC noted that since the resumption of inspections, UNMOVIC had faced relatively few difficulties in matters relating to process and had been able to perform "no-notice" inspections all over the country and to increase aerial surveillance. He believed, however, that Iraq should be able to provide more documentary evidence about its proscribed weapons programmes. Responding to claims from intelligence services about mobile weapons of mass destruction capacity, he noted that no evidence of such proscribed activities had been found so far, nor had any underground facilities for chemical and biological weapons production. He reported some tangible progress on unresolved disarmament tasks, highlighting in particular the destruction of Al-Samoud 2 missiles, which had been found to exceed the permissible range determined by the Council, and the efforts to clarify issues related to the quantity of

<sup>173</sup> S/PV.4709, pp. 5-6; and S/PV.4709 (Resumption 1) and Corr.1, pp. 34-35.

<sup>174</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; and part IV, sect. B, with regard to Article 42.

<sup>175</sup> S/2003/232; the report was submitted pursuant to paragraph 12 of resolution 1284 (1999).

<sup>176</sup> Chile, China, France, Germany, Guinea, Mexico, the Russian Federation, Spain and the Syrian Arab Republic were represented by their respective Ministers for Foreign Affairs, Angola by the Deputy Minister for Foreign Affairs, the United Kingdom by the Secretary of State for Foreign and Commonwealth Affairs, and the United States by the Secretary of State.

biological and chemical weapons, which Iraq claimed to have unilaterally destroyed in 1991. Against the background of what he termed an acceleration of initiatives “since the end of January”, he stated that Iraq’s efforts, while proactive, could not be said to constitute immediate cooperation. He noted that, pursuant to its mandate under resolution 1284 (1999), UNMOVIC would be ready to submit a draft programme of work to the Council with key remaining disarmament tasks in March, and that the complete list of clustered issues would be ready at the request of Council members. In conclusion, he stated that, even with a proactive Iraqi attitude, induced by continued pressure, verified disarmament would take months to achieve.<sup>177</sup>

The Director General of IAEA reported that the Agency had seen no indication that Iraq had resumed nuclear activities in the buildings identified through satellite imagery, nor any indication that it had attempted to import uranium, aluminium tubes and magnets for use in a centrifuge enrichment programme. In summing up, he stated that IAEA had found no evidence or plausible indication of the revival of a nuclear weapons programme in Iraq.<sup>178</sup>

A number of Council members stated that the inspectors’ report demonstrated that progress had been achieved in implementing resolution 1441 (2002), although several representatives noted that cooperation still needed to be improved. They saw no need for a new resolution, but instead spoke in favour of strengthening inspections. In that regard, it was noted that France, the Russian Federation and Germany had presented a memorandum proposing “a tough regime of intensive inspection”, and that a time frame needed to be prescribed for each outstanding issue to be addressed.<sup>179</sup> The representative of France also proposed that the inspectors be asked to establish a hierarchy of disarmament tasks to establish priority issues and be required to submit a progress report every three weeks. The Council would then establish a schedule for assessing the implementation of the work programme, and noted that resolution 1284 (2002) provided for a time frame of 120 days, which could be shortened if the inspectors considered it feasible. He

further underlined that the military agenda must not dictate the calendar of inspections, noting that he could not accept an ultimatum as long as inspectors were reporting progress in terms of cooperation, and would not, as a permanent member of the Council, allow a resolution to pass that authorised the automatic use of force.<sup>180</sup> Deploring the divergence of opinions in the Council on how to secure the elimination of Iraq’s weapons of mass destruction, the representative of Pakistan believed that an agreed approach could and had to evolve through consultations among Council members and United Nations inspectors. Once ways to credibly achieve the disarmament of Iraq’s weapons of mass destruction were established, the Council could also agree on a relatively short time frame. He added that his delegation did not believe there was an imminent threat to international peace and security.<sup>181</sup>

The representative of Mexico stated that he wished to broaden the range of formulas for achieving an effective disarmament of Iraq and to open the space to more ideas that would preserve the diplomatic option. He also insisted on the importance of working towards a consensus position on future actions to be taken by the Council.<sup>182</sup> The representatives of Chile, Cameroon and Guinea noted that the cooperation by Iraq was inadequate, but that inspections, subject to a time limit, should continue and that the use of force could only be invoked, by the Council, when all peaceful means had been exhausted.<sup>183</sup> The representative of Angola agreed that Iraq had not fully cooperated with inspectors, but also held that the Council needed to exhaust all peaceful and diplomatic means before force could be considered.<sup>184</sup>

The representative of the United States maintained that, despite some of the progress that had been mentioned, he considered the briefing by the inspectors to show “a catalogue of non-cooperation” by Iraq. He reiterated that Iraq had not made a strategic decision to disarm and that the Council needed to step up to its responsibilities. He maintained that, while nobody wanted war, it was clear that the limited progress that had been achieved had come from the presence of a large military force and from the

<sup>177</sup> S/PV.4714, pp. 2-6.

<sup>178</sup> *Ibid.*, pp. 6-9.

<sup>179</sup> *Ibid.*, pp. 9-10 (Germany); pp. 10-12 (Syrian Arab Republic); pp. 17-18 (Russian Federation); and pp. 18-21 (France).

<sup>180</sup> *Ibid.*, pp. 18-21.

<sup>181</sup> *Ibid.*, pp. 32-33.

<sup>182</sup> *Ibid.*, pp. 13-14.

<sup>183</sup> *Ibid.*, p. 22 (Chile); p. 29 (Cameroon); and pp. 33-34 (Guinea).

<sup>184</sup> *Ibid.*, p. 28 (Angola).

willingness to use that force. He noted that the draft resolution put forward was appropriate and encouraged the Council to bring it to a vote.<sup>185</sup> The representatives of Spain, the United Kingdom and Bulgaria stressed that the Government of Iraq had given no sign of a credible will to disarm and the Council needed to assume its responsibility to disarm Iraq, including by adopting a new draft resolution to put greater pressure on the regime.<sup>186</sup> The United Kingdom added that his delegation was introducing an amendment that would specify a further period beyond the adoption of a resolution for Iraq to take the final opportunity to disarm and to bring itself into compliance. He stressed, however, that the Council would need to send Iraq the clear message that they would resolve the crisis on United Nations terms, the terms that the Council had established in resolution 1441 (2002).<sup>187</sup>

The representative of Iraq stated that the possibilities of launching a war of aggression against his country had become imminent, despite demands for a peaceful solution, illustrated by the positions of France, Germany, the Russian Federation and China, the most recent Arab and Non-Aligned Movement summits, as well as the meeting of Heads of State of Islamic countries. He held that the United States and the United Kingdom were unable to prove the existence of weapons of mass destruction in his country, and were only interested in advancing their private agenda in the region. The representative stressed that his Government would continue to provide proactive and rapid cooperation with UNMOVIC and IAEA and was grateful to those opposing the proposed draft resolution.<sup>188</sup>

By a letter dated 7 March 2003 to the President of the Security Council,<sup>189</sup> the representative of Malaysia requested the holding of an open debate on the reports presented at the 4714th meeting by the Executive Chairman of UNMOVIC and the Director General of IAEA and on the new proposals that had been introduced.

<sup>185</sup> *Ibid.*, pp. 14-17.

<sup>186</sup> *Ibid.*, pp. 23-25 (Spain); pp. 25-26 (United Kingdom); and pp. 30-31 (Bulgaria).

<sup>187</sup> *Ibid.*, p. 27.

<sup>188</sup> *Ibid.*, pp. 34-36.

<sup>189</sup> S/2003/283.

At its 4717th meeting,<sup>190</sup> held on 11 and 12 March 2003, in response to the above-mentioned letter, the Council included the letter in its agenda. Statements were made by the representatives of Albania, Algeria, Argentina, Australia, Belarus, Bolivia, Brazil, Canada, Colombia, Cuba, the Dominican Republic, Egypt, El Salvador, Ethiopia, Georgia, Greece (on behalf of the European Union<sup>191</sup>), Nigeria, Iceland, India, Indonesia, the Islamic Republic of Iran, Iraq, Japan, Kuwait, the Lao People's Democratic Republic, Latvia, Lebanon, the Libyan Arab Jamahiriya, Malawi, Malaysia (on behalf of the Non-Aligned Movement), Morocco, New Zealand, Nicaragua, Norway, Papua New Guinea, Peru, the Philippines, the Republic of Korea, Senegal, Singapore, South Africa, the Sudan, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Venezuela, Viet Nam, Zambia and Zimbabwe, as well as the Permanent Observers of LAS and OIC.

During the debate, most speakers underlined the need for the peaceful disarmament of Iraq, as reflected in the conclusions of recent summits of the League of Arab States, the Non-Aligned Movement, and the Organization of the Islamic Conference, as well as the decisions of the European Union and Africa Union. They voiced opposition to the prospect of an imminent military action against Iraq outside the multilateral framework of the United Nations and the Security Council. Many speakers also observed that Iraq was cooperating in the implementation of resolution 1441 (2002), citing, as proof of Baghdad's willingness to disarm, the recent destruction of various Al-Samoud 2 missiles, as well as the recent statement of the Director General of IAEA that there was no indication of the resumption of nuclear activities. Nevertheless, they reaffirmed calls on Baghdad to continue to cooperate with United Nations inspectors. While some speakers

<sup>190</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part III, sect. B, with regard to Article 41; part IV, sect. B, with regard to Article 42; and part IX, sect. B, with regard to Article 51; and chap. XII, part III, sect. B, with regard to encouragement or calls by the Security Council for action by regional arrangements in the pacific settlement of disputes.

<sup>191</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

stressed that Iraq had not cooperated unconditionally, most expressed the view that the inspections were making concrete progress towards a genuine resolution of the situation and voiced support for giving inspectors the few additional months they had requested in order to complete their work, before establishing a deadline. Many speakers asked if it was reasonable, given the progress in inspections, that war should now be threatened, particularly when the requested period of time was so short. A number of speakers expressed concern about the possible devastating humanitarian consequences of such a conflict, and maintained that any conflict would have destabilizing consequences for the Middle East and for international peace and security. Several speakers also underlined that how the Council considered the issue of Iraq would mark a defining moment in its history and would impact the manner in which the international community approached future conflict situations. Several speakers emphasized the importance of a speedy resolution of the Israeli-Palestinian conflict or called for a zone free of weapons of mass destruction in the Middle East in accordance with paragraph 14 of resolution 687 (1991).

In terms of what action the Council needed to take, while agreeing that progress was being made, several speakers believed that the Council should strengthen the inspections process by, *inter alia*, endorsing a work programme for inspections, including the key remaining disarmament tasks or strengthening their mandate.<sup>192</sup>

A number of speakers agreed that there was no need for the revised draft resolution<sup>193</sup> being considered by the Council, which set a deadline of 17 March for compliance by Iraq.<sup>194</sup> The representative of South Africa held that any timetable developed without taking into account the programme of work of the inspectors could only lead to an unnecessary ultimatum for war, and furthermore would be counterproductive and contradict both resolutions 1284 (1999) and 1441 (2002).<sup>195</sup>

<sup>192</sup> S/PV.4717, p. 9 (South Africa); p. 13 (Algeria); p. 15 (India); p. 19 (Canada); p. 30 (Indonesia); and p. 32 (Viet Nam).

<sup>193</sup> S/2003/215.

<sup>194</sup> S/PV.4717, p. 26 (Cuba); and p. 34 (Lebanon); S/PV.4717 (Resumption 1), p. 3 (Sudan); and p. 18 (Malawi).

<sup>195</sup> S/PV.4717, p. 9.

Several representatives maintained that Iraq had not fulfilled its obligations under resolution 1441 (2002) and had only taken small and belated steps under pressure. They held that the best and perhaps last hope of achieving a peaceful solution was for the Council to send a clear message to Iraq through a new resolution, which set deadlines and included concrete demands that it must fully disarm. In appealing to Council members to support a new resolution, speakers stated clearly that it was time that the Council faced its responsibilities, adding that the unity of the Council, particularly if force was required, needed to be maintained.<sup>196</sup> Several speakers noted that it was clear that Iraq had not complied and that a clear deadline was necessary to guarantee its disarmament and expressed hope that the Council would act in a way that preserved its unity.<sup>197</sup> The representative of the Philippines stated that Iraq was in material breach of its obligations and remarked that, while his delegation shared the hopes for peace, it was necessary to be ready to take decisive action to preserve and maintain a meaningful peace.<sup>198</sup>

The representative of Canada, recalling his Government's proposal of 18 February, held that a message of absolute clarity should be sent by the Council to Baghdad on what was required by requiring the leadership of Iraq to publicly direct all levels of the Government to take all necessary disarmament decisions; asking UNMOVIC to bring forward the programme of work urgently, within a week, including the list of key remaining disarmament tasks; setting a deadline of three weeks for Iraq to demonstrate conclusively that it was implementing those tasks; and authorizing Member States to eventually use all necessary means to force compliance, unless, on the basis of ongoing inspectors reports, the Council concluded that Iraq was complying.<sup>199</sup>

The representative of Switzerland invited Council members to see to it that any decision taken on the

<sup>196</sup> S/PV.4717, pp. 5-6 (Kuwait); pp. 18-19 (Australia); and p. 31 (Albania); S/PV.4717 (Resumption 1), p. 2 (Japan); p. 8 (Dominican Republic); p. 9 (Latvia); p. 10 (El Salvador); p. 11 (Georgia, Nicaragua); p. 17 (the former Yugoslav Republic of Macedonia); and p. 23 (Colombia).

<sup>197</sup> S/PV.4717, p. 28 (Singapore); and pp. 28-29 (Republic of Korea); S/PV.4717 (Resumption 1), p. 4 (Thailand).

<sup>198</sup> S/PV.4717 (Resumption 1), p. 4.

<sup>199</sup> S/PV.4717, p. 20.

basis of Chapter VII included the unconditional demand that all parties respect international humanitarian law.<sup>200</sup>

The representative of Iraq noted, *inter alia*, that the goal of the United States and the United Kingdom was not disarmament but to acquire Iraqi oil, control the region and redraw its borders to ensure the continuation of their vital interests in the long-term. He affirmed that Iraq had taken the strategic decision to rid itself of weapons of mass destruction, and he called upon the international community to prevent a “catastrophe” that had become imminent. He rejected the allegations that had been presented by the United States and others, noting the lack of evidence and the use of forged documents and other faulty intelligence. At the close of the meeting, the representative noted that the majority of speakers had expressed support for the cooperation being shown by his Government for the inspection process. While reiterating that Iraq possessed no weapons of mass destruction, he stressed that “only time” was needed to provide proof to the international community.<sup>201</sup>

At its 4721st meeting,<sup>202</sup> on 19 March 2003, the Council heard briefings by the Executive Chairman of UNMOVIC and a representative of the Director General of IAEA; statements were made by all members of the Council,<sup>203</sup> the representative of Iraq and the Secretary-General.

The Executive Chairman of UNMOVIC expressed sadness that three and a half months of work carried out by UNMOVIC in Iraq had not brought the assurances needed about the absence of weapons of mass destruction or other proscribed items in Iraq; that no more time was available for the inspectors; and that armed action now seemed imminent. At the same time, he felt a sense of relief that it had been possible to withdraw all United Nations international staff, including that of UNMOVIC and IAEA, safely from Iraq, with the cooperation of the Iraqi authorities. He also noted that Iraq had submitted several more letters

on unresolved issues and those efforts should be acknowledged. At the same time, his experts had found that in substance only limited new information had been provided that would help to resolve the remaining questions. Regarding the programme of work UNMOVIC had submitted, he stated that it was possible for the Council to single out a few issues for resolution within a specific time, although whatever approach was followed, results would depend on the active cooperation of Iraq on substance.<sup>204</sup>

The representative of the Director General of IAEA informed the Council that the work programme for IAEA had been transmitted, that it was self-explanatory and the Director General would be available any time to discuss it if the Security Council so wished.<sup>205</sup>

Council members expressed regret that it had not been possible to reach an agreement that would have allowed the continued peaceful disarmament of Iraq, and that the situation on the ground had brought the work of United Nations inspections to a standstill. At the same time, members took note of the Secretary-General’s decision to withdraw all United Nations staff on the basis of the need to ensure the continued safety and security of all personnel. Most speakers stressed that the United Nations and the Security Council needed to continue to play a central role in the Iraq conflict, as it bore the primary responsibility for world peace and international security. A number of speakers also expressed concern over the humanitarian consequences of war in Iraq. Most speakers emphasized that inspections within the framework of the United Nations would continue to be an important tool to prevent the proliferation of weapons of mass destruction.

The representatives of Germany, France, the Russian Federation and China believed that it was still possible to disarm Iraq peacefully, specifically by adhering to the deadlines outlined in the work programme of UNMOVIC, whose approach they endorsed.<sup>206</sup> The representative of Chile stated that nothing could be more serious than suspending the inspections process, as that could create doubts concerning the validity of that instrument for

<sup>200</sup> *Ibid.*, p. 21.

<sup>201</sup> S/PV.4717, pp. 3-5; S/PV.4717 (Resumption 1), pp. 24-25.

<sup>202</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; and part IV, sect. B, with regard to Article 42.

<sup>203</sup> France and Germany were represented by their respective Ministers for Foreign Affairs.

<sup>204</sup> S/PV.4721, pp. 2-3.

<sup>205</sup> *Ibid.*, p. 3.

<sup>206</sup> *Ibid.*, pp. 3-4 (Germany); p. 5 (France); p. 8 (Russian Federation); and p. 19 (China).



international peace and security. He expressed concern that if confidence in disarmament institutions eroded, those institutions would lose their value and would no longer be a guarantor of peace.<sup>207</sup>

The representatives of Germany and the Russian Federation stressed that the policy of military intervention had no credibility, and that there was no basis in the Charter for regime change by military means.<sup>208</sup> The representative of Mexico added that the Council was the only organ which the international community had entrusted the right to use force.<sup>209</sup> The representative of France maintained that the respect for law was the keystone of the international order and it needed to apply under all circumstances, particularly when it was a question regarding the use of force. He also believed that the example of UNMOVIC should serve as a model for the establishment of a permanent disarmament body under the auspices of the United Nations, aimed at resolving similar crises in the future.<sup>210</sup> The representative of the Syrian Arab Republic noted that the majority of the members of the Council had rejected the idea of adopting a draft resolution authorizing the use of force, thus rendering the use of the veto unnecessary by any country. He also noted that the verbatim record of the meeting of the Council included comments by those members that were hastening to wage war, confirming their belief that resolution 1441 (2002) did not permit a strike against Iraq without reverting to the Council.<sup>211</sup>

The representative of Spain stated that Saddam Hussein was responsible for the suspension of the inspections, due to his ongoing policy of deceit, concealment and delaying tactics, having decided to “openly opt for the path of confrontation”, in contravention of the demands of the Security Council. As for the legitimacy of the use of force against Iraq, he maintained that a new resolution was not legally necessary as it had already been established based on the logical linking of resolutions 660 (1990), 678 (1990), 687 (1991) and 1441 (2002), adopted under Chapter VII. He explained that in resolution 660 (1990) the Council had considered the Iraqi invasion of Kuwait a breach of the peace and international security and, while by resolution 687 (1991) it had declared a

ceasefire, that had been subordinated to compliance with a number of conditions mostly relating to the disarmament of weapons of mass destruction. Therefore, resolution 687 (1991) had left in abeyance resolution 678 (1990), by which the use of force had been authorized, but had not abolished it. The content of resolution 678 (1990) continued to be perfectly valid, and had been recalled in resolution 1441 (2002), by which the Council recognized that the non-compliance of Iraq constituted a threat to international peace and security, recalled that peace had not been restored to the region, and decided that Iraq had failed to comply and continued to fail to comply most seriously with the demands imposed by the international community.<sup>212</sup> The representative of Bulgaria maintained that, in refusing to cooperate fully, actively and without condition with the inspectors, Iraq had failed to seize its last chance to comply with the relevant resolutions.<sup>213</sup> The representative of the United Kingdom stressed that any action which his country took would be in accordance with international law and based on relevant resolutions of the Council.<sup>213</sup>

The representative of Cameroon, expressing concern at the de facto suspension of the oil-for-food programme, suggested that the Committee meet as soon as possible so that it could adopt any emergency measures needed at the humanitarian level.<sup>214</sup>

The representative of the United States noted that consideration of the draft programmes of work, which represented the agenda for the meeting, was incompatible with the issue of non-compliance of Iraq with resolution 1441 (2002) and the “current reality on the ground”. He expressed concern over the humanitarian needs of Iraq and stated that his country had been planning across all relevant United States agencies and in support of United Nations efforts to anticipate likely requirements and to be prepared to administer necessary relief as quickly as possible. He also noted the importance of keeping the oil-for-food programme running, and informed the Council that his delegation would present a draft humanitarian resolution that would ensure the continuity of the programme.<sup>215</sup>

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<sup>207</sup> *Ibid.*, p. 17.

<sup>208</sup> *Ibid.*, pp. 3-4 (Germany); and p. 8 (Russian Federation).

<sup>209</sup> *Ibid.*, p. 12.

<sup>210</sup> *Ibid.*, pp. 6-7 (France).

<sup>211</sup> *Ibid.*, p. 9.

<sup>212</sup> *Ibid.*, pp. 15-16.

<sup>213</sup> *Ibid.*, p. 19.

<sup>214</sup> *Ibid.*, p. 14.

<sup>215</sup> *Ibid.*, pp. 13-14.

The representative of Iraq reiterated that his country no longer possessed weapons of mass destruction and that the United States and the United Kingdom had failed to prove any allegations to the contrary since the adoption of resolution 1441 (2002). He believed that those countries' true motives, namely the occupation of Iraq and taking control of its oil wells, had now been exposed, and that the forthcoming conflict would show that. Highlighting the dire humanitarian effects of any conflict, the representative called on the Council to renew the work of the oil-for-food programme, specifically to ensure that the agreed-upon shipment of humanitarian goods on their way to Iraq, amounting to \$10 billion, was not further delayed.<sup>216</sup>

The Secretary-General shared the regrets of Council members on the failure to reach a common position on Iraq. Recalling the sufferings of the Iraqi people over the past two decades brought about by two major wars and more than a decade of debilitating sanctions, he stated that in the short term the conflict about to get under way could worsen the situation. He further expressed the hope that members of the Council would agree that everything should be done to mitigate the "imminent disaster". He recalled that under international law the responsibility for protecting civilians in conflicts fell on the belligerents and, in any area under military occupation, respect for the welfare of the population fell on the occupying power. However, the Secretary-General emphasized that the United Nations would do whatever it could to help, and had in fact been preparing for some time for that contingency. He also indicated that he would be preparing proposals for the Council's consideration on how to adjust the oil-for-food programme to enable its resumption.<sup>217</sup>

By a letter dated 24 March 2003 to the President of the Council,<sup>218</sup> the representative of Iraq, in his capacity as the Chairman of the Group of Arab States for the month of March 2003 and on behalf of the States members of LAS, with the reservation of Kuwait, requested the convening of an urgent session of the Security Council with regard to halting the American-British aggression and the immediate withdrawal of the invading forces outside the international boundaries of Iraq and reconfirming its

sovereignty, political independence and territorial integrity and preventing all States from interfering in its internal affairs.

By a letter dated 24 March 2003 to the President of the Council,<sup>219</sup> the representative of Malaysia, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement, requested the Security Council to consider convening urgently an open debate on the situation between Iraq and Kuwait.

The 4726th meeting of the Council<sup>220</sup> was held on 26 and 27 March 2003 in response to the requests contained in the above-mentioned letters, which were included in the agenda. Statements were made by all members of the Council and the representatives of Albania, Algeria, Argentina, Australia, Belarus, Brazil, Canada, Colombia, Costa Rica, Cuba, the Dominican Republic, Egypt, El Salvador, Ethiopia, the Federated States of Micronesia, Georgia, Greece (on behalf of the European Union<sup>221</sup>), Guatemala, Guinea, Honduras, Iceland, India, Indonesia, the Islamic Republic of Iran, Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, the Lao People's Democratic Republic, Latvia, Lebanon, the Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Malaysia (on behalf of the Non-Aligned Movement), the Marshall Islands, Mauritius, Mongolia, Morocco, New Zealand, Nicaragua, Norway, Poland, the Republic of Korea, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Sri Lanka, the Sudan, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Tunisia, Turkey, Uganda, the United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam and Yemen, as well as the Secretary-General and the Permanent Observers of LAS and Palestine.

In his introductory statement the Secretary-General expressed regret that intense efforts to achieve

<sup>219</sup> S/2003/363.

<sup>220</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to Article 39 of the Charter; part IV, sect. B with regard to Article 42; and part IX, sect. B, with regard to Article 51; and chap. XII, part I, sect. A, case 3, with regard to Article 1 (2); part I, sect. B, case 5, with regard to Article 2 (4); part I, sect. E, case 9, with regard to Article 2 (7); and part II, sect. A, case 19, with regard to Article 24.

<sup>221</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>216</sup> *Ibid.*, pp. 21-22.

<sup>217</sup> *Ibid.*, pp. 22-23.

<sup>218</sup> S/2003/362.

a peaceful solution, through the Council, had not succeeded. He stressed that the inability of the Council to agree earlier on a collective course of action placed an even greater burden on the Council now. He declared that the international community wanted to see the war brought to an end as soon as possible. Nevertheless, while it continued, it was essential that everything be done to protect the civilian population, as well as the wounded and the prisoners of war, on both sides, in accordance with international humanitarian law, in particular the Fourth Geneva Convention. He also reiterated the need to reach an agreement among Council members on how to adjust the oil-for-food programme. With regard to the future, he pointed out that the Council would also need to determine how it would address the many needs of the Iraqi people, whatever the outcome of the war, and what the United Nations itself might be asked to undertake. For anything beyond strictly humanitarian relief, the United Nations needed a mandate from the Council. In conclusion, the Secretary-General urged the Council to rediscover its “unity of purpose”, fearing that the deep divisions, if not healed, could have grave consequences for the international system and relations between States.<sup>222</sup>

The representative of Iraq informed the Council that “the American-British full-scale military aggression” had commenced on 20 March 2003 and the President of the United States had declared that the goal of the action was the occupation of Iraq and the change of its political regime. He recalled that the Security Council had not authorized the use of force by the United States and Britain and that resolution 1441 (2002) did not allow the use of force at all, a fact which both the United Kingdom and the United States had confirmed when it was adopted by stating that it did not contain “a hidden agenda, trigger or automatic use of force”. He held that the military invasion constituted a blatant material breach of international law and of the Charter, particularly Article 2 (4 and 7), as well as the relevant Council resolutions, all of which obliged Member States to respect the sovereignty, political independence and territorial integrity of Iraq. He argued that the world was well aware that the real reason for the aggression and invasion was “the occupation of Iraq, to recolonize it and control its oil wealth”. He further called on the United Nations, and the Council in particular, to condemn the invasion and

<sup>222</sup> S/PV.4726, pp. 3-4.

aggression and call for an unconditional and immediate end to it. Drawing attention to the Council members’ deliberations on the “humanitarian” as opposed to the “military” aspects of the aggression, he held that the Council should first and foremost pay attention to the cessation of the war of aggression as it was the cause of the humanitarian problems. In conclusion he stressed that the people of Iraq would resist and would “pay the price in blood in order to get the United States out of Iraq.”<sup>223</sup>

During the course of the debate, most speakers expressed strong disappointment that the efforts to avert war in that country had failed. They also underlined the need to address the humanitarian situation in Iraq and for all parties to the conflict to comply with their obligations under international humanitarian law. Most speakers also reiterated the need to respect the independence, sovereignty and territorial integrity of Iraq, emphasizing in particular the right of the people of Iraq to choose their own political destiny and form of governance, as well as their right to control their country’s natural resources. A majority of speakers reaffirmed the central role of the United Nations as the institution to ensure international peace and security. They underlined the need for the United Nations to continue to play a central role during and after the current crisis, noting that the United Nations system had a unique capacity and practical experience in coordinating assistance in post-conflict States. Most speakers stressed that the war should not be allowed to lead to the erosion of the principles and values that were set out in the Charter. Some highlighted the disunity in the Council and the need for it to reunite so as to ensure that the Council and the United Nations could respond quickly and meet the needs of the Iraqi people.

A large number of speakers argued that the inspections should have been allowed to continue as they had been producing results and that Iraq had indeed been actively cooperating with the inspectors.<sup>224</sup> A number of delegations stressed that the

<sup>223</sup> S/PV.4726, pp. 4-6; and S/PV.4726 (Resumption 1), pp. 35-36.

<sup>224</sup> S/PV.4726, p. 7 (Malaysia on behalf of the Non-Aligned Movement); pp. 8-9 (League of Arab States); pp. 10-11 (Algeria); p. 12 (Egypt); pp. 13-14 (Yemen); pp. 17-18 (Libyan Arab Jamahiriya); pp. 19-20 (Indonesia); pp. 20-21 (South Africa); p. 22 (Cuba); p. 24 (India); p. 32 (Jamaica); p. 33 (Islamic Republic of Iran); p. 35

war had been carried out without the authorization of the Security Council, in violation of the principles of international law and the Charter, and called on the Council to use its authority to stop the military action and revert to the multilateral process in an effort to resolve the issue. Many of those delegations reiterated the importance of the principles of the non-use of force and non-interference in the internal affairs of States. Several speakers also noted that the doctrine of “pre-emptive strikes” had no foundation in international law.<sup>225</sup> The representative of the Syrian Arab Republic stressed that the war was not justifiable because it was not aimed at the elimination of weapons of mass destruction in Iraq, as the inspectors had maintained that there was no evidence of such weapons. The objective was to occupy Iraq, to subject the region to hegemony and exploitation, and to help Israel, which did possess weapons of mass destruction.<sup>226</sup>

Other speakers maintained that Iraq had not voluntarily disarmed and given up its weapons of mass destruction or abided by the provisions of resolution 1441 (2002), which had contained a warning of “grave consequences” in case of non-compliance, based on Chapter VII of the Charter, and noted the responsibility of the Government of Iraq for any consequences.<sup>227</sup>

(Lebanon); p. 36 (Tunisia); and p. 37 (Mauritius); S/PV.4726 (Resumption 1), p. 9 (United Republic of Tanzania); p. 17 (Kenya); p. 20 (Pakistan); p. 26 (Russian Federation); p. 28 (China, France); and p. 32 (Syrian Arab Republic).

<sup>225</sup> S/PV.4726, p. 7 (Malaysia on behalf of the Non-Aligned Movement); pp. 8-9 (League of Arab States); pp. 10-11 (Algeria); p. 12 (Egypt); pp. 13-14 (Yemen); pp. 17-18 (Libyan Arab Jamahiriya); pp. 19-20 (Indonesia); pp. 20-21 (South Africa); p. 22 (Cuba); p. 28 (Brazil); p. 30 (Switzerland); p. 31 (Sudan); p. 32 (Viet Nam); pp. 32-33 (Jamaica); p. 33 (Islamic Republic of Iran); p. 35 (Lebanon); p. 36 (Tunisia); pp. 37-38 (Mauritius); p. 38 (Belarus); p. 46 (Venezuela); and p. 47 (Lao People’s Democratic Republic); S/PV.4726 (Resumption 1), p. 2 (Liechtenstein); pp. 7-8 (Saudi Arabia); p. 9 (United Republic of Tanzania); p. 10 (Palestine); p. 16 (Kyrgyzstan); pp. 26-27 (Russian Federation); p. 28 (China, France); and pp. 32-33 (Syrian Arab Republic).

<sup>226</sup> S/PV.4726 (Resumption 1), p. 32.

<sup>227</sup> S/PV.4726, p. 24 (Poland); pp. 25-26 (Singapore); pp. 34-35 (Republic of Korea); p. 39 (Japan); pp. 39-40 (the former Yugoslav Republic of Macedonia); p. 41 (Georgia, Uzbekistan); p. 42 (Latvia, Nicaragua); p. 45 (Albania); p. 46 (Iceland); and p. 47 (Mongolia); S/PV.4726 (Resumption 1), p. 6 (El Salvador); p. 8

Several delegations argued that the failure to take action against the Iraqi regime would have been tantamount to tolerating non-compliance with Council resolutions. They stressed that failure to take action to effectively disarm the Iraqi regime would be a serious political and military mistake and would lead to the further undermining of the authority of the United Nations.<sup>228</sup> A number of speakers opined that the actions of the coalition were in accordance with international law, they noted, pointing out that resolutions 678 (1990), 687 (1991) and 1441 (2002) provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region.<sup>229</sup> The representative of Singapore stated that, while his delegation would have preferred that the Council had explicitly authorized military action, it had felt that, given the long history of Iraq flouting Council resolutions, the inability to reach consensus could not be taken as a reason for inaction.<sup>230</sup> The representative of the Marshall Islands expressed support for the ultimate goals of the operation in Iraq, which were to ensure Iraqi compliance with its disarmament obligations and to restore the sovereignty of the country to its people.<sup>231</sup> The representative of Argentina stated that, while the use of force was a last resort, and within the United Nations system it needed to be authorized by the Council, his delegation believed that in the current situation, legal and political debate on the legality of the armed conflict would “divide and paralyse” the Council and divert attention from the humanitarian situation of the people of Iraq.<sup>232</sup>

Several speakers also noted the need to prevent a humanitarian catastrophe in Iraq and therefore called, *inter alia*, for the immediate resumption of the oil-for-

(Federated States of Micronesia); p. 11 (Timor-Leste); p. 13 (Uganda); p. 14 (Sri Lanka); p. 15 (Ethiopia); p. 23 (United Kingdom); p. 29 (Spain); and p. 31 (Bulgaria).

<sup>228</sup> S/PV.4726, p. 25 (Poland); p. 27 (Australia); pp. 34-35 (Republic of Korea); p. 30 (Japan), pp. 39-40 (the former Yugoslav Republic of Macedonia); p. 41 (Georgia); and p. 46 (Iceland); S/PV.4726 (Resumption 1), p. 5 (Lithuania); and p. 8 (Federated States of Micronesia).

<sup>229</sup> S/PV.4726, p. 27 (Australia); and p. 40 (the former Yugoslav Republic of Macedonia); S/PV.4726 (Resumption 1), p. 8 (Federated States of Micronesia); and p. 23 (United Kingdom).

<sup>230</sup> S/PV.4726, p. 26.

<sup>231</sup> S/PV.4726 (Resumption 1), p. 4.

<sup>232</sup> S/PV.4726, p. 37.

food programme, or for its amendment to allow an uninterrupted flow of humanitarian supplies.<sup>233</sup> In contrast, the representative of the Libyan Arab Jamahiriya argued that the people of Iraq did not need the humanitarian assistance that was being requested by some States that were trying to provide it “from the wealth and resources of Iraq”, despite the fact that they had stopped the oil-for-food programme.<sup>234</sup> The representative of South Africa cautioned that, while the Council had a role to play in ensuring that provisions were in place to assist with the delivery of humanitarian relief, the Council should not be drawn into drafting a resolution that would “provide tacit or implied approval of the military operations”.<sup>235</sup> This was echoed by the representative of Cuba, who noted that the aggression and the occupation of territories should not be legalized or endorsed under humanitarian pretexts.<sup>236</sup> The representative of Albania declared that the humanitarian situation had been caused by the “dictatorial policies” of the Government of Iraq and called on the regime to step aside and spare the people of Iraq from further danger.<sup>237</sup>

A number of speakers noted the importance of the Arab-Israel conflict and the lack of progress there. They opined, *inter alia*, that the real threat to the safety and security of the Arab nation was the possession by Israel of weapons of mass destruction; its ongoing occupation of the Arab territories; its policy against the Palestinian people; and its refusal to comply with numerous Council resolutions.<sup>238</sup> Other speakers

reiterated their commitment to the road map and progress in the Arab-Israeli peace process.<sup>239</sup>

The representative of the United Kingdom noted that the coalition action, which encompassed over 40 States, was under way to enforce Council decisions on complete disarmament by Iraq. He stressed that the action was being directed only at the regime, and that the coalition partners were doing everything possible to minimize the effect on civilians, leave infrastructure intact, and ensure the rapid delivery of humanitarian assistance. He also stated that his country accepted in full all its obligations under international humanitarian law.<sup>240</sup>

The representative of the United States expressed regret that the Government of Iraq had not taken advantage of the final opportunity provided in resolution 1441 (2002) and reiterated that the coalition’s response was legitimate and not unilateral. He recalled that resolution 687 (1991) imposed a series of obligations on Iraq that were the conditions of the ceasefire. A material breach of those obligations removed the basis of the ceasefire and revived the authority to use force under resolution 678 (1990). By resolution 1441 (2002) the Council explicitly found Iraq in continuing material breach. Therefore, in view of additional material breaches by Iraq, the basis for the existing ceasefire had been removed and the use of force was authorized under resolution 678 (1990). The representative also provided an overview of efforts to provide rapid assistance to the Iraqi people. He expressed support for the Secretary-General’s request for the necessary authorities to ensure the continuity of the oil-for-food programme and noted that the Council was close to an agreement on a resolution. He stressed that if the Council failed to adopt such a resolution there would be serious humanitarian implications. On the future of Iraq, he listed five principles that guided the Government of the United States. First, his country would demonstrate to the people of Iraq and the world

<sup>233</sup> S/PV.4726, p. 11 (Algeria); p. 15 (Kuwait); p. 19 (Greece on behalf of the European Union); pp. 20-21 (South Africa); p. 23 (New Zealand); p. 24 (India); p. 26 (Singapore); p. 27 (Australia); p. 29 (Turkey); p. 30 (Switzerland); p. 32 (Viet Nam); p. 35 (Republic of Korea); p. 37 (Argentina); p. 40 (the former Yugoslav Republic of Macedonia); p. 40 (Colombia); p. 41 (Georgia, Uzbekistan); p. 42 (Latvia, Nicaragua); p. 43 (Norway); p. 45 (Albania); p. 46 (Venezuela); pp. 47-48 (Mongolia); p. 48 (Guatemala); S/PV.4726 (Resumption 1), p. 2 (Liechtenstein); p. 3 (Canada); p. 4 (Uruguay); p. 5 (Thailand); p. 6 (Slovakia, El Salvador); p. 15 (Ethiopia); p. 16 (Jordan); p. 18 (Slovenia); p. 19 (Mexico); pp. 21-22 (Pakistan); p. 24 (Cameroon); p. 28 (China); p. 29 (France, Spain); p. 31 (Chile, Bulgaria); pp. 33-34 (Germany); and pp. 34-35 (Guinea).

<sup>234</sup> S/PV.4726, p. 17.

<sup>235</sup> *Ibid.*, p. 21.

<sup>236</sup> *Ibid.*, p. 23.

<sup>237</sup> *Ibid.*, p. 45.

<sup>238</sup> *Ibid.*, p. 9 (League of Arab States); p. 13 (Yemen); p. 17

(Libyan Arab Jamahiriya); p. 34 (Islamic Republic of Iran); and p. 44 (Morocco); S/PV.4726 (Resumption 1), pp. 7-8 (Saudi Arabia); p. 9 (United Republic of Tanzania); p. 10 (Palestine); p. 12 (Timor-Leste); pp. 13-14 (Uganda); pp. 14-15 (Sri Lanka); p. 16 (Jordan); p. 22 (Pakistan); and p. 32 (Syrian Arab Republic).

<sup>239</sup> S/PV.4726, p. 19 (Greece on behalf of the European Union); S/PV.4726 (Resumption 1), p. 23 (United Kingdom); p. 29 (Spain); and p. 31 (Chile).

<sup>240</sup> S/PV.4726 (Resumption 1), p. 23.

that the United States and the coalition aspired to liberate, not to occupy. Second, Iraq needed to be disarmed of all nuclear, chemical and biological weapons production capabilities and the means to deliver such weapons. Third, the “terrorist infrastructure” in Iraq needed to be eliminated. Fourth, Iraq needed to be preserved as a unified State, with its territorial integrity intact. Stressing that concern for the safety of the people of Iraq had been “foremost in our minds”, he said that the United States and the coalition would “provide security to prevent chaos and retribution”. Fifth, a process of economic and political reconstruction needed to be started. He noted the commitment of his Government to working in close partnership with international institutions, including the United Nations. Finally, he reiterated that his country wanted to return control over the sovereignty of Iraq to its people as soon as possible.<sup>241</sup>

The representative of the Russian Federation maintained that the military action undertaken by the United States and the United Kingdom in violation of Security Council resolutions could not be justified in any way. He noted that those countries had been unable to provide any proof to justify their allegations regarding the possession of weapons of mass destruction and support for international terrorism by Iraq. He also noted that no proof had been found in the course of the ongoing military action to sustain such accusations. Bearing in mind the exceptional, his delegation was prepared, to resolve the issue of temporary amendments to the procedures followed in the oil-for-food programme in order to meet the humanitarian needs of Iraqis. However, his delegation would not support the proposal to restructure the mechanism for the humanitarian programme in the light of the military scenario, which was a technical matter. He stressed that there was no more urgent task than to halt the war and return to the path of a political settlement within the context of the Security Council. To that end, his delegation would continue to oppose both direct and indirect attempts to legitimize the use of force against Iraq or to shift the responsibility for that action to the international community through the United Nations.<sup>242</sup>

The representative of Kuwait stated that the operations against Iraq had resulted from that country’s

<sup>241</sup> Ibid., pp. 25-26.

<sup>242</sup> Ibid., pp. 26-28.

persistent refusal to comply with relevant Security Council resolutions concerning the elimination of weapons of mass destruction. He reaffirmed that his delegation’s position on the military operations was in conformity with relevant Council resolutions and with the legal obligations on Iraq that proceeded from them. He stressed that his Government would not participate in any military measures against Iraq and that all measures taken were aimed at protecting the security, safety and territorial integrity of Kuwait. He added that the attacks by Iraq against civilian targets in Kuwait constituted a flagrant violation of the Charter of the United Nations and called on the Council to condemn them.<sup>243</sup>

The representative of Turkey noted that it was common knowledge that elements of the armed forces of Turkey had been stationed in northern Iraq for years in the context of Operation Northern Watch, which had been conducted from the territory of Turkey and which provided protection and humanitarian relief to Kurds in northern Iraq. However, he underlined that his country had no intention of entering into Iraq, but “should that need occur”, his country would not enter Iraq to fight but to monitor a refugee crisis if it unfolded and to respond to immediate concerns of security on the border. He stressed that Turkey could not allow another influx of refugees, as in 1991. Any refugee movement needed to be contained inside Iraq and the people in distress provided with shelter, food and security. He also stressed that his country could not allow Kurdish armed terrorists marauding in parts of northern Iraq to instigate terrorism and provocation that would set in motion a vicious circle hampering his country’s efforts to provide assistance.<sup>244</sup>

**Decision of 28 March 2003 (4732nd meeting):  
resolution 1472 (2003)**

At the 4732nd meeting, on 28 March 2003, statements were made by a majority of Council members,<sup>245</sup> and the Secretary-General. The President (Guinea) drew the attention of the Council to a draft resolution submitted by Angola, Bulgaria, Cameroon, Chile, China, France, Germany, Guinea, Mexico, Pakistan, the Russian Federation, Spain, the United

<sup>243</sup> S/PV.4726, pp. 14-15.

<sup>244</sup> Ibid., p. 29.

<sup>245</sup> The representatives of Angola, Cameroon, Chile, China, Mexico and the United Kingdom did not make statements.

Kingdom and the United States;<sup>246</sup> it was adopted unanimously as resolution 1472 (2003), by which the Council, acting under Chapter VII of the Charter, inter alia:

Authorized the Secretary-General: (a) to establish alternative locations for the delivery, inspection and authenticated confirmation of humanitarian supplies and equipment provided under the oil-for-food programme; (b) to review the approved funded and non-funded contracts concluded by the Government of Iraq to determine the relative priorities of the need for adequate medicine, health supplies, foodstuffs and other materials and supplies for essential civilian needs; (c) to contact suppliers of those contracts to determine the precise location of contracted goods; (d) to negotiate and agree on necessary adjustments in the terms or conditions of those contracts and their respective letters of credit; (e) to negotiate and execute new contracts for essential medical items under the programme; (f) to transfer unencumbered funds between the accounts created pursuant to paragraphs 8 (a) and (b) of resolution 986 (1995) on an exceptional and reimbursable basis as necessary to ensure the delivery of essential humanitarian supplies to the people of Iraq;

Decided that all applications outside the programme submitted for distribution or use in Iraq of emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs, should be reviewed by the Committee established by resolution 661 (1990), under a 24-hour no-objection procedure;

Decided that the provisions contained in paragraph 4 of the resolution should remain in force for a period of 45 days following the date of adoption of the resolution.

During the debate, most speakers welcomed the adoption of a resolution to provide humanitarian relief to the people of Iraq by restarting the oil-for-food programme, and noted that its adoption was a positive signal that the Council could return to a path of unity.

The representative of Pakistan underlined the principles guiding his delegation's position, namely, respect for the inalienable right of the people of Iraq over their natural resources and ensuring that the people of Iraq were not called upon to pay additional costs which the conflict might impose on the oil-for-food programme. Noting that his delegation accepted the fact that the Secretary-General would have to coordinate with whomever was in actual control of Iraq, he reiterated that the acceptance did not imply any position on the legality of the situation.<sup>247</sup>

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<sup>246</sup> S/2003/381.

<sup>247</sup> S/PV.4732, pp. 2-3.

The representative of the Syrian Arab Republic stressed that his vote should not be construed as an acceptance of the "American-British occupation". He noted that the contents of the resolution, including the references in paragraphs 4 and 5 to the Secretary-General's taking certain measures as an urgent first step and performing additional functions as a second step, meant only that his delegation was trying to cooperate with the current Government of Iraq.<sup>248</sup>

The representative of the Russian Federation reiterated that the adoption of the resolution in no way signified any type of legitimization of the military action being carried out by the coalition in violation of the Charter of the United Nations. The resolution clearly called the participants in the coalition "occupying Powers", whose actions on the occupied territory needed to be guided strictly by all norms of international humanitarian law, without exception. He stressed that any humanitarian problems needed to be dealt with primarily by those who began the war, as they bore responsibility for meeting the civilian population's humanitarian needs under the Fourth Geneva Convention. With regard to the United Nations humanitarian programme for Iraq, the resolution's adjustments to the programme had "a technical and provisional nature" and made it possible to use contracts that had been signed but not yet implemented in order to solve individual practical humanitarian issues caused by the war. The resolution did not change the essence of the humanitarian programme, and it fully retained the control of the Security Council over the United Nations special account that was accumulating revenue from the export of Iraqi oil.<sup>248</sup>

The representative of France also noted that it was important that the text recalled principles, humanitarian law instruments, in particular the Geneva Conventions, humanitarian access to the populations and the sovereignty of Iraq over its resources.<sup>249</sup>

**Decision of 24 April 2003 (4743rd meeting):  
resolution 1476 (2003)**

At the 4743rd meeting, on 24 April 2003, the President (Mexico) drew the attention of the Council to a draft resolution;<sup>250</sup> it was adopted unanimously and without debate as resolution 1476 (2003), by which the

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<sup>248</sup> Ibid., p. 3.

<sup>249</sup> Ibid., pp. 4-5.

<sup>250</sup> S/2003/465.

Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that the provisions contained in paragraph 4 of resolution 1472 (2003) should remain in force until 3 June 2003 and might be subject to further renewal by the Council;

Decided to remain seized of the matter.

**Decision of 22 May 2003 (4761st meeting):  
resolution 1483 (2003)**

At the 4761st meeting,<sup>251</sup> on 22 May 2003, statements were made by most members of the Council.<sup>252</sup> The President (Pakistan) drew attention to a draft resolution submitted by Spain, the United Kingdom and the United States;<sup>253</sup> it was put to the vote and adopted by 14 votes<sup>254</sup> as resolution 1483 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that all Member States should take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq;

Decided that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992), should no longer apply;

Decided to terminate within six months from the adoption of the resolution, the operations of the oil-for-food programme;

Decided to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) at the conclusion of the six-month period called for above;

Decided that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the

adoption of the resolution should be made consistent with prevailing international market best practices;

Decided further that 5 per cent of the proceeds referred to in paragraph 20 should be deposited into the Compensation Fund established in accordance with resolution 687 (1991);

Decided that, until 31 December 2007, unless the Council decided otherwise, petroleum, petroleum products and natural gas originating in Iraq should be immune from legal proceedings against them and not be subject to any form of attachment, garnishment or execution;

Decided that all Member States in which there were (a) funds or other financial assets of the previous Government of Iraq or (b) funds or other financial assets that had been removed from Iraq should freeze without delay those funds and, unless those funds were themselves the subject of a prior judicial, administrative or arbitral lien or judgement, immediately should cause their transfer to the Development Fund for Iraq;

Decided to review the implementation of the resolution within 12 months of its adoption and to consider further steps that might be necessary.

During the discussion, speakers noted the importance of the resolution and of the fact that it, *inter alia*, provided a framework under Chapter VII for the Coalition Provisional Authority; reaffirmed the obligations of the occupying Powers; affirmed the commitment of the Council to the development of an internationally recognized representative Government of Iraq; created a mandate for a Special Representative of the Secretary-General and otherwise set out a post-conflict role for the United Nations; established a framework for an orderly phase-out of the oil-for-food programme while providing for humanitarian needs; and the lifting of sanctions on Iraq, with the exception of trade in arms. Several speakers also noted the outstanding issues that would still need to be dealt with by the Council, including the role for UNMOVIC and IAEA in the longer-term monitoring of disarmament.

However, several representatives also stressed that the resolution had been a “compromise”. The representative of France noted that the resolution substantiated the essential role of the United Nations in a variety of areas. He also expressed the belief that the process of political transition in Iraq would gain in credibility if a precise procedure and timetable for establishing a representative and internationally recognized Government of Iraq were defined.<sup>255</sup> The representative of Mexico noted that the resolution did not authorize the establishment of long-term

<sup>251</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to Article 41 of the Charter.

<sup>252</sup> The representative of the Syrian Arab Republic did not make a statement.

<sup>253</sup> S/2003/556.

<sup>254</sup> The representative of the Syrian Arab Republic did not participate in the voting. At the 4762nd meeting of the Council, also on 22 May 2003, he stated that he would have voted in favour of the draft resolution if granted more time, despite the fact that it failed to rise to the expectations and aspirations of the Iraqi people (S/PV.4762, p. 20). See also chap. IV, part IV, sect. B, case 4.

<sup>255</sup> S/PV.4761, pp. 3-4.



commitments that would alienate the sovereignty of the people of Iraq over the petroleum resources.<sup>256</sup> The representative of the Russian Federation, affirming that his delegation was looking forward to receiving information on efforts to find the weapons of mass destruction programmes, expressed hope that the resolution would make it possible to reach closure on that issue.<sup>257</sup> The representative of Pakistan stated that while his delegation had agreed to the delegation of certain powers by the Council to the occupying Powers, represented by the Authority, he expected that the responsibilities entrusted would be exercised in the interest of the people of Iraq.<sup>258</sup>

**Decision of 3 July 2003 (4783rd meeting):  
resolution 1490 (2003)**

At its 4768th meeting, on 5 June 2003, the Council included in its agenda a note by the Secretary-General dated 10 May 2003;<sup>259</sup> transmitting the thirteenth quarterly report of the Executive Chairman of UNMOVIC, which provided an update on the work of UNMOVIC leading up to the evacuation of inspectors and noted that, despite the alteration of the situation resulting from the occupation of Iraq, UNMOVIC was still a subsidiary body of the Council until another decision was taken. The Council was briefed by the Executive Chairman of UNMOVIC, who noted that, while proscribed items remained unaccounted for, UNMOVIC had not found any evidence during the inspections of the continuation or resumption of programmes of weapons of mass destruction or significant quantities of proscribed items.<sup>260</sup>

At its 4783rd meeting, on 3 July 2003, the Council included in its agenda the report of the Secretary-General on the activities of the United Nations Iraq-Kuwait Observation Mission (UNIKOM)<sup>261</sup> following the suspension of its mandate owing to the deteriorating security situation in the demilitarized zone prior to the invasion of Iraq by coalition forces on 20 March 2003.

In his report, the Secretary-General noted that the Government of Kuwait had informed him that the delicate situation regarding the border between Kuwait and Iraq was ample reason for the maintenance of the mandate until such time as the situation became clearer and peace and security were restored to the area. In the altered conditions, he recommended that the residual peacekeeping presence of UNIKOM be maintained for a final three months, until 6 October 2003, when the Mission would be closed. During that period UNIKOM would, *inter alia*, scale down its military presence to a minimum, and make appropriate arrangements for handing over its activities in assisting humanitarian operations to other entities remaining in the area.

At the meeting, the President (Spain) drew the attention of the Council to a draft resolution;<sup>262</sup> it was put to the vote and adopted unanimously and without debate as resolution 1490 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to continue the mandate of UNIKOM for a final period until 6 October 2003;

Directed the Secretary-General to negotiate the transfer of the Mission's non-removable property and of those assets that could not be disposed otherwise to the States of Kuwait and Iraq, as appropriate;

Decided to end the demilitarized zone extending 10 kilometres into Iraq and 5 kilometres into Kuwait from the Iraq-Kuwait border at the end of the Mission's mandate on 6 October 2003;

Requested the Secretary-General to report to the Council on the completion of the Mission's mandate.

**Decision of 14 August 2003 (4808th meeting):  
resolution 1500 (2003)**

At its 4791st meeting, on 22 July 2003, the Council included in its agenda the report of the Secretary-General dated 17 July 2003 on the work of his Special Representative with respect to the implementation of resolution 1483 (2003).<sup>263</sup> In his report, the Secretary-General recommended an overall approach and structure for the United Nations presence in Iraq for the remainder of 2003. He noted that the Special Representative had met people representing a large and diverse spectrum of society. The response

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<sup>256</sup> *Ibid.*, p. 7.

<sup>257</sup> *Ibid.*, p. 8.

<sup>258</sup> *Ibid.*, p. 11.

<sup>259</sup> S/2003/580; the report was submitted pursuant to paragraph 12 of resolution 1284 (1999).

<sup>260</sup> S/PV.4768, pp. 2-4.

<sup>261</sup> S/2003/656.

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<sup>262</sup> S/2003/684.

<sup>263</sup> S/2003/715, submitted pursuant to paragraph 24 of resolution 1483 (2003).

had included an overwhelming demand for the early restoration of sovereignty, as well as concerns over the process of de-Baathification, the dissolution of the army of Iraq; the lack of improvement in daily living conditions and the precarious security situation. The unanimous concern among political groups was the urgent establishment of an Iraqi provisional government, by an Iraqi process, which could help to address some of the immediate practical challenges. The Secretary-General also laid out the proposal for a United Nations Assistance Mission for Iraq (UNAMI), which would incorporate the Office of the Special Representative, as well as other offices. In conclusion, he stressed that, if some of the concerns that had been relayed were to be allayed, it was important that the people of Iraq be able to set a clear timetable leading to the full restoration of sovereignty and the end of military occupation.

At the meeting, the Council heard briefings by the Secretary-General, the Special Representative of the Secretary-General for Iraq, and the head of the delegation for the Governing Council of Iraq, following which all members of the Council made statements.

The Secretary-General welcomed the formation of the Governing Council as a first step towards restoring the sovereignty of Iraq. He also stressed that the establishment of the Governing Council needed to be followed by a constitutional process run by the people of Iraq.<sup>264</sup>

In his briefing, the Special Representative of the Secretary-General for Iraq provided an overview of the situation in Iraq and the initial work of the United Nations. He stressed that the Governing Council possessed credible executive authority and that it was broadly representative of the various constituencies in Iraq. However, the Governing Council would need to be empowered to deliver tangible improvements while not becoming an object of criticism due to the legal obligations of the Coalition Provisional Authority. He noted that, while the United Nations did not have a clear mandate, the situation in Iraq was exceptional and the lack of clarity allowed for the United Nations role in Iraq to develop as the situation evolved. Some of the key areas in the programme of action would be the reform of key institutions and the establishment of electoral and constitutional processes. Nonetheless, it

was essential that the population of Iraq set the agenda and that the United Nations support its implementation as required.<sup>265</sup>

The head of the delegation of the Governing Council of Iraq maintained that Iraq had rid itself of the “oppressive tyrannical regime” that had oppressed the Iraqi people, and that, despite the ongoing suffering due to current security and living conditions, the people of Iraq had “a taste of freedom”. He noted that resolution 1483 (2003) did not set out in “a clear and precise manner” the function of the interim administration, which allowed for expansion of the powers of the Governing Council so all aspects of government could be covered. The primary goal was to put together an elected Government under a constitution to be endorsed in free elections. The draft constitution would be examined by a constitutional congress representing all political, social and religious groups. He suggested that the United Nations could help draw up legislation to prepare for the congress and subsequent elections. He indicated that some of the pressing issues to be addressed by the Governing Council were the need to appoint ministers and personnel not implicated in the previous regime; reopen the embassies of Iraq abroad and appoint representatives to international organizations, including the United Nations; establish institutions that could rebuild the national police and army; re-examine legislation enacted by the previous regime; consider special tribunals for those who had committed criminal acts under the previous regime; and revive the national economy. He also noted that the Governing Council had decided to train and employ 30,000 police officers, establish at least 1,500 schools and clinics throughout Iraq, pay back salaries and start a programme to reabsorb more than 200,000 demobilized soldiers into civilian employment.<sup>266</sup>

Most speakers expressed support for the efforts of the Special Representative and welcomed the formation of the Governing Council. They stressed the importance of quickly establishing an elected national Government and fully restoring sovereignty, on the basis of a clear timetable. They also expressed deep concern with the security situation in Iraq, as well as the lack of basic services such as electricity and fuel. A number of speakers called for an active and effective

<sup>264</sup> S/PV.4791, pp. 2-3.

<sup>265</sup> *Ibid.*, pp. 3-9.

<sup>266</sup> *Ibid.*, pp. 9-11.

role for the United Nations in Iraq and supported the creation of UNAMI. Several speakers also highlighted the importance of the regional dimension and of the need to work with the neighbours of Iraq on reconstruction. Most speakers also drew attention to the importance of establishing the rule of law and respect for human rights in Iraq.

The representative of France noted that resolution 1483 (2003) remained an imperfect and limited framework and underlined the need for a genuine international partnership as prolonged instability in Iraq would be harmful to all.<sup>267</sup>

The representative of the United States expressed support for the Governing Council, and opined that the fragile security situation was a manifestation of the minority of those who opposed political freedom. Acknowledging that the security situation was complex, he stated that the approach of the coalition was multifaceted, including enabling Iraqis to ultimately provide for their own security. He informed the Council that the coalition was moving quickly to establish police forces, and would shortly begin recruiting and training the first members of the new Iraqi army.<sup>268</sup>

The representative of Cameroon maintained that the Security Council would need to have informal discussions on the best way for the United Nations to make a decisive contribution to solving the issue of insecurity. He commented that although UNAMI would not have a military or police component, it would be desirable for the approach selected not to close the door to such a possibility.<sup>269</sup>

The representative of Pakistan noted that in promoting security, operations needed to be conducted in ways that were sensitive to the welfare and sentiments of the people of Iraq and to their cultural and religious values.<sup>270</sup>

At its 4808th meeting,<sup>271</sup> on 14 August 2003, the Council again included in its agenda the report of the Secretary-General dated 17 July 2003.<sup>272</sup> Statements

were made by the representatives of China, France, Mexico, Pakistan, the Russian Federation, Spain, the Syrian Arab Republic, the United Kingdom and the United States.

The President (Syrian Arab Republic) drew attention to a draft resolution submitted by Angola, Bulgaria, Cameroon, Chile, Guinea, Spain, the United Kingdom and the United States;<sup>273</sup> it was put to the vote and adopted by 14 votes, with 1 abstention (Syrian Arab Republic), as resolution 1500 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Welcomed the establishment of the broadly representative Governing Council of Iraq on 13 July 2003, as an important step towards the formation by the people of Iraq of an internationally recognized, representative government that would exercise the sovereignty of Iraq;

Decided to establish UNAMI to support the Secretary-General in the fulfilment of his mandate under resolution 1483 (2003) in accordance with the structure and responsibilities set out in his report of 15 July 2003, for an initial period of 12 months.

Following the adoption of the resolution, most speakers welcomed the establishment of UNAMI and reiterated their support for the Governing Council of Iraq. Several speakers requested that in the future non-permanent members be given more time to consider draft resolutions and that there be more transparent and comprehensive consultations, particularly on important topics such as Iraq.<sup>274</sup>

The representative of France reaffirmed the conviction that the success of the reconstruction of Iraq required the United Nations to play a dynamic role in the post-conflict management of the country, but resolution 1500 (2003) was not intended to do that. In particular, he reiterated the need for a timetable to be established with regard to the sequence of the political transition.<sup>275</sup>

The representative of Mexico noted that welcoming the establishment of the Governing Council did not constitute legal recognition, “nor should it be interpreted as endorsement”, as the Governing Council

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<sup>267</sup> *Ibid.*, pp. 14-15.

<sup>268</sup> *Ibid.*, pp. 18-20.

<sup>269</sup> *Ibid.*, p. 23.

<sup>270</sup> *Ibid.*, p. 24.

<sup>271</sup> For more information on the discussion at this meeting, see chap. XII, part I, sect. A, case 3, with regard to Article 1 (2) of the Charter.

<sup>272</sup> S/2003/715.

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<sup>273</sup> S/2003/812.

<sup>274</sup> S/PV.4808, p. 4 (Pakistan, Spain); pp. 4-5 (Germany); p. 5 (Mexico); and pp. 6-7 (Syrian Arab Republic).

<sup>275</sup> *Ibid.*, p. 2.

was still under the authority of the occupying Powers.<sup>276</sup>

The representative of the Syrian Arab Republic explained that he had abstained in the vote to reflect the Arab position endorsed by the Foreign Ministers of Arab States members of the Arab follow-up committee that had met in Cairo on 5 August 2003 on the question of Iraq. At that meeting, the Foreign Ministers had stressed that the Governing Council would gain credibility from the fact that it was paving the way for the formation of a national Government that represented the full spectrum of society in Iraq. He expressed regret that the sponsors of the resolution had not taken into account a number of important recommendations made by the Secretary-General in his report.<sup>277</sup>

**Decision of 16 October 2003 (4844th meeting):  
resolution 1511 (2003)**

At its 4812th meeting, on 21 August 2003, the Council heard briefings by the representatives of the United States and the United Kingdom; statements were made by all other members of the Council.

In his briefing, the representative of the United States expressed sympathy to the victims of the attack on the United Nations headquarters in Iraq and for the death of Sergio Vieira de Mello, the Special Representative of the Secretary-General in Iraq. He noted that, while the identities of the attackers was not known, their motives were likely to restore the Saddam regime and the Baath party, to terrify those who wanted to work with the international community and to prevent the emergence of a new Iraq. He then provided an overview of the situation in Iraq and the activities of the Coalition Provisional Authority. He highlighted several important markers of progress including projects to improve economic conditions, develop capacity to foil the saboteurs who were targeting electrical infrastructure, the oil industry and other key infrastructure; promote a secure environment; and start training the new army.<sup>278</sup>

The representative of the United Kingdom also began by expressing his shock at the attack and sympathy of the victims, including Sergio Vieira de Mello. In his briefing, he focused on humanitarian

activities, the contributions made by the Coalition Provisional Authority to efforts to establish local institutions for representative governance and human rights and legal and judicial reform. He stated that the food distribution systems had been fully restored, but there was a need to look beyond the end of the oil-for-food programme. He also noted the progress made in restoring health care services, the education system and the water sector.<sup>279</sup>

All representatives expressed their shock at the attack against the United Nations in Baghdad on 19 August, and their condolences for the deaths of the Special Representative of the Secretary-General and other United Nations and local employees. Most speakers emphasized that the terrorist attack showed that security remained the priority problem in Iraq, and called for a review of security measures for United Nations staff both in Iraq and elsewhere. Several speakers called for the process of restoring sovereignty to be accelerated and the strengthening of a local role for the Iraqi people.

The representatives of France and Mexico noted that the restoration of security and public order were the responsibility of the occupying Powers pursuant to international law, particularly the Geneva Conventions.<sup>280</sup>

The representative of France recalled that the Council still did not have any details on weapons of mass destruction that the regime of Saddam Hussein was said to have held. He underlined the importance of reconsidering the mandate of UNMOVIC within a reasonable time. He maintained that the joint mobilization of the entire international community was a basic requirement for the successful reconstruction of Iraq. He also commented that the International Advisory and Monitoring Board of the Development Fund for Iraq, a key instrument provided for in resolution 1483 (2003) to ensure ongoing international monitoring of the use of the resources of Iraq, needed to be established without delay. That would be possible only if the coalition authorities acknowledged that they could not succeed alone and if they played their role in a completely transparent manner. He stressed that sharing burdens and responsibilities also meant sharing information and authority.<sup>281</sup> The representative of

<sup>276</sup> Ibid., p. 5.

<sup>277</sup> Ibid., pp. 6-7.

<sup>278</sup> S/PV.4812, pp. 2-3.

<sup>279</sup> Ibid., pp. 4-5.

<sup>280</sup> Ibid., p. 6 (France); and p. 16 (Mexico).

<sup>281</sup> Ibid., pp. 6-7.

Cameroon also appealed to the Coalition to be more transparent, and to clarify its activities and purposes in Iraq.<sup>282</sup> The representative of Angola commented that the Coalition Powers had no option but to carry on with their task, no matter the price they would be obliged to pay and the difficulties they would encounter “on that hard, rocky and treacherous road”.<sup>283</sup>

At the 4844th meeting,<sup>284</sup> on 16 October 2003, statements were made by the Secretary-General, the representatives of Bulgaria, Chile, China, France, Germany, Pakistan, the Russian Federation, Spain, the United Kingdom and the United States. The President (United States) drew attention to a draft resolution submitted by Cameroon, Spain, the United Kingdom and the United States;<sup>285</sup> it was adopted unanimously as resolution 1511 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Authorized a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of UNAMI, the Governing Council and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure;

Urged Member States to contribute assistance under this United Nations mandate, including military forces, to the multinational force referred to above;

Decided that the Council would review the requirements and mission of the multinational force referred to above not later than one year from the date of adoption of the resolution, and that in any case the mandate of the force should expire upon the completion of the political process as described in paragraphs 4 to 7 and 10 of the resolution, and expressed readiness to consider on that occasion any future need for the continuation of the multinational force, taking into account the views of an internationally recognized, representative government of Iraq;

Urged Member States and international and regional organizations to support the Iraq reconstruction effort initiated at the United Nations technical consultations of 24 June 2003, including through substantial pledges at the international donors conference to be held in Madrid on 23 and 24 October 2003;

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<sup>282</sup> *Ibid.*, p. 13.

<sup>283</sup> *Ibid.*, pp. 16-17.

<sup>284</sup> For more information on the discussion at this meeting, see chap. XII, part I, sect. A, case 3, with regard to Article 1 (2) of the Charter.

<sup>285</sup> S/2003/992.

Called upon Member States and concerned organizations to help to meet the needs of the Iraqi people by providing resources necessary for the rehabilitation and reconstruction of Iraq’s economic infrastructure.

The Secretary-General stated that he would do his utmost to implement the mandate established by the Council bearing in mind the constraints on building up the required capacity and his obligations for the safety of United Nations staff. He expressed gratitude to the Council for the flexibility the resolution gave him. He reiterated that, despite having only a skeletal presence on the ground, the United Nations was determined to help the people of Iraq, from both inside and outside the country, primarily in providing humanitarian assistance.<sup>286</sup>

Most speakers welcomed the adoption of the resolution as an important step towards the return of sovereignty for Iraq. They also noted the importance of its unanimous adoption.

The representative of the Russian Federation pointed to several positive aspects of the resolution, including the elaboration of a specific timetable for the political process and giving the Secretary-General the right to take decisions regarding timetable and modalities for forming the membership of a constitutional conference and the holding of elections. He also noted that the mandate for the multinational force was subordinate to the task of promoting the restoration of sovereignty, and once that was restored, only if a “legitimately elected Government of Iraq” requested security assistance would the Council consider a request to extend the mandate. The resolution also called for the swift establishment of the International Advisory and Monitoring Board, which had been delayed too long without any convincing reason. Nonetheless, he stressed that the resolution was not ideal and the result was a compromise.<sup>287</sup>

The representative of Germany stated that the integration of the amendments proposed by Germany, France and the Russian Federation could have led to a better resolution. He deplored the lack of a clear signal that the transfer of sovereignty to the Iraqis would be accelerated, and suggested that the role of the United Nations and the Secretary-General could have been strengthened. Finally, he had also wanted to see clearer guidelines with regard to timing. As a result, he noted

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<sup>286</sup> S/PV.4844, p. 2.

<sup>287</sup> *Ibid.*, p. 3.

that Germany could not envisage any military commitment.<sup>288</sup>

The representative of the United Kingdom declared that it was quite right that the resolution did not prescribe artificial schedules for the transfer of power. Instead, it set a deadline of two months by which time the Governing Council needed to provide a timeline and the programme leading to a constitution and democratic elections, and it engaged the Council in that process.<sup>289</sup>

The representative of China agreed that the text of the resolution was a marked improvement over the original draft presented by the United States and would have a positive impact on accelerating the transfer of power from the Coalition Provisional Authority to the Iraqi people and increase transparency in the economic reconstruction of Iraq. Nonetheless, his delegation was not fully satisfied with its contents.<sup>290</sup>

The representative of Pakistan explained that his delegation had supported the resolution because “despite the complexity and contradictions of parts of the text”, its fundamental objectives were the restoration of sovereignty, the improvement of the security environment and the promotion of economic reconstruction. His delegation would have preferred a clearer process for the early restoration of sovereignty. He noted that the political process would have gained in credibility if it had been conducted under the authority and auspices of the United Nations. Regarding the multinational force, he recalled that Pakistan had advocated that it have an identity separate and distinct from the occupation forces and that its deployment be a result of an invitation from the people of Iraq, with the concurrence of the other States in the region. As those considerations were not reflected in the resolution, he stressed that Pakistan would not be able to contribute troops to the multinational force in Iraq.<sup>291</sup>

The representative of the Syrian Arab Republic stated that although the resolution did not meet all of his delegation’s expectations, he hoped that it would represent a step along the road to freedom and independence for Iraq and that the commitments set out

in the resolution would be fulfilled in order to accelerate the transfer of sovereignty.<sup>292</sup>

The representative of the United States noted that the resolution confirmed Iraqi leadership by establishing a political horizon for the transfer of power and made clear that the interim leadership embodied Iraqi sovereignty during the transition. He maintained that his Government’s careful consideration of the text during the previous weeks reflected its commitment to a multilateral approach.<sup>293</sup>

**Decision of 20 November 2003  
(4868th meeting): statement by the President**

At its 4851st meeting, on 28 October 2008, the Council heard a briefing by the Executive Director of the Office of the Iraq Programme, following which statements were made by all members of the Council.

In his briefing, the Executive Director stressed that the United Nations would terminate the oil-for-food programme on 21 November 2003, as called for in resolution 1483 (2003), and would continue to facilitate a smooth handover to the Coalition Provisional Authority, in close coordination with the relevant Iraqi authorities. Nonetheless, he stressed that handing over a multi-billion dollar programme of such complexity in the mandated six-month period would have been difficult under any circumstances, but under the conditions of insecurity and reduced on-site staffing would require a degree of realism and flexibility from all parties concerned. He set out the actions identified and taken to meet the goals that had been set and listed the activities that remained to be undertaken by the United Nations, the Authority and the relevant Iraqi authorities.<sup>294</sup>

Most Council members welcomed the briefing and stressed the importance of maintaining a high-level of transparency and continuity in the transition of the programme. A number of members expressed concern at the pace of work and made technical suggestions for improving the process.

Several speakers emphasized the importance of identifying and amending all of the priority contracts by the deadline,<sup>295</sup> while other representatives stressed

<sup>288</sup> Ibid., pp. 3-4.

<sup>289</sup> Ibid., pp. 4-5.

<sup>290</sup> Ibid., pp. 5-6.

<sup>291</sup> Ibid., pp. 6-8.

<sup>292</sup> Ibid., p. 8.

<sup>293</sup> Ibid., pp. 9-10.

<sup>294</sup> S/PV.4851, pp. 2-9.

<sup>295</sup> Ibid., p. 11 (Bulgaria); p. 12 (Russian Federation); p. 16

the need to be flexible with the deadlines as it seemed unlikely that all of the work would be completed before then, negatively affecting suppliers who had not had their contracts amended through no fault of their own.<sup>296</sup>

A number of representatives observed that, to avoid delivery disruptions, the Coalition Provisional Authority needed to come forward with clear information on how the programme would be continued as soon as possible.<sup>297</sup> The representative of France suggested that as a practical solution, the United Nations agencies, with the agreement of the Coalition Provisional Authority and the relevant Iraqi authorities, could continue the process for a few more weeks. This approach would not be an extension of the programme, but simply a technical arrangement between the Authority and the agencies that would not contradict the terms of resolution 1483 (2003).<sup>298</sup> The representative of the Russian Federation declared that the entire issue needed to be reviewed regularly in the Council and the sanctions Committee.<sup>299</sup>

The representative of the United Kingdom stressed that Coalition and Iraqi ministry officials were engaged in developing an effective transition strategy to ensure the efficient delivery of goods as well as adequate warehousing and inventory management and that measures were in hand for the uninterrupted authentication of deliveries after 21 November. He also confirmed that the Coalition Provisional Authority would continue to honour its existing commitment to support the fulfilment of all prioritized contracts.<sup>300</sup> The representative of the United States said that his Government continued to devote significant resources to ensuring a smooth transition of the oil-for-food programme after 21 November.<sup>301</sup>

At its 4868th meeting, on 20 November 2003, the Council heard a statement by the Secretary-General. In his statement, the Secretary-General noted that the Council was meeting to mark the completion of the oil-for-food programme, one of “the largest, most complex

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(Chile); and p. 17 (Cameroon).

<sup>296</sup> Ibid., p. 10 (Germany); p. 15 (Syrian Arab Republic); and p. 16 (Mexico).

<sup>297</sup> Ibid., p. 10 (Germany); p. 11 (Spain); and p. 12 (Russian Federation).

<sup>298</sup> Ibid., p. 19.

<sup>299</sup> Ibid., p. 12.

<sup>300</sup> Ibid., p. 13.

<sup>301</sup> Ibid., pp. 20-21.

and most unusual tasks” ever entrusted to the Secretariat. He remarked that in its seven years of operation, the oil-for-food programme had been required to meet an “almost impossible series of challenges”, using some \$46 billion of Iraqi export earnings on behalf of the people of Iraq and delivering food rations sufficient to feed all 27 million residents of Iraq and reducing the malnutrition rate among children by 50 per cent. He stated that all of the responsibilities, as well as the remaining funds and assets, would be handed over to the Coalition Provisional Authority on the next day. However, the actual delivery of items would continue into the next year and any unspent or undisbursed amounts would be transferred to the Development Fund for Iraq after the programme closed.<sup>302</sup>

At the same meeting, the President (Angola) made a statement on behalf of the Council,<sup>303</sup> by which the Council, inter alia:

Underlined the exceptionally important role of the Iraq Programme in providing humanitarian assistance to the people of Iraq under the regime of sanctions imposed by the Security Council;

Emphasized the need for continued international efforts aimed at the reconstruction of Iraq and, in this context, took note with satisfaction of the statements made by the representatives of the United States and the United Kingdom on the measures which the Coalition Provisional Authority intended to take in order to continue the payment mechanisms and the deliveries under the Programme;

Recognized the important role of the United Nations in coordinating the termination of the Programme, including the transfer at the earliest possible time of all surplus funds in the escrow accounts to the Development Fund for Iraq;

Recalled the vital role foreseen for the United Nations in resolutions 1483 (2003), 1500 (2003) and 1511 (2003), as circumstances permitted, inter alia, in the areas of humanitarian assistance, facilitation of economic rehabilitation and reconstruction.

#### **Decision of 24 November 2003 (4872nd meeting): resolution 1518 (2003)**

At its 4869th meeting, on 21 November 2003, the Council heard briefings by the representatives of the United States and United Kingdom on the situation in Iraq; all the other members of the Council made statements.

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<sup>302</sup> S/PV.4868, pp. 2-4.

<sup>303</sup> S/PRST/2003/24.

The representative of the United States noted that, despite the continuing violence, Iraqis were taking on increasing responsibility for their security and were working to rebuild a strong Iraqi police force and army. Iraqis were also continuing to take over administrative responsibilities and to provide for the delivery of basic services. He stated that the announcement by the Governing Council of Iraq on 15 November of an agreement on political process had been a dramatic step forward. Under that process, a transitional national assembly would be formed to elect an executive branch, select ministers and serve as a legislative body. By 30 June 2004, this new transitional administration would assume full responsibility for governing Iraq, and the Coalition Provisional Authority and the Governing Council would be dissolved. There was also a timeline for the direct election of a constitutional convention no later than 15 March 2005, to draft a permanent constitution for Iraq, which would be ratified through a popular referendum. A new Iraqi Government would be elected under that constitution no later than 31 December 2005. Stressing the importance of security, he observed that despite the killings, bombings and other attacks witnessed in the media, much of Iraq was calm and the strategy of enabling Iraqis to assume responsibility for their own security was achieving success, with major increases in the number of police and military. On the question of the disarmament of Iraq, he informed the Council that on 16 June the Iraq Survey Group, which included personnel from the United States, the United Kingdom and Australia, as well as experts from the former Special Commission, had assumed responsibility of searching and eliminating Iraqi weapons of mass destruction, prohibited missile-delivery systems and related infrastructure. The Survey Group had been investigating suspect sites and in October issued a report that detailed the numerous violations by Iraq of its mandated obligations under Council resolutions. Those included deliberate efforts to conceal equipment and programme activities related to weapons of mass destruction from the United Nations during the inspections beginning late in 2002.<sup>304</sup>

The representative of the United Kingdom briefed the Council on the provision of basic services, economic and reconstruction issues and human rights and justice. He stated that the Coalition Provisional Authority had worked to ensure the rapid restoration of

distribution networks and basic services. He further outlined the improvements and repairs being done on the power grid, the airport, mobile phone network, hospitals and schools. He also noted that unemployment remained a major challenge in Iraq and reforms were being initiated to transition Iraq to a liberalized market-based economy. He commented on the newly formed Ministry of Human Rights, stressing that those responsible for atrocities needed to be brought before an Iraqi-led process of justice. More generally, he noted that a central criminal court was up and running and the penal code had been amended to include new rights, including the absolute exclusion of evidence obtained through torture.<sup>305</sup>

Following the briefings, most members of the Council welcomed the new approach contained in the agreement between the Governing Council and the Coalition Provisional Authority signed in Baghdad on 15 November, and stressed the importance of a rapid restoration of Iraqi sovereignty and the establishment of a fully responsible Government. While welcoming the progress made in the restoration of basic services and other areas, Council members expressed concern that the continuation of violence and the lack of security threatened any gains. Most members also stressed that the United Nations needed to have a strong role in Iraq and expressed hope that international staff would be able to return as the situation improved. A number of representatives also recalled the importance of the involvement of Iraq's neighbours.

The representatives of France, Germany and the Russian Federation stated that the idea of a national conference, under United Nations auspices, which would bring together all Iraqi groups, as well as countries from the region, should be carefully considered.<sup>306</sup> The representative of the Russian Federation added that his Government was not ruling out holding the conference outside of Iraq, and suggested that the conference could be used to form the transitional Government of Iraq, which could, together with the Secretary-General and his representatives, elaborate specific steps in order to implement the political process.<sup>307</sup> The representative of Mexico stressed that there needed to be an international follow-

<sup>304</sup> S/PV.4869, pp. 2-5.

<sup>305</sup> *Ibid.*, pp. 5-8.

<sup>306</sup> *Ibid.*, p. 9 (France); p. 10 (Germany); and p. 12 (Russian Federation).

<sup>307</sup> *Ibid.*, pp. 12-13.



up mechanism to strengthen legitimacy and give transparency to the process of the election of a Transitional National Assembly.<sup>308</sup>

The representative of Germany noted that the plan for creating an interim Government still needed to be clarified and evaluated, and that there was a need to examine how the legitimacy of the process of transferring sovereignty could be strengthened.<sup>309</sup>

The representative of France stated that once a fully responsible transitional Government was established, the Iraqi people would be able to define permanent constitutional arrangements and organize elections at their own pace. He underlined that it was essential that the United Nations be allowed, with full independence, to lend its legitimacy and support to each stage of the transition in Iraq. Responding to the concerns expressed by the Secretary-General regarding the security of United Nations staff, he proposed that initially a special envoy of the Secretary-General be appointed who would not reside permanently in Iraq, but would help to engage Iraqis and countries in the region in the transition process.<sup>310</sup>

The representative of the Russian Federation asked why the agreement of 15 November had not been transmitted officially to the Security Council, and expressed disappointment that there was no mention in it of the United Nations. He stressed that in order to successfully resolve the Iraq problem, the active participation of the international community was necessary. On the question of disarmament, he also wondered why UNMOVIC and IAEA had not tried to obtain more information about the efforts of the Coalition and why the report prepared in October by a survey group could not be sent to UNMOVIC and IAEA experts. On the question of the timeline for the elections, he expressed the belief that it would be better if the date of the election for the constitutional convention and the date of the general election for the permanent Government were decided on by the Transitional Government and the Transitional National Assembly. He also expressed concern that the current timeline was a bit of a stretch, particularly the expectation that the constitutional convention would be held on 15 March and the general elections by the end of 2005. He also argued that there were certain

contradictions between parts of the agreement with respect to the proposal to form organizational committees that could affect future elections. He noted that the agreement stated that the Governing Council of Iraq would not play any formal role in selecting members of the National Assembly, but it also stated that the Governing Council would nominate five of the representatives of each provincial organizational committee. That meant that it would be playing a very real role and might lead to a situation where certain segments of the population were left out of the process.<sup>311</sup>

The representative of the Syrian Arab Republic stressed that any measure that might lead to a division of Iraq needed to be rejected, and Iraq's sovereignty, independence and territorial integrity respected.<sup>312</sup>

Responding to a question from the Russian Federation on the proposal to conclude, by the end of March 2004, an agreement on security between the Coalition and the Governing Council, including on the status of forces, the representative of the United Kingdom noted that the new force would not be the multinational force envisaged in resolution 1511 (2003), but would be something else, operating at the invitation of an Iraqi Government. He further expressed hope that it would be recognized in some way by the Council.<sup>313</sup>

At the 4872nd meeting,<sup>314</sup> on 24 November 2003, the President (Angola) drew the attention of the Council to a draft resolution submitted by Bulgaria, Chile, Guinea, Spain, the United Kingdom and the United States.<sup>315</sup> Statements were made by the representatives of France, Germany, Mexico and the Russian Federation.<sup>316</sup>

The representative of France noted that the draft resolution created a new committee to take over from the Committee established by resolution 661 (1990) and ensure follow-up of the implementation of freezes and transfers of the financial assets of the Government

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<sup>308</sup> Ibid., p. 17.

<sup>309</sup> Ibid., p. 9.

<sup>310</sup> Ibid., pp. 8-9.

<sup>311</sup> Ibid., pp. 12-13.

<sup>312</sup> Ibid., p. 16.

<sup>313</sup> Ibid., p. 23.

<sup>314</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to Article 41 of the Charter.

<sup>315</sup> S/2003/1107.

<sup>316</sup> The Secretary-General was present at the meeting but did not make a statement.

of Saddam Hussein and of high officials in his regime, as provided for in resolution 1483 (2003). Such a provision was particularly important for ensuring the continuity of the monitoring of the implementation of financial sanctions.<sup>317</sup>

A number of speakers emphasized that the new Committee should also be entrusted with monitoring for any possible violations of the arms embargo to Iraq, which remained fully in force under resolution 1483 (2003). They also stated that in the meantime it would be up to the Council to supervise the arms embargo.<sup>318</sup> The representative of the Russian Federation asked why the authors of the resolution had refused to entrust the Committee with monitoring the embargo at a time when the Council regularly heard statements on the illegal flow of arms into Iraq.<sup>319</sup> The representatives of France and Germany concurred that there were strong reasons of principle for wanting the Committee to monitor compliance.<sup>320</sup>

The representative of Mexico noted that his delegation had joined the consensus based on the understanding that the adoption of the guidelines and definitions for the implementation of the provisions of paragraphs 19 to 23 of resolution 1483 (2003), stipulated in operative paragraph 2 of the draft resolution, would be done on Mexican territory in accordance with Mexican law and in strict compliance with the principle of legality.<sup>321</sup>

The draft resolution was then put to the vote and adopted unanimously as resolution 1518 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to establish a Committee to continue to identify individuals and entities referred in paragraph 19 of resolution 1483 (2003), including by updating the list of individuals and entities already identified by the Committee established by resolution 661 (1990), and to report on its work to the Council;

Decided to adopt the guidelines and definitions previously agreed by the Committee established by resolution 661 (1990) to implement the provisions of paragraphs 19 and 23 of resolution 1483 (2003), and decided that the guidelines and definitions could be amended by the Committee in the light of further considerations;

<sup>317</sup> S/PV.4872, p. 3.

<sup>318</sup> *Ibid.*, p. 2 (Russian Federation); pp. 2-3 (Germany); and p. 3 (France, Mexico).

<sup>319</sup> *Ibid.*, p. 2.

<sup>320</sup> *Ibid.*, pp. 2-3 (Germany); and p. 3 (France).

<sup>321</sup> *Ibid.*, p. 3.

Decided that the mandate of the Committee would be kept under review and to consider the possible authorization of the additional task of observing fulfilment by Member States of their obligations under paragraph 10 of resolution 1483 (2003);

Decided to remain seized of the matter.

### **Deliberations of 16 December 2003 (4883rd meeting)**

On 5 December 2003, the Secretary-General submitted a report on the situation in Iraq,<sup>322</sup> in which he described the key developments in Iraq from 17 July to 19 August 2003; set out the events of 19 August 2003, when the United Nations headquarters in Baghdad was attacked and the actions taken by the United Nations in the aftermath; detailed the United Nations relief and reconstruction planning activities that had continued; summarized key political developments in Iraq since 19 August; and outlined a plan of action with regard to security, the deployment of UNAMI and the conduct of United Nations relief, recovery and reconstruction activities in Iraq. In laying down the way forward for the United Nations in Iraq, he stated that the fact that a sovereign transitional Government of Iraq was to be established by 30 June 2004 required him to consider which United Nations activities were appropriate immediately and which needed to wait for the new Government. He stressed that humanitarian assistance and emergency rehabilitation could not wait. In addition, as civil society had an essential role to play in the political dialogue and the United Nations had a great deal of experience in supporting civil society, ways needed to be found for UNAMI and the agencies to play such a role as quickly as possible. However, on the political front it had yet to be established what role, if any, Iraqis and the Coalition Provisional Authority wanted the United Nations to play in the formation of the Transitional National Assembly. He noted that in a letter dated 10 November the President of the Governing Council had urged him to appoint a new Special Representative for Iraq, who would not be resident but would go to Iraq for consultations as needed, and that he intended to do so. He also informed the Council that he had established an advisory group on Iraq, composed of neighbouring countries, Egypt and members of the Security Council,

<sup>322</sup> S/2003/1149, submitted pursuant to paragraph 24 of resolution 1483 (2003) and paragraph 12 of resolution 1511 (2003).

for the purpose of initiating an informal dialogue to develop a common basis for approaching the situation. On the subject of UNAMI, he indicated that it was impossible to predict when circumstances would permit its full deployment to Iraq. Therefore, he had decided to start an incremental process of establishing UNAMI by setting up the core of the Mission outside of Iraq, with the bulk of UNAMI staff located in Nicosia. Additional staff would be deployed to a small office in Amman and to other locations in the region. He envisaged a core team of around 40 international staff in total by early 2004, which would increase to 60, once the new Special Representative had been appointed. In conclusion, he noted that, while real progress had been made in many areas, including the advancement of basic human rights, the dangers posed by insurgents were real. He listed several steps that could be taken to deal with the insurgency, including the need to act on the recognition that the insecurity problem could not be solved through military means alone, but that required a political solution that made the political transition process more inclusive and empowered Iraqi institutions to take key decisions. He also stressed that intensified efforts by Coalition forces were needed to demonstrate that they were adhering strictly to international humanitarian law and human rights instruments even in the face of provocative terrorist attacks. In that connection, the use of lethal force by Coalition forces needed to be proportionate and discriminating in accordance with international humanitarian law, and all detainees needed to be protected in accordance with Iraqi law and the Geneva Conventions.

At its 4883rd meeting, on 16 December 2003, the Council included in its agenda the above-mentioned report of the Secretary-General.<sup>322</sup> The President (Bulgaria) also drew the attention of the Council to several documents.<sup>323</sup> At the meeting, the Council heard statements by the Secretary-General and the representative of Iraq.

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<sup>323</sup> Letter dated 2 December 2003 from the President of the Security Council to the representative of Iraq, acknowledging the receipt of a letter dated 24 November 2003 from the President of the Iraqi Governing Council, regarding the timetable agreed upon with the Coalition Provisional Authority in accordance with paragraph 7 of Security Council resolution 1511 (2003) (S/2003/1169); and letter dated 11 December 2003 from the interim President of the Iraqi Governing Council regarding that timetable (S/2003/1170).

The Secretary-General noted that the Council was meeting three days after the capture of Saddam Hussein by Coalition forces, which was an opportunity for a new beginning in the vital task of helping Iraqis to take control of their destiny. He stated that it was right that Hussein be held to account for past deeds through a procedure that met the highest international standards of due process. He reiterated that the task of restoring the effective exercise of sovereignty to Iraq was urgent, and while there might not be time to organize credible elections, it was essential that the process leading to the formation of a provisional Government be fully inclusive and transparent. He also underlined that much greater clarity was needed on what was expected of the United Nations, by Iraqis and by the Coalition, in terms of assistance to the political transition. He stressed that the end of the occupation and formation of a provisional Government would not bring about an end to insecurity, but a credible and inclusive transition offered the best hope of stability and the mobilization of Iraqis against the violence.<sup>324</sup>

The representative of Iraq welcomed the capture of Saddam Hussein, who would have to answer to the Iraqi people for his crimes against humanity, and thanked the Coalition for its role in delivering him into the hands of the people. He then presented the Council the timetable set out in the Agreement on Political Process signed on 15 November by the Governing Council and the Coalition Provisional Authority in accordance with paragraph 7 of resolution 1511 (2003). He stated that the plan spelled out the steps needed to rightfully restore full sovereignty to Iraq, ultimately in a new constitution. He observed that the Governing Council had unanimously agreed on the timetable and stressed that progress would continue to depend on the security situation. The representative underlined the need to see an expanded United Nations role in Iraq on many levels: humanitarian relief, capacity and nation-building, promoting sustainable development and advancing the electoral and political process. Therefore, he urged the appointment of a Special Representative and stressed that the help and expertise of the United Nations could not be effectively delivered from Cyprus or Amman. He underlined Iraq's willingness to help provide whatever security was required to see the United Nations return to Iraq. He also called upon the Members of the United Nations to look beyond their differences over the decision to go to

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<sup>324</sup> S/PV.4883, pp. 2-3.

war in Iraq and come together to forge an international consensus. Finally, he maintained that while Iraq was reaching out to its neighbours and the international community, his country insisted on playing a full part in any initiatives that concerned its future. He also strongly disagreed with those views that questioned the legitimacy of the present Iraqi authorities and argued that the Governing Council was “the most representative and democratic governing body in the region”. For that reason, members of the Council should be reaching out and engaging his Government to encourage their nascent democracy in “a region well known for its authoritarian rule”.<sup>325</sup>

**Decision of 18 December 2003 (4887th meeting): statement by the President**

At its 4887th meeting,<sup>326</sup> on 18 December 2003, the Council included in its agenda the report of the Secretary-General dated 9 December 2003 on the compliance by Iraq with its obligations regarding the repatriation and return of all Kuwaiti and third-country nationals, or their remains and all Kuwaiti property seized by Iraq.<sup>327</sup> In his report, the Secretary-General noted that, after years of denial by the previous Government of Iraq, the discovery of mass graves in Iraq containing the remains of Kuwaitis was a devastating development. He stressed that those responsible for the horrendous crimes, particularly those who had ordered the executions, needed to be brought to justice. He expressed regret that the Kuwaiti

archives and military equipment had not yet been returned, and trusted that the Governing Council, the Coalition Provisional Authority and the special group established by the United States would maintain their commitment to the search and return of Kuwaiti property. He concluded that there was further room for progress towards a satisfactory conclusion of the remaining humanitarian concerns of Kuwait and that more time and effort would be required before the questions could be settled. He also noted that Kuwait had requested that the mandate of the High-level Coordinator be extended in accordance with paragraph 14 of resolution 1284 (1999). Noting that he had previously suggested that the Council bring the Coordinator’s mandate to a close,<sup>328</sup> he stated that the Council would have to determine whether it would wish the mandate to continue.

At the same meeting, the Council invited the representative of Kuwait to participate in the discussion. The President (Bulgaria) then made a statement on behalf of the Council,<sup>329</sup> by which the Council, *inter alia*:

Strongly condemned the killing of Kuwaiti and third-country nationals by the previous Iraqi regime in violation of international law;

Stressed the importance of the work of the Coalition Provisional Authority, the International Committee of the Red Cross, the Tripartite Commission and its Technical Subcommittee, and called on all parties concerned to continue to work towards a satisfactory solution to all of the outstanding humanitarian aspects covered by the mandate of the High-level Coordinator.

<sup>325</sup> *Ibid.*, pp. 3-6.

<sup>326</sup> At the 4884th meeting, held in private on 16 December 2003, the members of the Council and the Minister for Foreign Affairs of Iraq had a constructive exchange of views.

<sup>327</sup> S/2003/1161, submitted pursuant to paragraph 14 of resolution 1284 (1999).

<sup>328</sup> S/2003/813, para. 39.

<sup>329</sup> S/PRST/2003/28.

## B. Response to the humanitarian situation in Iraq

### Initial proceedings

#### Deliberations of 22 May 2003 (4762nd meeting)

At its 4762nd meeting, on 22 May 2003, the Council adopted as its agenda the item entitled "Response to the humanitarian situation in Iraq". The Council heard briefings by the Deputy Secretary-General; the Administrator of the United Nations Development Programme (UNDP); the Executive Director of the World Food Programme (WFP); the Executive Director for Sustainable Development and Health Environments and Senior Policy Adviser to the Director General of the World Health Organization (WHO); the Director of Emergency Programmes of UNICEF; and the President of the International Committee of the Red Cross (ICRC). Following the briefings, most Council members and the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator made statements regarding the humanitarian situation in Iraq.<sup>330</sup>

At the meeting, the Deputy Secretary-General explained that, although a major humanitarian crisis had been averted in Iraq, the situation was still precarious. She described the various efforts that United Nations agencies had undertaken to provide food, water, medicine and other emergency assistance throughout the country. She stressed that the general lack of law and order had had a wide variety of humanitarian consequences: many ministries, water treatment plants, hospitals and warehouses were devastated; many facilities were repaired or restored only to be looted again, as were many of the archaeological sites, historical buildings, monuments and museums in Iraq; and unexploded ordnance and mines had continued to threaten the civilian population.<sup>331</sup>

The Administrator of UNDP reported that the Programme had been coordinating closely with other intergovernmental and non-governmental organizations, especially in the construction of electricity facilities, sewage treatment plants, medical facilities and a dredging project in the port of Umm Qasr. He explained that the activities in each of these

areas had been accelerated by access to contracts from the oil-for-food programme.<sup>332</sup>

The Executive Director of WFP reported that tremendous progress had been made in the distribution of foodstuffs to Iraq. He stated that over 200,000 tons of food had been delivered to the country already, and that after a five-month period the Iraqi authority would likely have the capacity to take over the programme. The Executive Director stressed that although there had been no food crisis in Iraq, there were a number of challenges which needed to be addressed: the issue of security for staff, warehouses, silos, mills and offices, and the pressing issue of the payment of salaries for Ministry of Trade staff. He further emphasized the importance of food rations, as the entire population of Iraq depended on the rations to some degree. Until there was political stability and broad economic recovery, the food rations would continue to provide basic household food security and act as a stabilizing force in that volatile period.<sup>333</sup>

The representative of WHO reported that the people of Iraq had faced a mix of health hazards which were generally associated with longstanding deprivation, such as heart and kidney disease, cancer and diabetes. He explained that those people were heavily dependent on functioning health services and that the security situation in Iraq had been hampering their access to such services. He also enumerated several other problems with the health system in Iraq and noted that it had been running at between 20 and 40 per cent of its pre-war capacity.<sup>334</sup>

The Director of Emergency Programmes of UNICEF emphasized the high priority that the Fund had placed upon the need for law and order throughout Iraq. He explained that a proper security environment was essential to getting all children back to school as soon as possible. While 80 per cent of the primary schools had reopened, many families had continued to refuse to send their children to school due to security concerns. He also declared that water facilities and sanitation needed to be improved and that breast-milk

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<sup>330</sup> The President of the Council (Pakistan) did not make a statement in his capacity as representative of Pakistan.

<sup>331</sup> S/PV.4762, pp. 2-4.

<sup>332</sup> *Ibid.*, pp. 4-5.

<sup>333</sup> *Ibid.*, pp. 5-7.

<sup>334</sup> *Ibid.*, pp. 7-8.

substitutes, which were ascertained to be hazardous to a child's health when mixed with contaminated water, should no longer be provided to the population in the food basket. He concluded by noting some steps that UNICEF had taken to protect children from various forms of abuse and exploitation.<sup>335</sup>

The President of ICRC stressed that ICRC had been active in Iraq since 1980 and that it had been focusing on priorities such as visits to all persons deprived of their liberty; the protection of vulnerable groups, including children and internally displaced persons; the re-establishment of family links; emergency repair and rehabilitation of vital structures such as water, health and sewage facilities; the provision of medical emergency consumables and equipment; and awareness-raising activities related to unexploded ordnance. He further warned that although there was no "general humanitarian catastrophe" in Iraq, things could still go wrong if security was not improved and if the infrastructure and specific sectors, such as hospitals, did not receive due attention.<sup>336</sup>

Most speakers paid tribute to the humanitarian efforts of the various United Nations agencies and ICRC and expressed the view that the primary challenge in Iraq was the security environment and the general lack of law and order in the country. Several speakers enumerated the various aid packages that their countries had given to Iraq in order to provide humanitarian relief and/or facilitate the reconstruction effort.<sup>337</sup>

The representative of the Syrian Arab Republic stressed that looting was still commonplace in Iraq, especially in the educational institutions.<sup>338</sup> The representative of Germany cautioned that although the Deputy Secretary-General's briefing had assured the Council that there was no humanitarian catastrophe in Iraq at present, the situation was still grave and required immediate assistance programmes to prevent a dramatic deterioration of the situation. He also identified looting as a problem which prevented normal economic activity from resuming and stated that it was the responsibility of the "occupying Powers" to make

the country's vital infrastructures safe. He further brought to the attention of the Council the allegation that some hospitals which had experienced less looting were receiving protection from Shiite or Sunni militias, which led to the wrong perception among the population of Iraq that the only way to provide for security was to follow religious groups.<sup>339</sup>

The representative of the United States agreed that security was the key problem and explained that his country had been making every effort to bring stability to Iraq. He explained that the United States had been deploying additional military police, promoting disarmament programmes and providing micro-grants to build confidence among the diverse population of Iraq. The representative stated that although difficulties had persisted in Iraq, economic activities of the most basic form — money and barter — were beginning to resume, and that progress had been made in a variety of other issues such as investigations into mass graves, the fortification of flour with vitamins and minerals, which had been missing from the average Iraqi diet, and the restoration of power lines and the southern marshes.<sup>340</sup>

The representative of the Russian Federation expressed concern with the ongoing instability in Iraq and stressed that the coalition forces had the responsibility of ensuring the safety of United Nations staff and of the personnel of other humanitarian organizations. He stated that the humanitarian situation remained alarming as there were shortages of drinking water, medical staff, equipment and electricity. He concluded by noting that the oil sector in Iraq was the engine for further development of the entire country's economy.<sup>341</sup>

The representative of the United Kingdom reported on the situation in the United Kingdom's area of operation. He stated that the humanitarian situation was getting better, although security remained a challenge. He explained that basic services, such as the sewage system, had improved and that there was no food crisis in Iraq.<sup>342</sup>

The representative of Mexico pointed out the unprecedented nature of the collapse of the state of Iraq and the resultant economic and social consequences. He noted that looting was commonplace

<sup>335</sup> Ibid., pp. 8-10.

<sup>336</sup> Ibid., pp. 10-11.

<sup>337</sup> Ibid., p. 12 (Syrian Arab Republic); and p. 14 (Bulgaria); S/PV.4762 (Resumption 1), pp. 2-4 (United States); pp. 5-7 (United Kingdom); and pp. 9-10 (Spain).

<sup>338</sup> S/PV.4762, p. 12.

<sup>339</sup> Ibid., pp. 12-13.

<sup>340</sup> S/PV.4762 (Resumption 1), pp. 2-4.

<sup>341</sup> Ibid., p. 5.

<sup>342</sup> Ibid., p. 6.

in Iraq and that certain segments of civil society had managed to organize and were filling the void created by the collapse of state institutions.<sup>343</sup>

The representative of China stated that the Council should fully implement the oil-for-food programme and fully utilize its resources.<sup>344</sup> The representative of France reiterated that, although there was no humanitarian catastrophe per se in Iraq, the situation remained nonetheless extremely fragile.<sup>345</sup>

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<sup>343</sup> Ibid., pp. 7-8.

<sup>344</sup> Ibid., pp. 8-9.

<sup>345</sup> Ibid., pp. 10-11.

Following the statements, the representatives of UNDP, WHO, UNICEF and ICRC and the Under-Secretary-General responded to questions from Council members.<sup>346</sup>

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<sup>346</sup> Ibid., pp. 12-15 (Administrator of UNDP); pp. 15-16 (Executive Director of WHO); pp. 16-18 (Director of UNICEF); p. 18 (President of ICRC); and pp. 18-19 (Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator).

### **35. Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council**

#### **Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council**

##### **Initial proceedings**

###### **Deliberations of 5 October 2003 (4836th meeting)**

By a letter dated 5 October 2003 addressed to the President of the Security Council,<sup>1</sup> the representative of the Syrian Arab Republic requested an emergency meeting of the Council to consider the violations of Syrian and Lebanese airspace committed on 5 October 2003 by the Israeli air force and the missile attack carried out by the latter on the same day against a civilian site situated inside Syrian territory.

By a letter dated 5 October 2003 addressed to the President of the Security Council,<sup>2</sup> the representative of Lebanon also requested an urgent meeting of the Council to consider a situation threatening the stability along the Israeli-Lebanese border. The representative of Lebanon requested the Council to meet immediately and consider the measures that needed to be taken to deter Israel from further violating the airspace of Lebanon.

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<sup>1</sup> S/2003/939.

<sup>2</sup> S/2003/943.

At the 4836th meeting, held on 5 October 2003 in response to the requests contained in the above-mentioned letters, which the Council included in its agenda, statements were made by all members of the Council and the representatives of Algeria, Bahrain, Cuba, Egypt, the Islamic Republic of Iran, Israel, Jordan, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Morocco, Qatar, Saudi Arabia, the Sudan, Tunisia and Yemen, as well as the Permanent Observers of the League of Arab States and Palestine.<sup>3</sup>

At the meeting, the representative of the Syrian Arab Republic stated that the air strike by Israel was a violation of the Charter of the United Nations, of international law and of the Agreement on Disengagement of 1974. He maintained that the "Israeli aggression" was no isolated incident, but had been preceded by another violation by Israel, on 2 January 2003, that had resulted in the death of a soldier of the Syrian Arab Republic. He requested the Council to

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<sup>3</sup> The representatives of Djibouti, Oman, Somalia and the United Arab Emirates were invited to participate but did not make statements.

condemn the air strike and noted that he had submitted a draft resolution<sup>4</sup> which reflected the positions usually adopted by the Council in the face of similar acts of aggression and threats.<sup>5</sup>

The representative of Israel stated that on 4 October 2003 a Palestinian suicide bomber had killed 19 civilians and wounded 60 others in a restaurant in Haifa. Islamic Jihad, which had “headquarters in Damascus” had claimed responsibility. He noted that the massacre was the latest of over 40 “terrorist atrocities” committed by Islamic Jihad in the past few years. The representative maintained that the Syrian Arab Republic provided “safe harbour and training facilities” for “terrorist organizations” such as Islamic Jihad, Hamas and Hizbullah, both in separate facilities and in army bases in the Syrian Arab Republic. He gave a number of examples of the extent and nature of the involvement of the Government of the Syrian Arab Republic in the “deliberate murder of innocent civilians”. He argued that each of those acts constituted a grave violation of international law and resolutions of the Council including resolution 1373 (2002), as well as a threat to international peace and security. The representative described the target of the air strike at the village of Ein Saheb as a “terrorist” facility sponsored by the Syrian Arab Republic and the Islamic Republic of Iran, and explained that the “measured defensive response” of Israel to the suicide bombing of the previous day was a clear act of self-defence in accordance with Article 51 of the Charter.<sup>6</sup>

The representative of Pakistan stated that the attack perpetrated by Israel against the Syrian Arab Republic had not met the strict requirements set out in the Charter with regard to the use of force. It had been an arbitrary attack, and in legal and political terms it was clearly a violation of the Charter and of resolutions 242 (1967), 338 (1973), 350 (1974), 1397 (2002) and others.<sup>7</sup>

The representative of the United States called on all sides to avoid heightening the tension in the Middle East and to think carefully about the consequences of their actions. He noted that his Government had been

notified of the Israeli action after the event. He asserted that the Syrian Arab Republic was “on the wrong side of the war on terrorism” and stressed the need for it to cease harbouring terrorist groups.<sup>8</sup>

The representative of Lebanon maintained that “mixing up” the Haifa bombing with an action against the Syrian Arab Republic or linking it with the “State terrorism” practised by Israel was a contravention of the norms of international law. He requested the Council to meet its responsibilities and take the proper measures to condemn Israel and deter it from committing acts of aggression.<sup>9</sup>

The representatives of Morocco and Jordan stressed that Article 51 did not apply in this matter, as the Israeli attack could not be considered legitimate self-defence. Therefore the attack was in violation of Article 2(4), which called on Member States to refrain from the use of force against the territorial integrity of any State.<sup>10</sup>

Most of the members of the Council expressed regret at the situation and urged both sides to observe restraint in their relations with one other. They also condemned both the suicide bombing of 4 October 2003 and the air strike of the following day. Several speakers also expressed a commitment to the road map peace plan for the Israeli-Palestinian conflict.<sup>11</sup>

Most other speakers strongly condemned the air strikes and denounced them as in contravention of the Charter and international law. They also traced the root of the dispute to the situation in the Palestinian territories.<sup>12</sup> A number of speakers also condemned the suicide bombing.<sup>13</sup>

<sup>8</sup> Ibid., pp. 13-14.

<sup>9</sup> Ibid., pp. 15-16.

<sup>10</sup> Ibid., p. 17 (Morocco); and pp. 17-18 (Jordan).

<sup>11</sup> Ibid., p. 9 (United Kingdom); pp. 9-10 (Russian Federation); p. 10 (Germany); pp. 10-11 (France); p. 11 (Chile); pp. 11-12 (Mexico); p. 12 (Angola); pp. 12-13 (Guinea); and p. 13 (Cameroon).

<sup>12</sup> Ibid., pp. 14-15 (League of Arab States); pp. 15-16 (Lebanon); pp. 16-17 (Algeria); pp. 17-18 (Jordan); p. 19 (Tunisia); pp. 19-20 (Kuwait); pp. 20-21 (Saudi Arabia); pp. 21-22 (Islamic Republic of Iran); pp. 22-23 (Bahrain); p. 23 (Libyan Arab Jamahiriya); pp. 23-24 (Yemen); p. 24 (Qatar); and pp. 24-25 (Sudan).

<sup>13</sup> Ibid., p. 17 (Morocco); p. 18 (Egypt); p. 19 (Palestine); and p. 21 (Cuba).

<sup>4</sup> Not issued as a document of the Council.

<sup>5</sup> S/PV.4836, pp. 2-4.

<sup>6</sup> Ibid., pp. 5-7.

<sup>7</sup> Ibid., pp. 8-9.



## Thematic issues

### 36. Items relating to the International Tribunals

#### A. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

#### International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

##### Deliberations of 2 June 2000 (4150th meeting)

At its 4150th meeting, on 2 June 2000, the Security Council heard a briefing by the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (International Tribunal for the Former Yugoslavia) and of the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (International Tribunal for Rwanda), following which statements were made by most members of the Council,<sup>1</sup> as well as by the representative of Rwanda.

The Prosecutor of the International Tribunal for the Former Yugoslavia and of the International Tribunal for Rwanda, in her briefing, speaking on the International Tribunal for the Former Yugoslavia, reported that there had been literally no cooperation of Yugoslavia with her Office since the NATO air campaign against Yugoslavia in 1999. She pointed out that such a situation hampered her ability to conclude investigations involving Serbian victims. While lauding the cooperation of the new Government of Croatia with the Tribunal, she stated that she could not yet report that Croatia was in full compliance with its

obligations, owing to some outstanding issues. On another matter, she pointed out that the length of the proceedings of the Tribunal had become a problem, since its statute guaranteed all accused the right to be tried without undue delay. She therefore supported the proposals of the President of the International Tribunal for the Former Yugoslavia, to be presented to the Council shortly, to request additional resources to deal with the workload of the Tribunal in a timely manner.

On a different issue, she reported that the prosecution had assessed complaints and allegations that NATO might have committed crimes that fell within the jurisdiction of the Tribunal during its air campaign against Yugoslavia in 1999. She announced that after an examination of all facts and a detailed legal analysis, she had come to the conclusion that, although some mistakes had been made, there had been no deliberate targeting of civilians or of unlawful military targets and that there was no basis for opening an investigation into any of those allegations or other incidents related to the NATO bombings.

Speaking in respect of the International Tribunal for Rwanda, the Prosecutor reported that relations with the Government of Rwanda had improved after the reversal of a decision by the Appeals Chamber to release the accused in the Barayagwiza case, and that cooperation with the Government was now excellent. She reported on plans by the Government of Rwanda to introduce a traditional form of justice called *gachacha* to alleviate the overcrowding of prisons.<sup>2</sup>

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<sup>1</sup> The representatives of Namibia, Tunisia and Ukraine did not make statements at the meeting.

<sup>2</sup> S/PV.4150, pp. 2-6.

In their statements following the briefings, most speakers expressed their support for the work of the Tribunals, called for all States to cooperate with the Tribunals, especially the International Tribunal for the Former Yugoslavia and emphasized that the remaining fugitives, especially high-ranking political and military leaders must be arrested and handed over to the Tribunals. Some speakers also held that the work of the two Tribunals was of great importance for the future work of the International Court.<sup>3</sup>

The representative of the Russian Federation held that while his Government attached great importance to the work of the International Tribunal for Rwanda, it had not had a serious impact on the normalization of the political processes within Rwanda or on combating war crimes in other parts of the world. While he attributed the lack of speed and effectiveness in the work of the Tribunal partly to the lack of a proper level of cooperation from States, he also criticized its organizational structures and working methods. He supported the efforts of the United Nations to overcome those difficulties as well as the request to increase the number of judges. While expressing his Government's intention to cooperate with the International Tribunal for the Former Yugoslavia, he stated that the Russian Federation had some serious problems with the work of that organ. He expressed the view that the work of the Tribunal had been politicized, that its work was partial and biased, especially vis-à-vis Yugoslavia and that it had adopted a clear anti-Serbian stance. He expressed concern at the use of sealed indictments and the cooperation — not authorized by the Council — between the Tribunal and NATO; at the use of the Stabilization Force to arrest persons indicted by the Tribunal; and at the continuing unjustified increase in the budget of the Tribunal and the inflated staffing table. In addition, he expressed his belief that the decision to halt investigations into the NATO air strikes against Yugoslavia was premature. In concluding, he stated that his Government had come to consider the Tribunal less and less as an impartial judicial body.<sup>4</sup> In response, the Prosecutor of the Tribunals stated that she completely rejected the accusation of politicization, and expressed regret that she had not been able in the previous 10 months to establish contacts with the authorities of the Russian

Federation to discuss the work of the Tribunal.<sup>5</sup> The representative of China shared the view that the International Tribunal for the Former Yugoslavia should conduct investigations into allegations of serious violations of international humanitarian law during the bombings of Yugoslavia by NATO and emphasized that the decision to halt those investigations should be supported by convincing evidence.<sup>6</sup>

The representative of Rwanda underlined the willingness of his Government to cooperate with the International Tribunal for Rwanda. Nevertheless, he requested the recruitment of better qualified investigators to match the highly qualified defence lawyers. He also requested that more Rwandan nationals from a variety of social groups be recruited, and pointed out that of those recruited so far, including witnesses, many already had files opened on genocide charges, or were relatives or friends of persons indicted by the Tribunal.<sup>7</sup>

**Decision of 30 November 2000 (4240th meeting): resolution 1329 (2000)**

At its 4229th meeting, on 21 November 2000, the Council heard briefings by the President of the International Tribunal for the Former Yugoslavia, the President of the International Tribunal for Rwanda and the Prosecutor of the two Tribunals, following which statements were made by all members of the Council.

The President of the International Tribunal for the Former Yugoslavia, in his briefing, concentrated on the reform proposals that he had presented to the Council at the 4161st meeting. He expressed his gratitude that the Council had swiftly set up a working group to examine his proposals. He held that a consensus appeared possible and asked the Council to give priority to the issue. Speaking in respect of the cooperation of States with the Tribunal, he applauded progress made after increased cooperation by Bosnia and Herzegovina and Croatia, but expressed concern that the highest-ranking political and military officials indicted by the Tribunal remained at large. In that regard, he appealed to the Council to use all its influence over Member States, especially the successor States of the former Yugoslavia, to persuade them to

<sup>3</sup> Ibid., p. 8 (Argentina); and p. 13 (Netherlands, Canada).

<sup>4</sup> Ibid., pp. 14-15.

<sup>5</sup> Ibid., p. 22.

<sup>6</sup> Ibid., pp. 15-16.

<sup>7</sup> Ibid., pp. 19-20.

arrest and bring before the Tribunal all the accused in their territories.<sup>8</sup>

The President of the International Tribunal for Rwanda described a period of intensive judicial effort on the part of the Tribunal, which had cleared a backlog of pretrial proceedings and which would allow a number of trials to commence. She assured the Council that there was a reasonable possibility that the Tribunal would complete the cases of all 35 persons currently awaiting trial within the period of its mandate, but cautioned that it was impossible at this stage to predict the number of new suspects that might be indicted.<sup>9</sup>

The Prosecutor of the Tribunals, speaking in respect of the International Tribunal for Rwanda, stated that since the prosecution had now reached a sufficiently advanced stage in its information-gathering activities, a longer-term plan for investigations could be prepared and submitted to the President of the Tribunal as a basis for strategic forward planning with regard to the completion of the mandate of the Tribunal. She also emphasized that to make the work of the Tribunal more relevant to the people of Rwanda, she would ask the Trial Chambers to hold hearings in Rwanda instead of at the seat of the Tribunal in Arusha, and suggested that it might even be possible to contemplate moving the entire Tribunal to Rwanda. On a related issue, she regretted that the statute of the Tribunal made no provision for the participation of victims during trial and included only minimal provisions for compensation and restitution to victims. Since her Office had considerable success in tracing and freezing large amounts of money in the personal accounts of the accused, she held that the money could be applied by the Tribunal to the compensation of victims or towards the costs of the prosecution, and suggested to the Council to consider changing the statute in that regard. Speaking in respect of the International Tribunal for the Former Yugoslavia, she stated that cooperation with the Government of Croatia had made significant progress, but was undermined by obstruction on a few key issues, including those relating to the 1995 Croatian campaign against Serbs in Croatia, known as Operation Storm. On a different matter, she expressed concern over the slowing rate at which indicted persons were arrested and over the

results of the recent elections in Bosnia and Herzegovina, which, in her opinion, would not lead to any improvement in the cooperation of some local authorities with the Tribunal. In addition, she warned against too much optimism about increased cooperation of Yugoslavia with the Tribunal after the removal of President Slobodan Milošević from office, demanding that Milošević be brought to trial before the Tribunal. Referring to a number of passionate pleas her Office had received to investigate allegations of continuing ethnic cleansing against Serb and Roma populations in Kosovo after the deployment of the Kosovo Force (KFOR), she formally requested the Council to extend the jurisdiction of the Tribunal in that respect.<sup>10</sup>

In their statements following the briefings, most speakers expressed support for the reform proposals made by the Presidents of the two Tribunals, including the creation of a pool of ad litem judges and the addition of two judges to the Appeals Chamber. Some speakers emphasized that the selection of ad litem judges should be done by elections and should take into account the principle of equitable geographic distribution, as well as the representation of a variety of legal systems.<sup>11</sup>

The representative of the Russian Federation reiterated his serious concerns with regard to the work of the International Tribunal for the Former Yugoslavia, adding that the Tribunal had closed its eyes to cases of non-observance of international humanitarian law by other parties to the conflict, including the halting of the investigation into the NATO air strikes against Yugoslavia. He held that the Tribunal had repeatedly amended and interpreted the norms of international humanitarian law. In that regard, he questioned whether the international community should be financing the activities of the Tribunal that exceeded its mandate, called for an exhaustive review of its activities and insisted that it was time to establish more clearly the temporary nature of its jurisdiction. Nevertheless, he expressed support for the proposal to enhance the effectiveness of the Tribunal and create a pool of ad litem judges.<sup>12</sup> In response, the Prosecutor again rejected those accusations, as offensive and without foundation and again expressed her regret that

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<sup>8</sup> S/PV.4229, pp. 2-4.

<sup>9</sup> *Ibid.*, pp. 4-7.

<sup>10</sup> *Ibid.*, pp. 7-11.

<sup>11</sup> *Ibid.*, p. 22 (Jamaica); p. 24 (Ukraine); and p. 26 (Tunisia).

<sup>12</sup> S/PV.4229, pp. 18-20; see also S/PV.4150, pp. 14-15.

the Government of the Russian Federation had not responded to her requests to visit Moscow to discuss the work of the Tribunal.<sup>13</sup> The representative of China also reiterated his serious reservations about the decision to halt an investigation into allegations of serious violations of international humanitarian law during the bombings of Yugoslavia by NATO. He held that in view of the major political changes in the former Yugoslavia, the Council should determine the ending date of the temporal jurisdiction of the Tribunal, and suggested that cases concerning lower-level persons should, where conditions permitted, be transferred to national courts in the countries of the former Yugoslavia. He also suggested exploring the possibility of resorting to some sort of truth and reconciliation process.<sup>14</sup> However, other speakers cautioned about the proposal to set a time limit to the jurisdiction of the International Tribunal for the Former Yugoslavia.<sup>15</sup>

At its 4240th meeting, on 30 November 2000, the Council included in its agenda a letter dated 7 September 2000 from the Secretary-General addressed to the President of the Council,<sup>16</sup> transmitting a letter dated 12 May 2000 from the President of the International Tribunal for the Former Yugoslavia and a letter dated 14 June 2000 from the President of the International Tribunal for Rwanda.

The President (Netherlands) drew the attention of the Council to a draft resolution.<sup>17</sup> Before the vote, the President made a statement, as agreed among the members of the Council. He stated that during the consultation on the draft resolution it had become apparent that four urgent issues remained to be addressed by the informal working group of the Council on the Tribunals, namely, the issue of equitable geographical distribution; the issue of compensation of victims; the issue of persons unlawfully arrested or detained; and the issue of gender balance.

The draft resolution was then put to the vote; it was adopted unanimously and without debate as

<sup>13</sup> S/PV.4229, pp. 10-11; see also S/PV.4150, p. 22.

<sup>14</sup> S/PV.4229, pp. 21-22.

<sup>15</sup> *Ibid.*, p. 12 (United States); p. 14 (France); and p. 17 (United Kingdom).

<sup>16</sup> S/2000/865; see deliberations of 20 June 2000 (4161st meeting).

<sup>17</sup> S/2000/1131.

resolution 1329 (2000), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to establish a pool of *ad litem* judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, and to that end decided to amend articles 12, 13 and 14 of the statute of the International Tribunal for the Former Yugoslavia and to replace those articles with the provisions set out in annex I to the resolution, and decided also to amend articles 11, 12 and 13 of the statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in annex II to the resolution;

Decided also that two additional judges shall be elected as soon as possible as judges of the International Tribunal for Rwanda, and decided, without prejudice to article 12, paragraph 4, of the statute of that Tribunal, that, once elected, they should serve until the date of the expiry of the terms of office of the existing judges, and that for the purpose of that election the Council should, notwithstanding article 12, paragraph 2(c), of the statute, establish a list from the nominations received of not less than four and not more than six candidates;

Decided further that, once two judges had been elected, the President of the International Tribunal for Rwanda should take the necessary steps as soon as practicable to assign two of the judges elected or appointed in accordance with article 12 of the statute of the International Tribunal for Rwanda to be members of the Appeals Chambers of the Tribunals.

#### **Deliberations of 27 November 2001 (4429th meeting)**

At its 4429th meeting, the Council heard briefings by the President of the International Tribunal for the Former Yugoslavia, the President of the International Tribunal for Rwanda and the Prosecutor of the two Tribunals, following which statements were made by most members of the Council and by the representatives of Bosnia and Herzegovina, Rwanda and Yugoslavia.<sup>18</sup>

The President of the International Tribunal for the Former Yugoslavia, in his briefing, stressed that major reforms had been implemented, were successful in expediting proceedings and were leading to a substantial increase in the activities of the Tribunal. He held that those reforms would enable the Tribunal to complete the Trial Chamber proceedings in 2007-2008,

<sup>18</sup> The representatives of Bangladesh, Jamaica and the United States did not make statements at the meeting; Rwanda was represented by the Minister for Justice.

provided that indicted persons continued to be arrested at a sustained rate and that the necessary resources were granted to the Tribunal. Nevertheless, he suggested that lesser cases could be prosecuted by the States of the region, taking into account the political developments in the region, provided that their judicial systems would be reconstructed on democratic foundations.<sup>19</sup>

The President of the International Tribunal for Rwanda also reported on the reforms implemented, but emphasized that if the current capacity of judges remained unchanged, the Tribunal would not be able to complete the trials of the existing detainees before the year 2007. In addition, she pointed to the fact that the prosecution anticipated indicting up to 136 new persons by the year 2005. She drew the attention of the Council to a proposal she had submitted on 9 July 2001 for the creation of a pool of *ad litem* judges, similar to the solution found for the International Tribunal for the Former Yugoslavia, and projected that if the judicial capacity was increased accordingly and if the Prosecutor drastically revised her investigative programme, the International Tribunal for Rwanda could complete its work by 2007, rather than a previously projected date of 2023. She suggested that other avenues of justice be pursued as well, such as the encouragement of trials at the national level.<sup>20</sup>

The Prosecutor, in connection with the exit strategy of the Tribunals, outlined her future prosecution policy in order to give the Council an understanding of how much work the Tribunals would have to do before they could complete their respective mandates. She stated that she intended to focus on the leaders in both Rwanda and Yugoslavia, but stressed that local leaders had also played an important role as organizers and motivators of major crimes. She held that the figures she had given for the remaining investigations — 36 for the International Tribunal for the Former Yugoslavia and 136 for the International Tribunal for Rwanda — were only a fraction of the potential number of crimes or suspects. In respect of the International Tribunal for Rwanda, she estimated that the end of 2008 might be a realistic date for the end strategy for the trials in that Tribunal. In respect of the International Tribunal for the Former Yugoslavia, she held that the referral of some cases to national

courts in Yugoslavia was an interesting possibility, but that she would not be ready to hand over prosecution of cases to the national courts as they were operating at that time. As the majority of cases were from Bosnia and Herzegovina, she had suggested to the Government the idea of designing a special court that would have an international component, or of developing an existing State court to perform that special task, and that her Office stood ready to assist in the development process. On State cooperation, she expressed her disappointment at the non-apprehension of General Ante Gotovina in Croatia. She asked the Council to insist upon the arrest of Radovan Karadžić and Ratko Mladić, whose continuing liberty, in her view, was an affront to the authority of the Council and mocked the entire process of international criminal justice.<sup>21</sup>

The representative of Rwanda emphasized that it was essential to bring to trial those suspected of genocide and held that it was not the time to reduce the capacities of the International Tribunal for Rwanda, but to build them up. As to areas of improvements for the Tribunal, he suggested that the programme of information of the Tribunal could be improved, assistance to witnesses should be increased and access to AIDS medication should be provided for those who were victims of rape at the time of the genocide. In addition, he encouraged the recruitment of Rwandans for the Tribunal, but appealed for greater care in the choice of persons recruited to prevent the abusive sharing of fees among defence counsels and detainees and the hiring of individuals suspected of genocide. He urged for compensation of victims and for a fuller participation of victims in the activities of the Tribunal. He also argued for the seat of the Tribunal to be relocated to Rwanda.<sup>22</sup>

The representative of Yugoslavia held that his country was well aware of its international obligations and was committed to fulfilling them. He held that his country had adopted in the past year a constructive and cooperative approach towards the International Tribunal for the Former Yugoslavia and pointed to the transfer of Slobodan Milošević as an example of that. In addition, he referred to his remarks in the General Assembly the day before on improving the functioning of the Tribunal, in which he identified a number of issues to be addressed, *inter alia*, the use of sealed

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<sup>19</sup> S/PV.4429, pp. 3-6.

<sup>20</sup> *Ibid.*, pp. 6-9.

<sup>21</sup> *Ibid.*, pp. 9-14.

<sup>22</sup> *Ibid.*, pp. 14-15.

indictments; the frequent changing of the Tribunal's rules of procedure and evidence; and compensation for those who were acquitted.<sup>23</sup> He also expressed the view that the Tribunal should make a contribution in dealing with cases of crimes committed against Serbs and other non-Albanians in Kosovo and Metohija since the deployment of the United Nations Interim Administration Mission in Kosovo and KFOR in 1999.<sup>24</sup>

The representative of Bosnia and Herzegovina underlined the important role of the International Tribunal for the Former Yugoslavia in the process of reconciliation and the maintenance of peace and stability. He expressed his disappointment and serious concern that 26 publicly indicted war criminals still remained at large. He welcomed the initiative of the Tribunal to process some of the cases by the local judicial structures under the auspices of the Tribunal.<sup>25</sup>

Most speakers welcomed the improvement in the performance of the Tribunals, but expressed concern at the continuing heavy workload. Speakers generally agreed with the intention of the Prosecutor to concentrate on the main offenders with high-level responsibility and with the proposals to transfer cases of lesser offenders to local courts. Most speakers expressed a willingness to consider the proposal to establish a pool of ad litem judges for the International Tribunal for Rwanda. Nevertheless, several speakers expressed concern with the high number of future indictments envisaged by the Prosecutor.<sup>26</sup> In addition, the representatives of the Russian Federation and China emphasized that the Tribunals had been established as temporary judicial bodies and that they could not exist indefinitely.<sup>27</sup> The representative of the Russian Federation further emphasized that a final deadline for the jurisdiction of the International Tribunal for the Former Yugoslavia should be established. He stressed that the primary responsibility for punishing war criminals remained with States and that his delegation would strive for a more active involvement of the national court systems of the States of the former Yugoslavia and Rwanda.<sup>28</sup>

<sup>23</sup> A/56/PV.62, pp. 11-12.

<sup>24</sup> S/PV.4429, pp. 15-16.

<sup>25</sup> Ibid., pp. 17-18.

<sup>26</sup> Ibid., p. 20 (Ireland); p. 22 (Russian Federation); p. 23 (China); and p. 27 (France).

<sup>27</sup> Ibid., p. 22 (Russian Federation); and p. 23 (China).

<sup>28</sup> Ibid., p. 22.

**Decision of 17 May 2002 (4535th meeting):  
resolution 1411 (2002)**

At the 4535th meeting, on 17 May 2002, the President (Singapore) drew the attention of the Council to a draft resolution;<sup>29</sup> it was put to the vote and adopted unanimously and without a debate as resolution 1411 (2002), by which the Council, acting under Chapter VII of the Charter, inter alia:

Decided to amend article 12 of the statute of the International Tribunal for the Former Yugoslavia and to replace that article with the provisions set out in annex I to the resolution;

Decided also to amend article 11 of the statute of the International Tribunal for Rwanda and to replace that article with the provisions set out in annex II to the resolution.

**Decision of 18 December 2002 (4674th meeting):  
statement by the President**

At the 4674th meeting,<sup>30</sup> on 18 December 2002, the President (Colombia) made a statement on behalf of the Council,<sup>31</sup> by which the Council, inter alia:

Reaffirmed its support for the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia;

Recalled the mandatory obligations of all States, including the Governments of Rwanda and Yugoslavia, pursuant to its resolutions 827 (1993) and 955 (1994) and the statutes of the Tribunals, to cooperate fully with the Tribunals and their organs;

Stressed the importance it attached to full cooperation by all States, particularly those directly concerned, with the Tribunals;

Also stressed the importance of constructive dialogue between the Tribunals and the Governments concerned to resolve any outstanding issues affecting the work of the Tribunals, but insisted that such dialogue or lack of dialogue must not be used by States as an excuse for failure to discharge their obligations to cooperate fully with the Tribunals.

<sup>29</sup> S/2002/544.

<sup>30</sup> At its 4637th meeting, held in private on 29 October 2002, the Council heard briefings by the President of the International Tribunal for the Former Yugoslavia, the President of the International Criminal Tribunal for Rwanda and the Prosecutor of the two Tribunals.

<sup>31</sup> S/PRST/2002/39.

**Decision of 28 August 2003 (4817th meeting):  
resolution 1503 (2003)**

At the 4817th meeting,<sup>32</sup> on 28 August 2003, the President (Syrian Arab Republic) drew the attention of the members of the Council to a letter dated 28 July 2003 from the Secretary-General addressed to the President of the Council,<sup>33</sup> containing a proposed amendment to the statute of the International Tribunal for Rwanda for adoption by the General Assembly and the Council; and to a letter dated 5 August 2003 from the representative of Rwanda addressed to the President of the Council.<sup>34</sup> The Secretary-General, in his letter, reported that the term of office of the Prosecutor of the International Tribunal for the Former Yugoslavia and of the International Tribunal for Rwanda would come to an end on 14 September 2003. In that regard, he suggested that it was time to split the positions of the Prosecutor of the two Tribunals, previously held by the same person, so that they were occupied by two different people. In his letter, the representative of Rwanda transmitted a proposal for the appointment of a separate prosecutor for the International Tribunal for Rwanda, in which the Government of Rwanda welcomed the recommendation of the Secretary-General, urged the Council to approve the proposal and, reiterating various concerns about the work of the Tribunal, urged the Council also to consider other necessary reforms that would make the Tribunal more efficient and accountable.

The President then drew the attention of the Council to a draft resolution;<sup>35</sup> it was put to the vote and adopted unanimously and without debate as resolution 1503 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Requested the Presidents of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda and their Prosecutors, in their annual reports to the Council, to explain their plans to implement the completion strategies of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda;

Called upon the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010 (the completion strategies);

Decided to amend article 15 of the statute of the International Tribunal for Rwanda and to replace that article with the provision set out in annex I to the resolution, and requested the Secretary-General to nominate a person to be the Prosecutor of the International Tribunal for Rwanda.

**Decisions of 4 September 2003 (4819th  
meeting): resolutions 1504 (2003) and  
1505 (2003)**

At the 4819th meeting, on 4 September 2003, the President (United Kingdom) drew the attention of the Council to two draft resolutions;<sup>36</sup> they were consecutively put to the vote and adopted as resolutions 1504 (2003) and 1505 (2003), by which, respectively, the Council appointed Carla del Ponte as Prosecutor of the International Tribunal for the Former Yugoslavia and Hassan Bubacar Jallow as Prosecutor of the International Tribunal for Rwanda, each for a four-year term with effect from 15 September 2003.

**Deliberations of 9 October 2003  
(4838th meeting)**

At its 4838th meeting, on 9 October 2003, the Council heard briefings by the President of the International Tribunal for the Former Yugoslavia, the President of the International Tribunal for Rwanda, the Prosecutor of the International Tribunal for the Former Yugoslavia and the Prosecutor of the International Tribunal for Rwanda. Following the briefings, statements were made by the representatives of Bosnia and Herzegovina, Cameroon, China, Croatia, France, Germany, Guinea, Mexico, Pakistan, the Russian Federation, Rwanda, Serbia and Montenegro and the United Kingdom

At the outset of the meeting, the President (United States) drew the attention of the Council to a note by the Secretary-General dated 20 August 2003, transmitting the tenth annual report of the International Tribunal for the Former Yugoslavia<sup>37</sup> and a letter dated 3 October 2003 from the Secretary-General addressed to the President of the Council, transmitting a letter

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<sup>32</sup> At its 4806th meeting, held in private on 8 August 2003, the Council heard a statement by the Prosecutor of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

<sup>33</sup> S/2003/766.

<sup>34</sup> S/2003/794.

<sup>35</sup> S/2003/835.

<sup>36</sup> S/2003/846 and S/2003/847.

<sup>37</sup> S/2003/829 and Corr.1.

from the President of the International Tribunal for Rwanda enclosing a report on the completion strategy of the Tribunal.<sup>38</sup>

In the annual report of the International Tribunal for the Former Yugoslavia, the President of the Tribunal reported that the pace of activities had reached an all-time high. At the same time, the Tribunal had pressed forward with plans to bring its efforts to an orderly close in the foreseeable future and had continued internal reforms to improve the efficiency of proceedings. In the spring of 2003, the Tribunal had reached an agreement with the Office of the United Nations High Representative for Bosnia and Herzegovina concerning the establishment of a special chamber for prosecution of war crimes in the State Court of Bosnia and Herzegovina, which was projected to enable the Tribunal to begin transferring some cases of mid- and lower-level accused by the end of 2004 or early 2005. According to the report, the Prosecutor remained committed to ceasing investigations by the end of 2004. It was also reported that the invigorated law enforcement efforts of the Government of Serbia and Montenegro in the wake of the assassination of Prime Minister Zoran Djindjić had led to the arrest and transfer to the Tribunal of several important accused, but that nearly 20 indictees, including some high-ranking military and political officials, notably Radovan Karadžić and Ratko Mladić, remained at large.

In his report, the President of the International Tribunal for Rwanda projected, on the basis of experience gained in the conduct of trials to date and in the light of information supplied by the former Prosecutor regarding ongoing investigations and possible future indictments, how the Tribunal's trial activities were likely to evolve in the future. In view of resolution 1503 (2003) of 28 August 2003, in which the Council called on the Tribunals to take all possible measures to complete all trial activities at first instance by the end of the year 2008, the President of the International Tribunal for Rwanda projected that, if its judicial capacity were to remain unchanged, it would take until 2011 for the Tribunal to complete the trials of all of those persons who were currently being, or who might in the future be prosecuted before it. He therefore requested that the Council amend the statute of the International Tribunal for Rwanda so that the

Tribunal would be authorized to make use of up to nine ad litem judges at any one time, instead of the existing maximum of four, in which case the Tribunal would most probably be able to complete all trial activities at first instance by the target date of the end of 2008, or would at least be able to come very close to achieving that target. He recalled that with nine ad litem judges, the Tribunal would then enjoy the same judicial capacity for conducting trials at first instance as the International Tribunal for the Former Yugoslavia.

In his briefing, the President of the International Tribunal for the Former Yugoslavia noted that internal reforms, an increase in the number of guilty pleas and the advancement of a plan to create a special war crimes chamber in the State Court of Bosnia and Herzegovina had given the completion strategy a major boost. He emphasized that, despite those efforts, it was not possible to predict the completion date of judicial proceedings with scientific accuracy. While he believed that the trials of all individuals in custody would be completed within the 2008 deadline, he held that trying the cases of all fugitives, including those of highest priority, Radovan Karadžić and Ratko Mladić, would probably require trials at least through 2009. Emphasizing the prerogative as well as the intention of the Prosecutor to file new indictments, he maintained that new indictments would inevitably cause significant additional slippage in the target dates of the completion strategy, up to as much as two years beyond the estimated time for current trials. Nevertheless, he emphasized, that a strict application of the target dates for the completion strategy must not result in impunity, particularly for the most senior leaders, and that once indictments had been submitted and the legal process started, it would have to run its course.<sup>39</sup>

The President of the International Tribunal for Rwanda reported that the number of trials had doubled in the second mandate of the Tribunal. Nevertheless, with regard to the completion strategy, the President noted that with four ad litem judges, the Tribunal would not be in a position to bring to trial all of the indictees who were still at large and who might be indicted in the future until the target date of 2008. The Tribunal had therefore requested the Council to

<sup>38</sup> S/2003/946.

<sup>39</sup> S/PV.4838 and Corr.1, pp. 3-7.



increase the number of ad litem judges from four to nine, and to allow them to do pretrial work.<sup>40</sup>

The Prosecutor of the International Tribunal for the Former Yugoslavia assured the Council that the necessary measures were being taken to complete all remaining investigations by 2004, and expressed confidence that the remaining most senior leaders suspected of being responsible for crimes falling within the jurisdiction of the Tribunal would be indicted by that date. Other investigations that had not involved the most senior perpetrators had been suspended and were expected to be referred to domestic courts in Bosnia and Herzegovina, Croatia and Serbia and Montenegro. She suggested that after investigations were completed at the end of 2004, it would be possible to decide, in close cooperation with the President of the Tribunal, and on the basis of the guidance provided by the Council, which cases could responsibly be referred back to the domestic jurisdictions. Arguing that her investigations should not be stopped outright, she expressed her belief that referring cases already indicted by the Tribunal to the domestic jurisdictions offered better guarantees that those cases would actually be tried. She held that the completion strategy necessarily depended on full cooperation by the States of the former Yugoslavia and on reforms and support of national courts. She reported that Croatia, Serbia and Montenegro, the Republika Srpska and the Bosnian Croat party to the Federation of Bosnia and Herzegovina had not so far achieved full cooperation with the Tribunal.<sup>41</sup>

The Prosecutor of the International Tribunal for Rwanda reported that he had begun reviewing cases of all those awaiting trial to assess their level of responsibility, with a view to referring to national jurisdictions those cases in which the accused did not fall within the category of those bearing the greatest responsibility. He was convinced that States that had agreed to prosecute those cases would need assistance from the international community.<sup>42</sup>

In their comments following the briefing, most speakers welcomed the completion strategies of the Tribunals. Most speakers also welcomed the intended referral of lower-level cases to national jurisdictions, recognizing that the relevant States would need

assistance with regard to strengthening their judicial systems. Most speakers also expressed a willingness to consider the request by the International Tribunal for Rwanda to authorize the use of more ad litem judges. Several speakers pointed to the importance of cooperation of States with the International Tribunal for the Former Yugoslavia, and held that the fugitives Radovan Karadžić and Ratko Mladić needed to be brought to trial. The representative of Germany suggested that cases that could not be tried by the Tribunals within the given time frame could be referred to the International Court, a procedure that would be much more cost-efficient than extending the mandate of the Tribunals.<sup>43</sup>

The representative of Bosnia and Herzegovina noted progress in the restructuring of his country's court system, which would enable the International Tribunal for the Former Yugoslavia to begin transferring some cases of mid- and low-level accused by the end of the following year. He expected, nevertheless, that the apprehension and trial of the most notorious offenders would remain the continuing responsibility of the United Nations and the international community.<sup>44</sup>

The representative of Rwanda reiterated his Government's serious concerns with the functioning of the International Tribunal for Rwanda. In addition, he held that the Prosecutor had failed to indict and apprehend large numbers of prominent genocide suspects and recommended that the proposed completion strategy should urgently address that problem. He also pointed to the financial implications of the transfer of cases to the jurisdiction of Rwanda and recommended that the completion strategy should make provisions as to how the financial resources required to assist Rwanda would be raised.<sup>45</sup>

The representative of Serbia and Montenegro appreciated the assessment of the President of the International Tribunal for the Former Yugoslavia that the cooperation of his country with the Tribunal had improved, but acknowledged that more needed to be done. Referring to the assessment of the Prosecutor of the Tribunal, however, he pointed out that a former President, a former head of State Security and several

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<sup>40</sup> Ibid., pp. 7-9.

<sup>41</sup> Ibid., pp. 9-13.

<sup>42</sup> Ibid., pp. 13-16.

<sup>43</sup> Ibid., p. 17.

<sup>44</sup> Ibid., p. 23.

<sup>45</sup> Ibid., pp. 24-26.

army officers had surrendered voluntarily and that he could not understand the Prosecutor's suggestion that voluntary surrenders of the accused were somehow of lesser value than arrests.<sup>46</sup>

<sup>46</sup> Ibid., pp. 26-27.

The representative of Croatia held that with the exception of the Gotovina case, where the indicted person remained at large, Croatia had fulfilled all its obligations towards the Tribunal.<sup>47</sup>

<sup>47</sup> Ibid., p. 28.

## **B. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991**

### **Deliberations of 20 June 2000 (4161st meeting)**

At its 4161st meeting, on 20 June 2000, the Council heard a briefing by the President of the International Tribunal for the Former Yugoslavia, following which statements were made by most members of the Council.<sup>48</sup> The President (France) drew the attention of the Council to a letter dated 14 June 2000 from the Secretary-General addressed to the President of the Council,<sup>49</sup> transmitting the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda,<sup>50</sup> as well as comments and observations of the two Tribunals and the comments of the Secretary-General on the report. The President also drew the attention of the Council to a letter dated 12 May 2000 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General and a letter dated 14 June 2000 from the President of the International Tribunal for Rwanda.<sup>51</sup>

In his letter dated 14 June 2000, the President of the International Tribunal for the Former Yugoslavia reviewed the current situation regarding the conduct of trials before the Tribunal and projected ways in which the Tribunal's activities were likely to evolve in the future, on the basis of experience gained in the conduct of trials to that date and in the light of information supplied by the Prosecutor regarding probable future

<sup>48</sup> The representative of Mali did not make a statement at the meeting.

<sup>49</sup> S/2000/597.

<sup>50</sup> Established pursuant to General Assembly resolutions 53/212 and 53/213 of 18 December 1998.

<sup>51</sup> Subsequently issued as S/2000/865, annexes I and II; see decision of 30 November 2000 (4240th meeting).

indictments. The President concluded that, should the Tribunal maintain its current structure, it was likely to require a considerable period of time to complete all trials. The President therefore proposed to confer on senior legal officers of the Trial Chambers certain powers that were currently vested in the judges to take decisions regarding the conduct of the pretrial process, to create a pool of ad litem judges on which the Tribunal could draw when needed and to enlarge the Appeals Chambers of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda by the addition of two further judges, drawn from the Trial Chambers of the International Tribunal for Rwanda.

In his letter dated 12 May 2000, the President of the International Tribunal for Rwanda reported that the judges of the Tribunal had agreed to the recommendation to enlarge the Appeals Chamber and that they intended to address long-term plans of the Tribunal once they received the criminal prosecution projection from the Prosecutor.

At the meeting, the President of the International Tribunal for the Former Yugoslavia, in his briefing, stated that the political changes in the Balkan region, the ever more active cooperation with regard to arrests and the intention of the Prosecutor to make almost 200 new indictments would in the future lead to a heavy workload for the Tribunal. Referring to the already lengthy pretrial detentions, he expressed the view that the Tribunal owed the accused, the victims and the international community trials that were not only fair, but also expeditious. He projected that if no changes were made, the four-year mandate of the Tribunal would have to be extended at least three or four more times. He therefore believed that the solutions proposed in his report were flexible and pragmatic and

that the period of the mandate assigned to the Tribunal, insofar as first instance trials were concerned, could thereby be shortened to conclude at the end of 2007, instead of 2016. He stated that the proposed changes would require an amendment to its statute. He held that this opportunity could also be used to introduce into the statute several other modifications, including a recommendation by the Expert Group to reinforce the Appeals Chamber with two additional ad hoc judges, provision of compensation for persons unjustly detained or prosecuted and the suggestion by the Prosecutor to fund compensation for victims by the seizure of revenues of the convicted.<sup>52</sup>

In their statements following the briefing, most speakers welcomed the report by the President of the International Tribunal for the Former Yugoslavia and generally supported its recommendations, while reserving the right to examine them in more detail. The representative of Jamaica expressed concern that the practice of drawing judges for the Appeals Chamber from the Trial Chambers created a situation in which the Appeals Chamber might find it difficult to operate with impartiality.<sup>53</sup> The representative of the United States stated that it must be ensured that efforts to streamline the Tribunal would not complicate the ability of the Prosecutor to apprehend those at large.<sup>54</sup> The representative of the Russian Federation reiterated his serious reservations concerning the work of the International Tribunal for the Former Yugoslavia. He nevertheless expressed his readiness to consider the proposal of the President of the Tribunal, but emphasized that it needed to be addressed on the basis of a comprehensive analysis of the work of the Tribunal and bearing in mind the need to redress its deficiencies.<sup>55</sup> The representative of Canada categorically rejected claims that the work of the Tribunal was biased.<sup>56</sup> The representative of Ukraine expressed his concern at the absence of judges from Eastern Europe on the Tribunal.<sup>57</sup> The President, speaking in his national capacity as the representative of France, stated that his delegation had suggested that an informal working group be established to examine

the existing ideas and recommendations and to submit its conclusions to the Council in the near future.<sup>58</sup>

**Decision of 19 January 2001 (4260th meeting):  
letter from the President to the Secretary-  
General**

At its 4260th meeting, on 19 January 2001, the Council included in its agenda a letter dated 11 January 2001 from the Secretary-General addressed to the President of the Council,<sup>59</sup> by which the Secretary-General, pursuant to article 13 bis of the statute of the International Tribunal for the Former Yugoslavia, forwarded 24 nominations for permanent judges for the Tribunal that he had received from Member States. He noted in that connection that the number of candidates whose nominations he had received was short of the minimum number of 28 which, pursuant to the statute of the Tribunal, should appear on the list that the Council was to establish for transmission to the General Assembly.

At the meeting, the President (Singapore) drew the attention of the Council to a draft letter, prepared in reply to the above-mentioned letter, by which the Council would inform the Secretary-General of its decision to extend the deadline for nominations of judges of the Tribunal until 31 January 2001. The Council decided that the President should send the letter as drafted to the Secretary-General.<sup>60</sup>

**Decision of 8 February 2001 (4274th meeting):  
resolution 1340 (2001)**

At its 4274th meeting, on 8 February 2001, the Council included in its agenda the item entitled "Establishment of the list of candidates for permanent judges".

The President (Tunisia) drew the attention of the Council to a draft resolution;<sup>61</sup> it was then put to the vote and adopted unanimously and without debate as resolution 1340 (2001), by which the Council, *inter alia*, forwarded nominations to the General Assembly in accordance with article 13 bis, paragraph 1 (d), of the statute of the International Tribunal for the Former Yugoslavia.

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<sup>52</sup> S/PV.4161, pp. 2-7.

<sup>53</sup> *Ibid.*, p. 9.

<sup>54</sup> *Ibid.*, pp. 9-10.

<sup>55</sup> *Ibid.*, pp. 7-9.

<sup>56</sup> *Ibid.*, p. 12.

<sup>57</sup> *Ibid.*, p. 16.

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<sup>58</sup> *Ibid.*, p. 19.

<sup>59</sup> S/2001/61.

<sup>60</sup> S/2001/63.

<sup>61</sup> S/2001/108.

**Decision of 27 April 2001 (4316th meeting): resolution 1350 (2001)**

At its 4316th meeting, on 27 April 2001, the Council included in its agenda the item entitled “Establishment of the list of candidates for ad litem judges”. The President (United Kingdom) drew the attention of the Council to a letter dated 19 April 2001 from the Secretary-General, addressed to the President of the Council,<sup>62</sup> by which the Secretary-General, pursuant to article 13 ter, paragraph 1 (c), of the statute of the International Tribunal for the Former Yugoslavia, forwarded to the Council 60 nominations received from Member States.

The President then drew the attention of the Council to a draft resolution;<sup>63</sup> it was put to the vote and adopted unanimously and without debate as resolution 1350 (2001), by which the Council, inter alia, forwarded nominations to the General Assembly in accordance with article 13 ter, paragraph 1 (d), of the statute of the International Tribunal for the Former Yugoslavia.

**Decision of 23 July 2002 (4582nd meeting): statement by the President**

At the 4582nd meeting,<sup>64</sup> on 23 July 2002, the President (United Kingdom) made a statement on behalf of the Council,<sup>65</sup> by which the Council, inter alia:

Welcomed the report on the judicial status of the International Tribunal for the Former Yugoslavia and the prospects for referring certain cases to national courts<sup>66</sup> submitted by the President of the Tribunal on 10 June 2002;

Recognized that the Tribunal should concentrate its work on the prosecution and trial of the civilian, military and

paramilitary leaders suspected of being responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, rather than on minor actors;

Endorsed the broad strategy of the report for the transfer of cases involving intermediary and lower-level accused to competent national jurisdictions as likely to be in practice the best way of allowing the Tribunal to achieve its current objective of completing all trial activities at first instance by 2008.

**Decision of 19 May 2003 (4759th meeting): resolution 1481 (2003)**

At its 4759th meeting,<sup>67</sup> on 19 May 2003, the Council included in its agenda a letter dated 7 May 2003 from the Secretary-General addressed to the President of the Council,<sup>68</sup> transmitting a letter from the President of the International Tribunal for the Former Yugoslavia, in which he renewed a request to the Council by his predecessor to amend the statute of the Tribunal so that, during the period for which an ad litem judge was appointed to serve in the Tribunal for a trial, he or she could also adjudicate in pretrial proceedings in other cases, arguing that the restriction on the mandate of the ad litem judges prevented the Tribunal from making the most efficient use of their time.

The President then drew the attention of the Council to a draft resolution;<sup>69</sup> it was put to the vote and adopted unanimously and without debate as resolution 1481 (2003), by which the Council, acting under Chapter VII of the Charter, inter alia, decided to amend article 13 quater of the statute of the International Tribunal for the Former Yugoslavia and to replace that article with the provisions set out in the annex to the resolution.

<sup>62</sup> S/2001/391.

<sup>63</sup> S/2001/414.

<sup>64</sup> At its 4581st meeting, held in private on 23 July 2002, the Council heard a briefing by the President of the International Tribunal for the Former Yugoslavia.

<sup>65</sup> S/PRST/2002/21.

<sup>66</sup> S/2002/678.

<sup>67</sup> The President of the International Tribunal for the Former Yugoslavia was present at the meeting.

<sup>68</sup> S/2003/530.

<sup>69</sup> S/2003/546.

### **C. International Tribunal for the prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994**

#### **Decision of 30 March 2001 (4307th meeting): resolution 1347 (2001)**

At its 4307th meeting, on 30 March 2001, the Council included in its agenda the item entitled “Establishment of the list of candidates for Judges on the International Tribunal for Rwanda”.

The President (Ukraine) then drew the attention of the Council to a draft resolution;<sup>70</sup> it was put to the vote and adopted unanimously and without debate as resolution 1347 (2001), by which the Council, *inter alia*, forwarded the following nominations to the General Assembly in accordance with article 12, paragraph 2 (d), of the statute of the International Tribunal for Rwanda: Mr. Mouinou Aminou (Benin), Mr. Frederick Mwela Chomba (Zambia), Mr. Winston Churchill Matanzima Maqutu (Lesotho), Mr. Harris Michael Mtegha (Malawi) and Ms. Arlette Ramarosan (Madagascar).

#### **Decision of 14 August 2002 (4601st meeting): resolution 1431 (2002)**

At the 4601st meeting, on 14 August 2002, the President (United States) drew the attention of the Council to three letters addressed to the President of the Council: a letter dated 26 July 2002 from the President of the International Tribunal for Rwanda;<sup>71</sup> a

letter dated 26 July 2002 from the representative of Rwanda;<sup>72</sup> and a letter dated 8 August 2002 from the President of the International Tribunal for Rwanda.<sup>73</sup>

At the same meeting, the President (United States) drew the attention of the Council to a draft resolution;<sup>74</sup> it was put to the vote and adopted unanimously and without debate as resolution 1431 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to establish a pool of *ad litem* judges in the International Tribunal for Rwanda, and decided to amend articles 11, 12 and 13 of the statute of the Tribunal, and decided also to amend articles 13 bis and 14 of the statute of the International Tribunal for the Former Yugoslavia and to replace

Tribunal could fulfil its mandate.

<sup>72</sup> S/2002/842, reply of the Government of Rwanda to the report of the Prosecutor of the International Tribunal for Rwanda to the Council: (a) explaining to the members of the Council the shortcomings of the Tribunal, including inefficiency, corruption, nepotism, lack of protection of witnesses, harassment of witnesses, employing *genocidaires* as members of defence teams and investigators, mismanagement, slow pace of trials, insufficient staff and lack of competent staff, negligence and false allegations concerning the Government of Rwanda; and (b) recommending, *inter alia*, creation of an Office of the Prosecutor of the International Tribunal for Rwanda separate from that of the International Tribunal for the Former Yugoslavia; development of a plan to transfer the International Tribunal for Rwanda to Rwanda and, pending transfer, arrangements to conduct some trials in Rwanda; and the establishment of mechanisms for better treatment and protection of witnesses.

<sup>73</sup> S/2002/923, transmitting a note, jointly endorsed by the three organs of the Tribunal, on the reply of the Government of Rwanda to the report of the Prosecutor of the Tribunal, which provided, *inter alia*, a factual recapitulation of events that constituted a failure by the Government of Rwanda to issue travel documents for witnesses in a timely manner and clarifying, for information purposes only, statements in the reply of the Government of Rwanda on a number of issues concerning the functioning of the Tribunal.

<sup>74</sup> S/2002/922.

<sup>70</sup> S/2001/294.

<sup>71</sup> S/2002/847, referring to article 28 of the statute of the Tribunal, under which the President of the Tribunal has the discretion to formally bring to the attention of the Council concerns that might exist regarding the cooperation of States; drawing the attention of the Council to a report of 23 July 2002 from the Prosecutor concerning the lack of cooperation from Rwandan authorities, in particular the lack of availability of witnesses, which was likely to hamper the judicial work of the Tribunal, and to decisions of two Trial Chambers pointing out the failure of the Government of Rwanda to issue travel documents in a timely manner so that witnesses could appear before the Tribunal; and highlighting the need for the Council to use such measures as it thought appropriate to ensure that the

those articles with the provisions set out in annex II to the resolution;

Requested the Secretary-General to make practical arrangements for the election as soon as possible of 18 ad litem judges in accordance with article 12 ter of the statute of the International Tribunal for Rwanda.

**Decision of 11 October 2002 (4621st meeting): letter from the President to the Secretary-General**

At its 4621st meeting, on 11 October 2002, at which no statements were made, the Council included in its agenda a letter dated 26 September 2002 from the Secretary-General addressed to the President of the Council,<sup>75</sup> by which the Secretary-General, pursuant to article 12, paragraph 1 (c), of the statute of the International Tribunal for Rwanda, forwarded 17 nominations for permanent judges for the Tribunal received from Member States, and noted in that connection that the number of candidates whose nominations he had received was short of the minimum number of 22 which, pursuant to the statute of the Tribunal, should appear in the list that the Council was to establish for transmission to the General Assembly.

At the meeting, the President (Cameroon) drew the attention of the Council to a draft letter, prepared in reply to the above-mentioned letter, by which the Council informed the Secretary-General of its decision to extend the deadline for nominations of judges of the Tribunal until 15 November 2002. The Council decided that the President should send the letter as drafted.<sup>76</sup>

**Decision of 13 December 2002 (4666th meeting): resolution 1449 (2002)**

At its 4666th meeting, on 13 December 2002, the Council included in its agenda the item entitled "Establishment of the list of candidates for Judges on the International Tribunal for Rwanda". The Council extended an invitation to the representative of Rwanda to participate in the meeting.

The President (Colombia) drew the attention of the Council to a draft resolution;<sup>77</sup> it was put to the vote and adopted unanimously and without debate as resolution 1449 (2002), by which the Council, inter alia, forwarded to the General Assembly nominations

<sup>75</sup> S/2002/1106.

<sup>76</sup> S/2002/1131.

<sup>77</sup> S/2002/1356.

for permanent judges of the International Tribunal for Rwanda in accordance with article 12 bis, paragraph 1 (d), of the statute of the Tribunal.

**Decision of 28 March 2003 (4731st meeting): letter from the President to the Secretary-General**

At its 4731st meeting, on 28 March 2003, the Council included in its agenda a letter dated 6 March 2003 from the Secretary-General addressed to the President of the Council,<sup>78</sup> by which the Secretary-General, pursuant to article 12, paragraph 1 (c), of the statute of the International Tribunal for Rwanda, forwarded 26 nominations for permanent judges for that Tribunal received from Member States, and noted in that connection that the number of candidates whose nominations he had received was short of the minimum number of 36 which, pursuant to the statute of the Tribunal, should appear on the list which the Council was to establish for transmission to the General Assembly.

At the meeting, the President (Guinea) drew the attention of the Council to a draft letter, prepared in reply to the above-mentioned letter, by which the Council would inform the Secretary-General of its decision to extend the deadline for nominations of judges of the Tribunal until 15 April 2003.<sup>79</sup> The Council decided that the President should send the letter as drafted.

**Decision of 29 April 2003 (4745th meeting): resolution 1477 (2003)**

At its 4745th meeting, on 29 April 2003, the Council included in its agenda a letter dated 21 April 2003 from the Secretary-General addressed to the President of the Council,<sup>80</sup> by which the Secretary-General forwarded 35 nominations received pursuant to article 12, paragraph 1 (c), of the statute of the International Tribunal for Rwanda. He stated that the number of candidates received fell short of the minimum number of 36 that should appear on the list to be established by the Council for transmission to the General Assembly.

<sup>78</sup> S/2003/290.

<sup>79</sup> S/2003/382.

<sup>80</sup> S/2003/467.

The President (Mexico) drew the attention of the Council to a draft resolution;<sup>81</sup> it was put to the vote and adopted unanimously and without debate as resolution 1477 (2003), by which the Council, *inter alia*, forwarded to the General Assembly nominations for *ad litem* judges of the International Tribunal for Rwanda in accordance with article 12 *ter*, paragraph 1 (d), of the statute of the Tribunal.

**Decision of 19 May 2003 (4760th meeting):  
resolution 1482 (2003)**

At its 4760th meeting, on 19 May 2003, the Council included in its agenda a letter dated 16 April 2003 from the Secretary-General addressed to the President of the Council,<sup>82</sup> transmitting a letter from the President of the International Tribunal for Rwanda in which she requested the extension of the term of office of four non-elected permanent judges to allow them to dispose of ongoing cases.

The President (Pakistan) then drew the attention of the Council to a draft resolution;<sup>83</sup> it was put to the vote and adopted unanimously and without debate as resolution 1482 (2003), by which the Council, *inter alia*:

Decided, in response to the request by the Secretary-General, that:

(a) Judge Dolenc, once replaced as a member of the Tribunal, finish the *Cyangugu* case which he had begun before expiry of his term of office;

(b) Judge Maqutu, once replaced as a member of the Tribunal, finish the *Kajelijeli* and *Kamuhanda* cases which he had begun before expiry of his term of office;

(c) Notwithstanding article 11, paragraph 1, of the statute of the Tribunal and on an exceptional basis, Judge Ostrovsky, once replaced as a member of the Tribunal, finish the *Cyangugu* case which he had begun before expiry of his term of office;

(d) Judge Pillay, once replaced as a member of the Tribunal, finish the *Media* case which she had begun before expiry of her term of office;

Took note, in that regard, of the intention of the Tribunal to finish the *Cyangugu* case before the end of February 2004 and the *Kajelijeli*, *Kamuhanda* and *Media* cases before the end of December 2003;

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<sup>81</sup> S/2003/505.

<sup>82</sup> S/2003/431.

<sup>83</sup> S/2003/549.

Requested the President of the Tribunal to provide it, by 1 August 2003, 15 November 2003 and 15 January 2004, respectively, with reports on the progress of the above-mentioned cases.

**Decisions of 27 October 2003 (4849th meeting):  
resolution 1512 (2003) and statement  
by the President**

At its 4849th meeting, on 27 October 2003, the Council included in its agenda a letter dated 12 September 2003 from the Secretary-General addressed to the President of the Council,<sup>84</sup> transmitting a letter from the President of the International Tribunal for Rwanda addressed to the Secretary-General, in which he requested that the Council amend the statute of the Tribunal so that, during the period during which an *ad litem* judge was appointed to serve on the Tribunal for a trial, he or she could also adjudicate in pretrial proceedings in other cases. The Secretary-General recalled that, earlier the same year, the Council had acceded to an identical proposal by the President of the International Tribunal for the Former Yugoslavia. The Council also included in its agenda a letter dated 3 October 2003 from the Secretary-General addressed to the President of the Council,<sup>85</sup> transmitting a letter from the President of the International Tribunal for Rwanda requesting an increase in the number of *ad litem* judges from four to nine and enclosing a report on the completion strategy of the Tribunal.

The President (United States) then drew the attention of the Council to a draft resolution;<sup>86</sup> it was put to the vote and adopted unanimously and without debate as resolution 1512 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*, decided to amend articles 11 and 12 *quater* of the statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in the annex to the resolution.

At the same meeting, the President made a statement on behalf of the Council,<sup>87</sup> by which the Council, *inter alia*:

Noted the invitation of the General Assembly contained in paragraph 7 of resolution 57/289 that it address uncertainties

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<sup>84</sup> S/2003/879.

<sup>85</sup> S/2003/946.

<sup>86</sup> S/2003/1033.

<sup>87</sup> S/PRST/2003/18.

regarding the power of the International Tribunal for Rwanda under its statute to finance the upgrading of prison accommodations;

Confirmed that it was within the lawful powers of the Tribunal under its statute to fund the renovation and

refurbishment of prison facilities in States that had concluded agreements with the United Nations for the carrying out of prison sentences of the Tribunal. Such funds should be used to bring up to international minimum standards the prison accommodation to be occupied or used pursuant to those agreements.

## **37. Items relating to the maintenance of international peace and security**

### **A. The responsibility of the Security Council in the maintenance of international peace and security**

#### **Decision of 6 December 2000 (4243rd meeting): statement by the President**

At its 4242nd meeting, on 6 December 2000, the Security Council was briefed by the Under-Secretary-General for Legal Affairs. Statements were made by a majority of members of the Council.<sup>1</sup>

In his briefing, the Under-Secretary-General highlighted the actions taken by the Council, the General Assembly and the Secretariat with regard to the significant developments in international law pertaining to acts of terrorism that had taken place in the previous decade. With regard to the Council, he recalled that the efforts undertaken by the Council began in 1992 and culminated in October 1999, with the adoption of resolution 1269 (1999) which, *inter alia*, called upon States to implement fully the anti-terrorism conventions and to consider adhering to those to which they were not parties. With regard to the Assembly, he referred in particular to the development of a legal framework of conventions, most notably the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of the Financing of Terrorism. Recalling that, in September 2000, a Working Group of the Sixth Committee, on the basis of a draft text prepared by the representative of India, had embarked on the elaboration of a comprehensive convention on international terrorism, he pointed out that delegations expressed support for the work begun, although expressing divergent views on the elaboration of such a comprehensive convention. More specifically, he explained that some delegations believed that the instrument should be truly comprehensive in scope, containing a definition which

distinguished between terrorist acts and the legitimate struggle for national liberation and other forms of alien domination and foreign occupation, while others held that the future convention should complement and complete the existing sectoral anti-terrorism conventions rather than replace them. Turning to the role of the Secretariat, he mentioned, in particular, the submission of annual reports by the Secretary-General to the Assembly, including information on the status and implementation of existing multilateral, regional and bilateral agreements on terrorism, as well as on relevant incidents and criminal prosecutions, and recalled that the Secretary-General was also entrusted with the preparation of a compendium of national laws and regulations regarding the prevention and suppression of international terrorism. In concluding, the Under-Secretary-General stressed that the fight against terrorism required better international cooperation, acknowledging at the same time that obstacles were standing in the way of enhanced international cooperation, such as the definition of terrorism, the political element, the links between terrorist groups and organized crime groups, and the perceived relationship between religion and terrorism in some parts of the world.<sup>2</sup>

Recognizing that international terrorism posed a serious threat to peace and security, Council members commended the continuing efforts of the Organization, through the Council, the Assembly and the Secretariat, seriously to address such a threat and, in that regard, stressed the importance of a coordinated international approach. They welcomed, in particular, the adoption of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

<sup>1</sup> The representative of Mali did not make a statement.

<sup>2</sup> S/PV.4242, pp. 2-8.



They also expressed their support for the draft comprehensive convention on terrorism and the ongoing efforts to complete a draft international convention for the suppression of acts of nuclear terrorism, proposed by the Russian Federation, and hoped that that work could be brought to completion as soon as possible.

While most delegations concurred that terrorism was never justifiable, for whatever purpose and by whomever committed, several representatives highlighted the need to distinguish between terrorism and the legitimate struggle of peoples exercising their right to self-determination.<sup>3</sup> In that regard, the representative of Malaysia called for a clear and universally agreed definition of terrorism. He further believed that in taking security measures, States must be guided by the principle of proportionate response and not cross the threshold beyond which such security measures might descend to the level of terrorism.<sup>4</sup> Although acknowledging that the fight against increasingly sophisticated terrorists might require increasingly harsher means, the representative of the Netherlands cautioned that the response to terrorism had to be proportionate and limited to the requirements of the maintenance of public order.<sup>5</sup>

The representative of the United States stressed that sanctions constituted the primary tool against terrorism, emphasizing the need for Member States to follow through on the commitments imposed on them by the Council.<sup>6</sup> Similarly, the representative of the United Kingdom supported the imposition of measures by the Council against those who failed to bring to

justice those responsible for terrorist acts.<sup>7</sup> Giving as an example the sanctions imposed against the Taliban and Osama bin Laden, the representative of Canada stressed that such measures demonstrated that there could be no impunity for terrorism and could also serve as a deterrent to future terrorist acts.<sup>8</sup> The representative of China urged the Council to avoid or minimize resort to sanctions, which sometimes not only failed to resolve the problem satisfactorily, but could also have very serious humanitarian consequences.<sup>9</sup>

At the 4243rd meeting, on 6 December 2000, the President (Russian Federation) made a statement on behalf of the Council.<sup>10</sup> by which the Council, *inter alia*:

Was deeply concerned by the increase, in many regions of the world, of acts of terrorism in all its forms and manifestations;

Reiterated its condemnation of all acts of terrorism, irrespective of motive, wherever and by whomever committed;

Welcomed the efforts of the General Assembly and other organs of the United Nations in the field of combating international terrorism;

Called on all States that had not done so to consider, as a matter of priority, becoming party to the existing anti-terrorism conventions;

Reaffirmed its resolution 1269 (1999) of 19 October 1999 and called upon all States to implement its provisions fully and expeditiously;

Reiterated its readiness to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security.

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<sup>3</sup> *Ibid.*, p. 10 (Tunisia); p. 15 (Malaysia); and p. 20 (Namibia).

<sup>4</sup> *Ibid.*, p. 15.

<sup>5</sup> *Ibid.*, p. 13.

<sup>6</sup> *Ibid.*, p. 17.

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<sup>7</sup> *Ibid.*, p. 8.

<sup>8</sup> *Ibid.*, p. 15.

<sup>9</sup> *Ibid.*, p. 10.

<sup>10</sup> S/PRST/2000/38.

## **B. Maintenance of peace and security and post-conflict peacebuilding**

### **Decision of 23 March 2000 (4119th meeting): statement by the President**

On 11 February 2000, the Secretary-General submitted to the Council the report on the role of United Nations peacekeeping in disarmament, demobilization and reintegration.<sup>11</sup> The Secretary-

General presented an overview of the evolution of the involvement of United Nations peacekeeping in disarmament, demobilization and reintegration, identifying key elements that favoured the success of those processes, highlighting ways in which peacekeeping had assisted in them in the past and suggesting ways in which the United Nations could better support future disarmament, demobilization and reintegration efforts.

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<sup>11</sup> S/2000/101, submitted pursuant to the presidential statement of 8 July 1999 (S/PRST/1999/21).

The Secretary-General noted that past experience suggested that the basis for a successful disarmament, demobilization and reintegration programme should be laid within the peace agreement that provided for the end of a conflict. Where relevant, the role of children in armed conflict should be acknowledged and children's rights should be identified as an explicit priority in peacemaking, peacebuilding and conflict resolution processes, both in the peace agreement and disarmament, demobilization and reintegration plans. The Secretary-General announced that, where appropriate, future peacekeeping operations would include personnel with appropriate training in international humanitarian, human rights and refugee law, including child- and gender-related provisions.

He observed that the process of disarmament might require access to considerable technical skills and institutional knowledge. Stressing the danger posed by the flow of weapons across borders, the Secretary-General noted that if disarmament was to be undertaken effectively, it might be necessary to impose local arms embargoes and targeted sanctions. In that respect, peacekeeping operations should be given the capacity to monitor and control regional arms traffic, while the international community should focus on the economic dimension of arms flows.

With regard to demobilization, the review revealed the importance of a strong political role and ample resources for peacekeeping operations, including, at times, a deterrent capacity. In addition, it had sometimes been useful to provide funding within the assessed budget of a peacekeeping operation to allow the disarmament, demobilization and reintegration process to begin. He suggested that the Council might wish to consider demobilization exercises, or at least their initial stages, as an integral part of the mandate for peacekeeping operations, when such elements played a crucial part in ensuring peace, so that they could be supported by the assessed contributions for the operation.

With respect to reintegration, the Secretary-General observed that while a peacekeeping operation might make direct contributions to reintegration and assist in fostering an appropriate political and socio-economic framework, further efforts were necessary to enhance access by the United Nations to the skills and resources required in that regard. Moreover, the ability of peacekeeping operations to advance reintegration could also be strengthened

through the enhancement of institutional coordination within the international community.

The Secretary-General noted that the ultimate success of a disarmament, demobilization and reintegration process might require efforts long after the withdrawal of a multidisciplinary peacekeeping operation. The deployment of a follow-on mission, in the form of a peacekeeping operation organized around police or a political mission, might help to support advances made and enable further progress. Recalling that the role of a peacekeeping operation in post-conflict disarmament, demobilization and reintegration was rooted in and fed into a broader search for peace and development, the Secretary-General observed that that the international community's key role in the process was to provide clear, consistent and determined support to an overall peace process and to offer long-term assistance with development.

At its 4118th meeting, on 23 March 2000, the Council included in its agenda the above-mentioned report.<sup>11</sup> The Council was briefed by the Secretary-General and statements were made by all Council members and the representatives of Algeria, Bahrain, Colombia, Costa Rica, Croatia, Egypt, Guatemala, Indonesia, Japan, Mongolia, New Zealand, Norway, Portugal (on behalf of the European Union<sup>12</sup>), Singapore and South Africa.

In his briefing, the Secretary-General emphasized that while primary responsibility for reintegration fell outside peacekeeping, peacekeeping operations could nonetheless play a key role in that element of post-conflict reconstruction by ensuring that all factions viewed the political process as fair and a legitimate alternative to violence. For peacekeeping operations to succeed in disarmament, demobilization and reintegration, he believed that the range of tools available to them should be extended. For example, the focus on the needs of child soldiers should be strengthened, and a more flexible approach by the Council was needed in assessing funding for critical elements of disarmament, demobilization and reintegration, so that the disarmament, demobilization and reintegration process could go ahead even while funding through voluntary sources was being

<sup>12</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

mobilized. Furthermore, the ability to locate experienced disarmament experts and trainers for service within peacekeeping operations in the field had to be improved. He concluded that the disarmament, demobilization and reintegration process was only one part of the multifaceted approach necessary for peacekeeping to be successful in the twenty-first century.<sup>13</sup>

In their statements, speakers, *inter alia*, expressed support for the recommendations contained in the report of the Secretary-General; stressed the need for the Council to learn from its past experiences in peacekeeping and disarmament, demobilization and reintegration and to continue to attach importance to disarmament, demobilization and reintegration as an important bridge from the cessation of hostilities to sustainable peace; and noted that the individual stages of disarmament, demobilization and reintegration were mutually supportive, with the overall success of the process depending on the success of each of its stages. They underscored the need for coordination among all the actors involved in the implementation of a disarmament, demobilization and reintegration process and the importance of the political will of the parties for the success of the process. Speakers also agreed on the need to incorporate disarmament, demobilization and reintegration into the planning of peacekeeping missions and peace agreements and pointed out the necessity for a clear mandate for peacekeeping missions. Representatives drew attention to the need to provide sufficient resources to peacekeeping operations, stem the flow of small arms and light weapons to an area of conflict and enhance the implementation of arms embargoes for an effective disarmament, demobilization and reintegration process.

Speakers, in general, stressed the need for guaranteeing sufficient resources. Several delegations stressed the need to strike a balance between assessed and voluntary contributions for an effective implementation of disarmament, demobilization and reintegration programmes, as well as the need for sustained support by the international community and financial institutions.<sup>14</sup> Noting that a lack of financial resources too often caused the failure of disarmament, demobilization and reintegration, the representative of France believed that, at least in the early stages, such

programmes should be able to draw on the budgets of peacekeeping operations. In that respect, the Secretary-General's initiatives regarding seed money for quick impact projects within the assessed budgets of peacekeeping operations deserved encouragement.<sup>15</sup> The representative of Algeria held that reintegration should be given greater attention and in the future be financed through United Nations mission resources and no longer on the basis of voluntary contributions, which were unpredictable and often fell short of the requirements of operations.<sup>16</sup>

In the view of the representative of the United States, reintegration work was distinct from the traditional peacekeeping activities of disarmament and demobilization. While their implementation had been at times shared by humanitarian agencies, disarmament and demobilization fell within the purview of the Council and were often part of peacekeeping operations. Reintegration, however, had to be viewed as a post-conflict peacebuilding or development activity.<sup>17</sup>

Many speakers also touched upon the issue of former child soldiers and war-affected children in the context of disarmament, demobilization and reintegration. Some delegations expressed appreciation for the inclusion of child protection advisers in the disarmament, demobilization and reintegration programmes of the United Nations missions in the Democratic Republic of the Congo and Sierra Leone.<sup>18</sup> A number of speakers called attention to similar needs of women ex-combatants, who were particularly vulnerable in the post-conflict phase.<sup>19</sup> Several representatives believed that the commitment to guarantee the security of former combatants who decided to lay down their weapons should be an integral part of disarmament, demobilization and reintegration programmes.<sup>20</sup>

The representatives of Malaysia and Croatia stressed that all ex-combatants should be reintegrated,

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<sup>15</sup> *Ibid.*, p. 16.

<sup>16</sup> *Ibid.*, p. 23.

<sup>17</sup> *Ibid.*, p. 7.

<sup>18</sup> *Ibid.*, p. 9 (Namibia); p. 18 (Ukraine); and p. 29 (Japan); S/PV.4118 (Resumption 1), p. 10 (Singapore).

<sup>19</sup> S/PV.4118, p. 7 (United States); p. 9 (Namibia); p. 19 (Bangladesh); and p. 24 (South Africa).

<sup>20</sup> *Ibid.*, p. 19 (Bangladesh); p. 24 (South Africa); and p. 28 (Norway); S/PV.4118 (Resumption 1), p. 6 (Bahrain).

<sup>13</sup> S/PV.4118, pp. 2-3.

<sup>14</sup> *Ibid.*, p. 4 (China); p. 7 (United States); p. 10 (Malaysia); and p. 13 (Jamaica).

with the exception of those responsible for war crimes.<sup>21</sup>

The representative of New Zealand cautioned against defining detailed policy approaches to disarmament, demobilization and reintegration applicable to all situations, as no two post-conflict peacebuilding situations were the same. Nevertheless, drawing from his country's experience in East Timor, he stated that the timeliness of the response was one of the key principles that had general applicability.<sup>22</sup> That view was shared by the representative of Canada, who advised that a swift and substantive United Nations peacekeeping action lent credibility to the Organization's efforts and to national initiatives, and that in order to include a meaningful disarmament, demobilization and reintegration component in the mandate of peacekeeping operations, the Council had to show a genuine will to build a capacity for rapid and adequate deployment.<sup>23</sup>

In regard to the execution of disarmament, demobilization and reintegration programmes, the representatives of Algeria and Mongolia highlighted the need to respect the principles of political independence, sovereignty and territorial integrity of all States concerned, as established in the Charter.<sup>24</sup> A number of delegations also drew attention to the role

played by the General Assembly and the Economic and Social Council in disarmament, demobilization and reintegration processes.<sup>25</sup>

At its 4119th meeting, on 23 March 2000, at which the Council again included in its agenda the above-mentioned report of the Secretary-General,<sup>26</sup> the President (Bangladesh) made a statement on behalf of the Council,<sup>27</sup> by which, the Council, inter alia:

Underlined that the disarmament, demobilization and reintegration of ex-combatants were mutually supportive;

Stressed that the political commitment of the parties involved in a peace process was a precondition for success of disarmament, demobilization and reintegration programmes;

Reaffirmed that disarmament and demobilization must take place in a secure and safe environment, which would give ex-combatants the confidence to lay down their arms;

Underlined in particular the importance of disarming, demobilizing and reintegrating child soldiers, as well as taking into account the problems faced by war-affected children in mission areas;

Welcomed the initiative of the Secretary-General to include within all peacekeeping operations personnel with appropriate training in international, humanitarian, human rights and refugee law, including child-and gender-related provisions;

Recognized that adequate and timely funding for disarmament, demobilization and reintegration was critical to the successful implementation of a peace process.

<sup>21</sup> S/PV.4118, p. 10 (Malaysia); S/PV.4118 (Resumption 1), pp. 5-6 (Croatia).

<sup>22</sup> S/PV.4118 (Resumption 1), p. 2.

<sup>23</sup> S/PV.4118, p. 17.

<sup>24</sup> *Ibid.*, p. 23 (Algeria); S/PV.4118 (Resumption 1), p. 4 (Mongolia).

<sup>25</sup> S/PV.4118, p. 5 (Russian Federation); and p. 23 (Algeria); S/PV.4118 (Resumption 1), p. 7 (Bahrain); and p. 14 (Egypt).

<sup>26</sup> S/2000/101.

<sup>27</sup> S/PRST/2000/10.

## **C. Maintaining peace and security: humanitarian aspects of issues before the Security Council**

### **Initial proceedings**

#### **Decision of 9 March 2000 (4110th meeting): statement by the President**

At its 4109th meeting, on 9 March 2000, the Council included in its agenda the item entitled "Maintaining peace and security: humanitarian aspects of issues before the Security Council". At the meeting, statements were made by the Secretary-General; by all Council members, the representatives of Austria (as Chairman-in-Office of the Organization for Security and Cooperation in Europe), Belarus, Brazil, Bulgaria,

Colombia, Egypt, India, the Islamic Republic of Iran, Norway, Pakistan, Portugal (on behalf of the European Union<sup>28</sup>) and South Africa, as well as the Permanent Observer of Switzerland.

In his opening statement, the Secretary-General observed that the experiences of the past decade, from

<sup>28</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

Africa to the Balkans to Asia, had drawn attention to the fact that a humanitarian mission held both greater promise and greater peril than almost any other part of the United Nations work. He drew attention to how humanitarian action could save lives and at the same time how it could be exploited and abused by parties unwilling to abide by humanitarian principles and thus subvert such action to further their own inhumane policies. He emphasized three major issues facing humanitarian action: (a) how such action could make a positive contribution to efforts to restore and maintain peace and security; (b) how to continue to make progress in integrating humanitarian and political-military elements of peace operations; and (c) how to ensure that the legal and principled basis of humanitarian action was respected and strengthened. He stressed the importance of giving humanitarian concerns early consideration when comprehensive peace agreements were negotiated, as well as in peacekeeping missions, to ensure sufficient advance planning on the humanitarian side for operations undertaken to implement a peace agreement. He mentioned three ways in which the Council could strengthen its support for humanitarian action. First, the Council could press Member States to commit themselves fully to providing the financial support needed for humanitarian programmes. Second, the Council could consider including in peacekeeping mandates provisions for financing the early stages of post-conflict reconstruction and the restoration of the rule of law. Third, the Council should address the fact that post-conflict peacebuilding activities were routinely hampered by the failure to sustain the flow of resources, leading to gaps between the provision of direct humanitarian assistance and the restoration of longer-term reconstruction and development. In conclusion, he expressed hope that humanitarian concerns would be fully integrated into the Council's efforts to foster peace and security.<sup>29</sup>

Speakers generally concurred with the observations of the Secretary-General, especially the fact that the Council should deal with humanitarian crises in a timely manner to prevent further complications in finding solutions for such issues. Some representatives advocated the importance of adopting comprehensive and flexible approaches that integrated political, security, humanitarian, human rights and development dimensions to solve the causes

of crises. Other representatives pointed out that addressing humanitarian aspects of crises was not a substitute for political action and stressed the importance of the use of preventive measures in addressing the root causes of conflicts.

Most speakers stressed the importance of the Council ensuring the safe and unimpeded access of humanitarian assistance to war-affected civilians and the safety, security and freedom of movement of the United Nations and associated humanitarian personnel. A number of representatives underlined the importance of the cooperation of all the parties to a given conflict, as well as the need to secure the consent of the Governments of the affected countries in addressing humanitarian emergencies. Some delegations recognized the need to incorporate the humanitarian dimension at the earliest stage in the formulation of clear and viable peacekeeping mandates, and also cautioned that care should be taken to keep a clear distinction between peacekeeping and humanitarian activities. Other speakers observed the need for the Council to develop better coordination with relevant bodies of the United Nations and its specialized agencies, which would enhance a comprehensive and integrated approach in alleviating the hardships suffered by civilians during humanitarian crises.

The representative of France argued that humanitarian crises could reach such degrees of seriousness that the response could be only a political one, which, in certain circumstances, would also require the use of force to put an end to large-scale violations of human rights and international humanitarian law. Those violations in themselves threatened international peace and security and therefore fully justified the use of such action, in accordance with the Charter.<sup>30</sup> That view was supported by the representative of Portugal, who agreed that massive and systematic breaches of international humanitarian and human rights law could constitute a threat to peace and security, and in the case of massive and ongoing abuses the consideration by the Council of appropriate enforcement measures, based on clear and identifiable criteria, might be necessary.<sup>31</sup>

In contrast, the representative of Norway noted that while a difficult humanitarian situation might be part of the Council's assessment of whether a situation

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<sup>29</sup> S/PV.4109, pp. 3-4.

<sup>30</sup> *Ibid.*, p. 7.

<sup>31</sup> S/PV.4109 (Resumption 1), p. 2.

was a threat to peace and security, it was not in itself a sufficient legal basis for the threat or use of force.<sup>32</sup> The representative of the Russian Federation underlined that violations of international humanitarian law could not be ended by actions that themselves violated the Charter. He added, echoed by China and Pakistan, that arbitrary military measures that sidestepped the Council, including those taken under the pretext of preventing humanitarian catastrophes, were not acceptable and could only worsen crises. He noted that his country was open to the idea of developing criteria and legal frameworks for activities of the international community, including enforcement in cases of extreme humanitarian situations.<sup>33</sup> Similarly, the representative of the Islamic Republic of Iran pointed out that in the process of furthering humanitarian causes, the international community might employ coercive measures, including the use of military force, but this could be done only in strict conformity with the Charter and pursuant to a decision by the Council. He expressed the belief that enforcement actions without Council authorization and in contempt of the Charter tended to undermine the current international security system.<sup>34</sup> The representative of Belarus also stressed that the concept of “humanitarian intervention” was illogical and was fraught with unforeseeable dangers.<sup>35</sup>

The representative of Egypt commented on the wording of the agenda item and stated that it provided a very loose framework for discussion, making it difficult for many Member States to address the issue accurately or to speak about it in specific or definitive terms. He noted that the term “humanitarian aspects” could be used to raise various subjects and ideas and involved too many concepts and measures which made it difficult to deal with the various dimensions or component parts of the question with any reasonable degree of confidence.<sup>36</sup> The representative of India noted that the fact that 15 members of the Council had so clearly been unable to agree even on the wording of the agenda item showed that the underlying concept was controversial. He pointed out that since there was no comparable legal framework for humanitarian

relief, it might seem to be a greyer area, but it was the sovereign right of a State to determine whether it needed humanitarian assistance or not, and therefore the use of force by the Council would be wrong in law, violating Article 2 (7) of the Charter.<sup>37</sup>

At the 4110th meeting, on 9 March 2000, the President (Bangladesh) made a statement on behalf of the Council,<sup>38</sup> by which the Council, *inter alia*:

Recalled its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security;

Affirmed that timely consideration of humanitarian issues contributes to the prevention of escalation of conflicts and to the maintenance of international peace and security;

Reaffirmed its concern for the well-being and rights of war-affected civilians and reiterated its call to all parties to ensure safe and unimpeded access of humanitarian personnel to those civilians;

Noted that full and timely support for humanitarian components could be critical in ensuring and enhancing the sustainability of any peace agreement and post-conflict peacebuilding;

Noted that in some instances the integration of humanitarian components into peacekeeping operations would contribute effectively to the fulfilment of their mandate, and, in that regard, noted the importance of adequate training for peacekeeping personnel in, *inter alia*, international humanitarian law and human rights;

Underlined the importance of effective coordination among relevant United Nations organs and agencies, regional bodies and other humanitarian actors in the field;

Recognized the role played by international humanitarian organizations and Non-Governmental Organizations in providing humanitarian assistance and alleviating the impact of humanitarian crises;

Noted with concern the inadequate financial support for humanitarian activities, and called for adequate funding;

Encouraged the Secretary-General to continue to include the humanitarian situation in his regular briefings to the Council on countries under review, as well as the funding status of the United Nations consolidated appeals, where appropriate.

<sup>32</sup> *Ibid.*, p. 6.

<sup>33</sup> S/PV.4109, p. 15 (Russian Federation); and p. 16 (China) and S/PV.4109 (Resumption 1), and p. 9 (Pakistan).

<sup>34</sup> S/PV.4109 (Resumption 1), pp. 18-19.

<sup>35</sup> S/PV.4109, p. 23.

<sup>36</sup> *Ibid.*, p. 20.

<sup>37</sup> *Ibid.*, pp. 12-13.

<sup>38</sup> S/PRST/2000/7.

## D. The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations

### Decision of 17 July 2000 (4172nd meeting): resolution 1308 (2000)

At its 4172nd meeting,<sup>39</sup> on 17 July 2000, the Council was briefed by the Executive Director of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Statements were made by a majority of Council members,<sup>40</sup> and the representatives of Indonesia, Malawi, Uganda and Zimbabwe.

The President (Jamaica) drew attention to a letter dated 5 July 2000 from the Secretary-General addressed to the President of the Council, transmitting a note prepared by UNAIDS, summarizing actions taken to date in follow-up to the Council meeting on HIV/AIDS in Africa held on 10 January 2000.<sup>41</sup>

In his briefing, the Executive Director of UNAIDS described the recently concluded International Conference on AIDS, held in Durban, South Africa in July 2000, as a “conference of hope”. He underlined the value of prevention and improving the treatment and care offered to people living with the virus, and noted that the main theme of the Conference had been access to treatment. On the strides made since the Council first discussed the subject of HIV/AIDS in January 2000,<sup>42</sup> he drew attention to (a) the efforts made to increase ease of access to information on the epidemic, pointing to the country response monitoring project; (b) the substantial progress being made by the International Partnership against AIDS in Africa; (c) the country-level efforts to fight the spread of the disease; and (d) the action plan endorsed by an Inter-Agency Standing Committee working group in May 2000, which emphasized the importance of incorporating HIV/AIDS into humanitarian action. He

announced that to facilitate the implementation of the proposals of the working group, a humanitarian coordination unit had been established by the UNAIDS secretariat and a number of countries had been identified for the first phase of the effort. He further welcomed the draft resolution under consideration,<sup>43</sup> in particular its recognition that HIV/AIDS posed a threat to human security and could be a destabilizing force worldwide.<sup>44</sup>

Speakers concurred that HIV/AIDS had risen beyond a health crisis to a global one. Referring to the Durban Conference, they noted that the most contentious issue had been access to care and treatment of HIV/AIDS, and welcomed the dialogue that had begun between pharmaceutical companies and United Nations agencies with the goal of accelerating and improving care and access to treatment in developing countries. In the battle against HIV/AIDS, speakers underlined the importance of setting international targets, noting the reference in the resolution that aimed to reduce the rate of infection by 25 per cent by the year 2010. Other areas of concern addressed by the speakers included better coordination and partnership among the relevant bodies and within the United Nations system, and the need for bold national responses to the pandemic. In that context, speakers recalled the role played by the General Assembly and the Economic and Social Council in addressing HIV/AIDS.<sup>45</sup>

Speakers also drew attention to the focus of the resolution on the need to train peacekeepers and other international workers in HIV/AIDS prevention, noting that without adequate training in prevention, peacekeepers could expose themselves to infection and

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<sup>39</sup> For more information on the discussion at this meeting, see chap. VI, part I, sect. F, case 3, with regard to relations with subsidiary organs established by the General Assembly; chap. VI, part II, sect. B, case 5, with regards to the constitutional discussion arising in connection with the Economic and Social Council; and chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter.

<sup>40</sup> The representatives of China and the Russian Federation did not make statements.

<sup>41</sup> S/2000/657.

<sup>42</sup> See S/PV.4087.

<sup>43</sup> S/2000/696.

<sup>44</sup> S/PV.4172, pp. 2-4.

<sup>45</sup> For more information on the relationship between the Council and the Assembly in addressing HIV/AIDS, please see chapter VI, part I, sect. F, case 3, with regard to relations with subsidiary organs established by the General Assembly; and for the relationship between the Security Council and the Economic and Social Council, see chapter VI, part II, sect. B, case 5, with regard to the constitutional discussion arising in connection with the Economic and Social Council.

spread HIV/AIDS inadvertently. The representative of Tunisia emphasized that peacekeepers, in addition to providing means of protection for themselves and others, had an important role to play in raising awareness of HIV/AIDS.<sup>46</sup>

Speaking on behalf of the European Union,<sup>47</sup> the representative of France described AIDS as a “massive killer” which in 1999 had caused more deaths on the continent of Africa than all the conflicts raging there combined.<sup>48</sup> The representative of Zimbabwe, noting that the Secretary-General had stressed in his millennium report<sup>49</sup> the desperate need for a vaccine against HIV/AIDS, expressed the hope that the Council could make decisions and proposals that could stimulate the desperately needed investment in the area of research or treatment of HIV.<sup>50</sup>

Several speakers called for affordable vaccines against HIV.<sup>51</sup> The representative of Tunisia deemed it unacceptable that the majority of humanity was denied the benefits of medical progress or drugs merely as a result of living in developing countries.<sup>52</sup>

Responding to comments, the Executive Director of UNAIDS noted that the fact that HIV/AIDS was being conceptualized as a security and development problem and not simply a health problem would change dramatically the kinds of resources that could be used to tackle the problem, which would help UNAIDS tremendously in its very difficult work.<sup>53</sup>

The President drew the attention of the Council to a draft resolution;<sup>54</sup> it was put to the vote and adopted unanimously as resolution 1308 (2000), by which the Council, *inter alia*:

Expressed concern at the potentially damaging impact of HIV/AIDS on the health of international peacekeeping personnel, including support personnel;

Encouraged all interested Member States which had not already done so to consider developing, in cooperation with the international community and UNAIDS, where appropriate, effective long-term strategies for HIV/AIDS education, prevention, voluntary and confidential testing and counselling, and treatment of their personnel, as an important part of their preparation for participation in peacekeeping operations;

Requested the Secretary-General to take further steps towards the provision of training for peacekeeping personnel on issues related to preventing the spread of HIV/AIDS and to continue the further development of pre-deployment orientation and ongoing training for all peacekeeping personnel on these issues;

Encouraged UNAIDS to continue to strengthen its cooperation with interested Member States to further develop its country profiles in order to reflect best practices in and country policies on HIV/AIDS prevention education, testing, counselling and treatment.

**Decision of 28 June 2001 (4339th meeting): statement by the President**

At its 4259th meeting,<sup>55</sup> on 19 January 2001, the Council was briefed by the Under-Secretary-General for Peacekeeping Operations and the Executive Director of UNAIDS. Statements were made by a majority of Council members,<sup>56</sup> and by the representatives of Canada, Costa Rica, India, Nigeria and Sweden (on behalf of the European Union<sup>57</sup>).

The Under-Secretary-General for Peacekeeping Operations noted that while there was undeniably a risk of peacekeepers transmitting HIV or contracting it while they were on mission, the means were not yet available to quantify the extent to which that had already occurred or could occur in the future. First, there was generally a lack of reliable data on HIV/AIDS in places where peacekeepers were deployed and, second, reliable data was not available on the prevalence of HIV among contingents. He noted that the first step in mitigating future risks was to increase the awareness of peacekeepers, and those with whom they came into contact locally, about the causes

<sup>46</sup> S/PV.4172, p. 9.

<sup>47</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>48</sup> S/PV.4172, pp. 18-19.

<sup>49</sup> A/54/2000.

<sup>50</sup> S/PV.4172, pp. 20-21.

<sup>51</sup> *Ibid.*, p. 9 (Tunisia); p. 15 (Mali); p. 17 (Bangladesh); and p. 21 (Indonesia).

<sup>52</sup> *Ibid.*, p. 9.

<sup>53</sup> *Ibid.*, pp. 25-26.

<sup>54</sup> S/2000/696.

<sup>55</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter.

<sup>56</sup> The representatives of China, Mali and the Russian Federation did not make statements. Singapore was represented by its Minister for Foreign Affairs and Norway by its Minister of International Development.

<sup>57</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.



and prevention of HIV/AIDS. He elaborated on concrete steps taken and new initiatives contemplated by the Department of Peacekeeping Operations. On particular points, he reported that the Department had recently put forward a proposal to Member States for the United Nations to reimburse contributors for the costs of conducting HIV testing for their personnel, both predeployment and upon return. While recognizing that it remained the prerogative of Member States to apply their respective policies on testing, he stated that the Department strongly recommended voluntary and confidential counselling and testing. The Under-Secretary-General further stated that the Department was seeking funding for making prophylactics readily available in all missions. The Department, he indicated, would continue to evaluate the effectiveness of all its programmes and activities and would also examine the necessary staffing levels related to HIV-related issues. He announced that the Department and UNAIDS had recently signed a memorandum of understanding, which further developed and institutionalized the cooperative relationship between the respective organizations.<sup>58</sup>

The Executive Director of UNAIDS paid tribute to the Council for helping to transform the way in which AIDS was viewed by characterizing the global epidemic as a fundamental issue of human security. He maintained that much of the global agenda on AIDS was unfinished, especially the continuing inequities in access to effective care and treatments and even to life-saving materials such as condoms. He noted that in 2000 there has been increasing acceptance by Governments and industry of the moral legitimacy of equity pricing — the idea that poorer countries should be able to buy essential drugs at lower prices than wealthy countries. He also announced that as the role of HIV testing in peacekeeping operations was a complex issue, he had decided to establish, in conjunction with the Under-Secretary-General for Peacekeeping Operations, a senior expert panel to analyse and formulate a comprehensive position on the issue of HIV testing for peacekeepers and humanitarian personnel.<sup>59</sup>

Speakers expressed their gratitude to the Department of Peacekeeping Operations and UNAIDS for their work, despite insufficient staffing and

resources, to curb the spread of HIV/AIDS, especially in hardest-hit Africa, and encouraged them to continue their efforts to train peacekeepers on issues relating to the prevention of HIV/AIDS. Reiterating their conviction that the HIV/AIDS pandemic was a threat to international peace and security and underscoring its long-term social and economic impact, as well as its potentially damaging impact on the health of international peacekeeping personnel, many speakers underlined the need for efforts to ensure the implementation of resolution 1308 (2000). Speakers also looked forward to the special session of the General Assembly on HIV/AIDS, to be held in June 2001.

The representative of the United Kingdom expressed support for the development by UNAIDS of a United Nations system strategic plan and stressed the need to mainstream HIV/AIDS in all relevant work on international peace and security, especially in Africa.<sup>60</sup>

Several speakers stressed the importance of making medication affordable to people in developing countries.<sup>61</sup> The representative of Ireland held that clarity was needed on such issues such as tiered pricing, compulsory licensing, parallel imports and the rights and obligations of both patent holders and signatories to international patent protection agreements.<sup>62</sup>

Many speakers emphasized the need to raise awareness of HIV/AIDS among peacekeepers and increase the training afforded to peacekeepers before deployment. The representative of Canada suggested that the Department of Peacekeeping Operations and UNAIDS meet soon with troop-contributing countries to assess the progress made in undertaking the requirements of resolution 1308 (2000). He underlined that care should be taken not to demonize peacekeepers, as no one believed they were the heart of the problem, while HIV/AIDS was a serious security challenge.<sup>63</sup>

The representative of Jamaica emphasized the critical role of the Department of Peacekeeping

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<sup>58</sup> S/PV.4259, pp. 2-6.

<sup>59</sup> *Ibid.*, pp. 6-8.

<sup>60</sup> *Ibid.*, p. 20.

<sup>61</sup> *Ibid.*, p. 16 (Norway); p. 18 (Tunisia); and pp. 22-23 (France); S/PV.4259 (Resumption 1), p. 6 (Mauritius); p. 10 (Costa Rica); p. 12 (Nigeria); and p. 15 (Singapore).

<sup>62</sup> S/PV.4259 (Resumption 1), p. 4.

<sup>63</sup> *Ibid.*, p. 7.

Operations in ensuring the development of adequate policy guidelines on acceptable behaviour in relation to HIV/AIDS.<sup>64</sup> The representative of Norway recommended that all United Nations peacekeeping personnel be offered voluntary confidential counselling and testing, both pre- and post-deployment; that every peacekeeping operation have a focal point for HIV/AIDS; that resident coordinators ensure that United Nations dispensary staff receive regular training on all aspects of HIV/AIDS prevention; and that male and female condoms be freely available on all United Nations premises.<sup>65</sup> The representative of Nigeria held that the Department should embark upon a massive information campaign to educate United Nations peacekeepers on the HIV pandemic before their deployment. He further proposed that the Secretariat and the Council, during their consultations with troop-contributing countries, could provide data on the prevalence of HIV/AIDS in a particular field of operation before the troops were deployed. He added that the information would facilitate the taking of preventive measures by those countries before the departure of their troops.<sup>66</sup>

The representative of Sweden, speaking on behalf of the European Union, held that the United Nations should support the creation of national HIV/AIDS programmes wherever they were not already in place.<sup>67</sup>

The representative of the United States stated that HIV/AIDS was the most important and biggest problem in the world today. In regard to the efforts made by the Department of Peacekeeping Operations in implementing resolution 1308 (2000), he admitted that the Department was understaffed, but described its HIV/AIDS handbooks as technical, wordy, not clear-cut and out of date, and devoid of any reference to resolution 1308 (2000). He believed they should be rewritten and made clearer and more useful. He suggested that the Department establish a separate unit to deal specifically with HIV/AIDS and include the cost of pre- and post-deployment HIV tests as a standard line item in the regular peacekeeping budget. Referring to the resistance he had encountered when trying to bring a health issue to the Council, he called on the United Nations to put outcome over process to accomplish more. He expressed the view that putting

the issue on the agenda would help to save lives from HIV/AIDS, as the stigma attached to it and its long incubation period would kill more people than even the worst conflicts before the Council.<sup>68</sup>

The representative of India held that AIDS was not and had not been a cause of conflict and, disputing the provision in resolution 1308 (2000) that the HIV/AIDS pandemic was also exacerbated by conditions of violence and instability, stated that the countries with the highest prevalence of HIV/AIDS were, without exception, democracies with stable recent histories, either completely or largely free of conflict. Citing a recent study regarding the Democratic Republic of the Congo, he concluded that there was no organic link between conflict and AIDS. He noted that India would find unfortunate the imputation that peacekeepers were either necessarily at risk or carriers of the disease. He further held that singling out HIV/AIDS awareness for peacekeepers, as the Council had done in its recent resolutions, was not only needless, but presented a misleading picture of the problems that peacekeepers faced and for which they must prepare. He stated that if the Council believed that HIV/AIDS was a threat to international peace and security, it had not only the right but also the duty to rule that article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) be invoked to urgently provide affordable medicines that help in the treatment of the epidemic.<sup>69</sup>

At the 4339th meeting, on 28 June 2001, in which the Executive Director of UNAIDS was invited to participate, the President (Bangladesh) made a statement on behalf of the Council.<sup>70</sup> by which the Council, *inter alia*:

Welcomed the fact that the Declaration of Commitment on HIV/AIDS, adopted by the General Assembly at its twenty-sixth special session, contained a number of practical measures at the national and international levels, to be met within given time frames, to reduce the impact of conflict and disasters on the spread of HIV/AIDS;

Noted the progress made in the implementation of resolution 1308 (2000) and commended the increased cooperation in this regard between the Department of Peacekeeping Operations and UNAIDS;

<sup>64</sup> S/PV.4259, pp. 21-22.

<sup>65</sup> *Ibid.*, pp. 15-16.

<sup>66</sup> S/PV.4259 (Resumption 1), p. 12.

<sup>67</sup> *Ibid.*, p. 9.

<sup>68</sup> S/PV.4259, pp. 10-13.

<sup>69</sup> S/PV.4259 (Resumption 1), pp. 13-14.

<sup>70</sup> S/PRST/2001/16.

Recognized that further efforts were necessary to reduce the negative impact of conflict and disasters on the spread of HIV/AIDS;

Encouraged continued efforts with regard to relevant training for peacekeeping, predeployment orientation and increased international cooperation in areas such as prevention, voluntary and confidential testing and counselling, treatment for personnel, and the exchange of best practices and country policies in this regard;

Expressed its intention to contribute within its competence to the attainment of the relevant objectives in the Declaration adopted by General Assembly at the twenty-sixth special session of the General Assembly.

### **Deliberations of 17 November 2003 (4859th meeting)**

At its 4859th meeting,<sup>71</sup> on 17 November 2003, the Council was briefed by the Under-Secretary-General for Peacekeeping Operations and the Executive Director of UNAIDS. Statements were made by all Council members.

The Under-Secretary-General for Peacekeeping Operations recalled that the focus of resolution 1308 (2000) had been on the vulnerability to HIV/AIDS of uniformed services and international peacekeeping personnel, which included civilian staff. Among the measures instituted by the United Nations since the resolution's adoption, he drew attention to the establishment of the HIV/AIDS trust fund; the appointment of the HIV/AIDS advisers and focal points in the Department of Peacekeeping Operations and in the major peacekeeping missions; and advances in HIV/AIDS awareness training, including updated publications and predeployment and in-mission training programmes. Noting that, with 92 countries contributing military personnel and civilian police, it presented an immense challenge to making training culturally specific, the Under-Secretary-General appealed to countries to mainstream HIV/AIDS awareness in their national training programmes. In addition, he hoped that the following year, Member States would accept the Secretariat's proposal that the United Nations reimburse troop-contributing countries for the cost of voluntary confidential counselling and testing. He further reiterated the Department's zero-tolerance stance regarding sexual abuse and exploitation by peacekeeping personnel. He added that

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<sup>71</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter.

the Department was seeking to capitalize on the positive potential of peacekeepers as agents of change who could share their knowledge about HIV with local populations and respond to sexual violence and exploitation. The Department was also working to assist host countries at the strategic level, providing guidance to national armed forces on ways to mainstream awareness programming.<sup>72</sup>

The Executive Director of UNAIDS asserted that the Council's consideration of AIDS in January 2000 and its subsequent adoption of resolution 1308 (2000) had reshaped the global landscape of the fight against AIDS and laid the groundwork for the prominence given to AIDS as a security issue. However, he regretted that the Council had not addressed AIDS expressly in several recent resolutions establishing and extending United Nations missions, especially those in regions experiencing major HIV epidemics. Nonetheless, in his view, the Council's resolve had been integral to winning the support of national Governments in responding in a more concerted fashion to the threat of AIDS in the peacekeeping context and had opened the door for UNAIDS to work with defence and civil defence forces. The Executive Director indicated that he planned to present to the Council in 2004 a detailed progress report on UNAIDS implementation activities in relation to resolution 1308 (2000). Declaring that AIDS was not only a great moral challenge, but also a barrier to development and a fundamental threat to security, he expressed his appreciation to the Security Council for its part in meeting that challenge, and stated that he looked forward to the continued leadership of the Council.<sup>73</sup>

Council members recalled that resolution 1308 (2000) was a milestone in the struggle against the scourge of HIV/AIDS, which had the potential to unravel societies, destroy economies, evaporate progress made in development and threaten international peace and security. They shared the view that HIV/AIDS continued to threaten to kill more people and undermine more societies than any other conflict addressed by the Council.

Recalling that in conflict and post-conflict areas, peacekeepers were at high risk for HIV/AIDS, speakers were encouraged by the progress made in implementing resolution 1308 (2000). In particular,

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<sup>72</sup> S/PV.4859, pp. 2-5.

<sup>73</sup> *Ibid.*, pp. 6-8.

they commended the practical work undertaken by the Department of Peacekeeping Operations and UNAIDS and the improved coordination between them in combating the epidemic.

Council members also welcomed the steps taken by the Department in increasing the awareness of peacekeepers, establishing the post of HIV/AIDS advisers, creating focal points in missions and revising the code of conduct. The representative of Germany noted that the three related areas of HIV/AIDS, women and peace and security, and children and armed conflict were key components in setting up future peacekeeping missions. The creation of the United Nations Mission in Liberia was therefore very encouraging.<sup>74</sup>

Speakers expressed support for the creation of the Global Fund to Fight AIDS, Tuberculosis and Malaria. Many representatives detailed the steps taken by their Governments in addressing the danger posed by the disease in their national armed forces.<sup>75</sup>

Council members stressed that the eradication of the disease required further strong cooperative action on the part of the entire international community, as well as an urgent need to provide adequate resources for the implementation of resolution 1308 (2000), bearing in mind the 2005 targets set in the Declaration of Commitment on HIV/AIDS. The representative of Germany believed that progress should be followed closely in both the Council and the General Assembly.<sup>76</sup> The representative of the United Kingdom noted that the Council had to be clear that it was fulfilling its potential in working collectively with the

Assembly and the Economic and Social Council to ensure that the response of the United Nations system was coherent and effective.<sup>77</sup> Similarly, the representative of France observed that the Security Council, together with the Economic and Social Council, should consider means to respond more effectively to the challenges linked to HIV/AIDS.<sup>78</sup>

A few representatives underlined the need for a joint evaluation report by UNAIDS and the Department of Peacekeeping Operations on implementation of resolution 1308 (2000), to be available by 2004.<sup>79</sup> The representative of the United Kingdom held also that the Council should draw on experience of UNAIDS, the Department and others to offer a clear evidence base for the links between peace, security and HIV/AIDS, and with suggestions for action; and the Council should ask the Secretary-General to bring both strands together in a definitive assessment for consideration by the Council in 2005.<sup>80</sup>

The representative of Mexico urged Member States to assist developing countries that supply troop contingents for peacekeeping operations as they did not have the resources necessary for voluntary and confidential counselling and testing.<sup>81</sup> The representative of Germany held that testing facilities should be part of all peacekeeping operations.<sup>82</sup> The representative of Chile drew attention to the need for a coordinated approach regarding HIV/AIDS prevention when United Nations peacekeepers were replaced by regional organizations.<sup>83</sup>

<sup>74</sup> Ibid., p. 15.

<sup>75</sup> Ibid., p. 11 (United States); p. 12 (Chile); p. 14 (Syrian Arab Republic); p. 17 (Bulgaria); p. 18 (France); p. 20 (Guinea); p. 23 (Pakistan); and p. 25 (Angola).

<sup>76</sup> Ibid., p. 15.

<sup>77</sup> Ibid., p. 9.

<sup>78</sup> Ibid., p. 18.

<sup>79</sup> Ibid., pp. 9-10 (United Kingdom); p. 12 (Chile); and p. 23 (Cameroon).

<sup>80</sup> Ibid., pp. 9-10.

<sup>81</sup> Ibid., p. 21.

<sup>82</sup> Ibid., p. 15.

<sup>83</sup> Ibid., p. 12.

## **E. Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

### **Decision of 7 September 2000 (4194th meeting): resolution 1318 (2000)**

At its 4194th meeting,<sup>84</sup> held at the level of Heads of State and Government, on 7 September 2000, the Council was briefed by the Secretary-General. Statements were made by all Council members.<sup>85</sup>

In his introductory remarks, the President of the Council (Mali) stressed that Member States, in renewing their commitment to the ideals and objectives of the Charter of the United Nations as well as their commitment to achieving real progress towards international peace and security, must accord the United Nations the necessary means to achieve peace.<sup>86</sup>

The Secretary-General, citing what he considered to be a crisis of credibility facing the Council, noted the need for prompt, united and effective action in halting conflict and restoring peace, especially in Africa, where millions were suffering from the ravages of war. He stressed the importance of summoning the will to act preventively, before crises spiralled out of control. Whether in the case of sanctions, peacekeeping operations or armed intervention as a last resort, he stressed that the will to act had to be accompanied by the ability to act effectively and decisively. Affirming his commitment to implementing the changes proposed in the report of the Panel on United Nations Peace Operations of 21 August 2000 (the Brahimi report),<sup>87</sup>

he urged Council members and the larger United Nations membership to do likewise.<sup>88</sup>

Echoing the Secretary-General, Council members generally noted that in recent years, conflicts, including in Africa, were increasingly internal in nature and their settlement required addressing the root cause of conflict. Council members also highlighted the importance of conflict prevention, stressing the need for addressing such core issues as the illegal exploitation of natural resources, trafficking in narcotics and small arms, terrorism and fundamentalism. In that context, the representatives of France and the Netherlands advocated a greater role for the Secretary-General in the field of conflict prevention.<sup>89</sup>

Several speakers addressed the issue of State sovereignty and the principle of non-intervention.<sup>90</sup> While noting that the principle of non-intervention had to be respected, the representative of Argentina stated that a complementary value should be added, namely the principle of non-indifference, which meant that perpetrators of crimes that offended the common conscience of humankind could not be left unpunished.<sup>91</sup> Similarly, the representative of Jamaica observed that breaches of international humanitarian and human rights laws must not go unchallenged and therefore held that rightful concerns over sovereignty could not justify turning a blind eye to the forces of evil.<sup>92</sup> The representative of China held that wilful use of force and interference in the internal affairs of other countries in the name of humanitarianism not only ran counter to the purposes and principles of the Charter, but would also have severe negative consequences. He stressed that the success of peacekeeping operations

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<sup>84</sup> For more information on the discussion at this meeting, see chap. I, part I, sect. B, case 2, with regard to procedural developments relating to meetings; and chap. XII, part III, sect. A, with regard to general considerations of the provisions of Chapter VIII of the Charter.

<sup>85</sup> Argentina, China, France, Mali, Namibia, the Russian Federation, Tunisia, Ukraine and the United States were represented by their respective Presidents; Bangladesh, Canada, Jamaica, the Netherlands and the United Kingdom were represented by their respective Prime Ministers; and Malaysia was represented by its Minister for Foreign Affairs.

<sup>86</sup> S/PV.4194, pp. 2-3.

<sup>87</sup> S/2000/809, prepared by the Panel on United Nations Peace Operations established by the Secretary-General, and chaired by former minister for foreign affairs of

Algeria, Lakhdar Brahimi. It contained an assessment of the ability of the United Nations to conduct peace operations effectively and offered specific recommendations for ways in which the Organization could enhance that capacity.

<sup>88</sup> S/PV.4194, pp. 3-4.

<sup>89</sup> *Ibid.*, p. 8 (France); and p. 17 (Netherlands).

<sup>90</sup> *Ibid.*, p. 6 (Argentina); pp. 7-8 (China); and p. 16 (Jamaica).

<sup>91</sup> *Ibid.*, p. 6.

<sup>92</sup> *Ibid.*, p. 16.

depended on the observance of the purposes and principles of the Charter, particularly the principles of respect for State sovereignty, non-interference in the internal affairs of recipient countries, seeking prior consent of the parties concerned, neutrality and the non-use of force except for self-defence.<sup>93</sup>

Many members welcomed the recommendations contained in the Brahimi report and recognized that further consideration of such proposals was needed with a view to implementing them. Furthermore, Council members supported the recommendations concerning the need for peace operations to have sufficient resources, quality troops and proper equipment, objectives in line with operating mandates, and a strengthened partnership between the Council, the Secretariat and regional organizations and initiatives.

Drawing attention to the destabilizing effect of infectious diseases, the representative of the United States stressed the need to define security more broadly. He added that the Council would increasingly have to deal with such issues as HIV/AIDS and climate change and expressed hope that the Council would have a twenty-first century vision of security.<sup>94</sup> A number of representatives held that international security in the twenty-first century had to be understood in terms of human security.<sup>95</sup> The representative of Canada noted that, while remaining essential, the security of States was not sufficient to ensure the safety and well-being of people. He further recalled his delegation's past efforts to broaden the Council's definition of security to encompass new human security challenges and insisted on the need for the Council to give greater weight to humanitarian principles and human rights when making decisions.<sup>96</sup>

The representative of Namibia urged the Council to accord equal importance to all regions of the world in undertaking swift response to breaches of international peace and security. He demanded that Africa not be treated as an afterthought.<sup>97</sup> Similarly, the representative of Malaysia stressed the importance

of an even-handed, rather than a selective, approach by the Council to conflict situations.<sup>98</sup>

Calling for better use of sanctions, several speakers noted that when such measures were resorted to, they should be proportionate to the objective and targeted to achieve maximum results with minimal effect on civilian populations.<sup>99</sup>

The President drew the attention of the Council to a draft resolution;<sup>100</sup> it was put to the vote and adopted unanimously as resolution 1318 (2000),<sup>101</sup> by which the Council decided to adopt a declaration, annexed to the resolution, on ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa.

**Decision of 13 November 2000 (4220th meeting): resolution 1327 (2000)**

At its 4220th meeting,<sup>102</sup> on 13 November 2000, the Council included in its agenda a letter dated 10 November 2000 from the Chairman of the Security Council Working Group on the Brahimi Report<sup>103</sup> addressed to the President of the Council,<sup>104</sup> transmitting the report of the Working Group; the

<sup>98</sup> Ibid., p. 18.

<sup>99</sup> Ibid., p. 9 (France); p. 10 (Namibia); p. 13 (Ukraine); p. 18 (Malaysia); and p. 19 (Mali).

<sup>100</sup> S/2000/845.

<sup>101</sup> At the same meeting, the Council adopted a presidential statement in connection with the situation in the Democratic Republic of the Congo (S/PRST/2000/28). For more information, see section 10 of the present chapter (The situation concerning the Democratic Republic of the Congo).

<sup>102</sup> For more information on the discussion at this meeting, see chap. VI, part VI, case 18, with regard to relations with the Military Staff Committee; chap. X, part IV, with regard to the constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter; chapter XI, part V, section B, with regard to the discussion relating to Article 43 of the Charter; and chap. XI, part V, sect. F, with regard to the discussion relating to Articles 46 to 47.

<sup>103</sup> The Security Council Working Group on the Brahimi Report (S/2000/809) was established on 3 October 2000 pursuant to a decision by the Council to undertake a comprehensive review of the recommendations contained in the report on improving the role of the United Nations in peace operations. For more information, see chap. V, part I, sect. C, with regard to informal and ad hoc working groups.

<sup>104</sup> S/2000/1084.

<sup>93</sup> Ibid., pp. 7-8.

<sup>94</sup> Ibid., p. 5.

<sup>95</sup> Ibid., p. 6 (Argentina); p. 14 (Bangladesh); and p. 15 (Canada).

<sup>96</sup> Ibid., p. 15.

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

results of its discussions were set out in the form of a draft resolution and an annex containing a number of decisions and recommendations for the Council.

At the meeting, statements were made by all Council members. At the outset, the President (Netherlands) drew attention to the report of the Secretary-General on the implementation of the Brahimi report,<sup>105</sup> and to the text of a draft resolution,<sup>106</sup> which contained an annex identical to that above-mentioned report of the Working Group. The draft resolution was adopted unanimously as resolution 1327 (2000), by which the Council, *inter alia*:

Agreed to adopt the decisions and recommendations contained in the annex to the resolution; and decided to review periodically the implementation of the provisions contained in the annex.

Decided to remain actively seized of the matter.

Following the adoption of the resolution, Council members expressed their support for the work undertaken by the Working Group and observed that the Council had taken an important step forward by adopting a resolution which implemented a number of the recommendations included therein. Speakers particularly supported the recommendations whereby the Council resolved to give peacekeeping operations clearer, more credible and achievable mandates as well as appropriate resources to fulfil those mandates, in the light of the changing nature of peacekeeping operations and conflicts. Speakers also drew attention to, *inter alia*, the need to improve the rapid deployment capacity of the United Nations, ensure the safety of peacekeepers and improve the training of peacekeeping forces. A number of Council members also recommended that, in line with the recommendations included in the Brahimi report, more effective conflict prevention strategies be adopted, and underlined the importance of addressing the root causes of conflicts and of elaborating better peacebuilding strategies.

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<sup>105</sup> S/2000/1081, including recommendations in the areas of enhancing the effectiveness of key peace and security instruments; creating new mechanisms for improving system-wide integration; enhancing rapid and effective deployment capacities; securing funding for Headquarters support to peacekeeping operations; restructuring the Department of Peacekeeping Operations; strengthening other parts of the United Nations system; and improving information technology and knowledge management.

<sup>106</sup> S/2000/1085.

The representative of Argentina observed that lack of participation by States with greater capability, in resources and means, could have a deterrent effect on other troop-contributing countries, which made all initiatives geared towards obtaining a stronger commitment from the most capable States attractive to countries of moderate resources.<sup>107</sup> Similarly, the representative of Tunisia noted that the provision of sufficient numbers of troops and equipment for peacekeeping operations was an issue of collective responsibility incumbent upon all Member States, in particular those having greater means and capacities.<sup>108</sup>

The representative of Bangladesh drew attention to the seriousness of the question of a commitment gap and supported the Panel's recommendations to keep Council resolutions in draft form until a firm commitment of troops was available. He also spoke in favour of permanent Council members each contributing 5 per cent of the troops needed for each peacekeeping operation.<sup>109</sup> In response, the representative of the United Kingdom rejected the implication that all permanent members failed to meet their responsibilities in respect of peacekeeping and recalled some of his country's contributions to peacekeeping operations.<sup>110</sup>

Council members unanimously underlined the importance of an improved system of consultations between troop-contributing countries, the Secretary-General and the Council. The representative of Bangladesh held that those consultations, whatever the provisions of the Council's provisional rules of procedure, should be neither traditional troop-contributor meetings nor private meetings in the Council Chamber. Rather, they should be in a format that allowed a free exchange of views between Council members and troop-contributing countries, and they should include the necessary substantive briefings.<sup>111</sup>

In that context, several members endorsed the Council's request for regular military briefings from the Secretariat.<sup>112</sup> The representative of Canada believed that the Council, when considering the creation of a peacekeeping force, should receive timely

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<sup>107</sup> S/PV.4220, p. 10.

<sup>108</sup> *Ibid.*, p. 13.

<sup>109</sup> *Ibid.*, p. 6.

<sup>110</sup> *Ibid.*, p. 12.

<sup>111</sup> *Ibid.*, p. 7.

<sup>112</sup> *Ibid.*, p. 3 (Jamaica); p. 7 (Bangladesh); p. 9 (Canada); and p. 11 (United Kingdom).

military advice from those directly involved in the military dimension of a peacekeeping mission.<sup>113</sup> The representative of Bangladesh voiced his delegation's strong support for humanitarian briefings by the Secretariat.<sup>114</sup> The representative of Jamaica, echoed by the representative of Mali, advocated the strengthening of consultations and cooperation with regional organizations.<sup>115</sup>

While welcoming the initiative to more frequently deploy fact-finding missions to areas of tension as a means of preventing crises, the representative of Mali cautioned that conflict-prevention measures should not be taken in violation of the principles of non-interference in the internal affairs of States.<sup>116</sup>

On the need to mainstream the gender perspective into United Nations peacekeeping operations, the representative of Jamaica, while recalling that the gender perspective had been absent from the Brahimi report, welcomed references to the issue in the implementation report of the Secretary-General<sup>117</sup> and the resolution.<sup>118</sup> The representative of Namibia fully endorsed the mainstreaming of a gender perspective into peacekeeping operations and was satisfied with the creation of a gender unit within the Department of Peacekeeping Operations.<sup>119</sup>

**Decision of 22 March 2001 (4302nd meeting):  
statement by the President**

At its 4288th meeting,<sup>120</sup> on 7 March 2001, the Council included in its agenda letter dated 28 February 2001 from the representative of Ukraine addressed to

the Secretary-General,<sup>121</sup> transmitting a working paper prepared by the President of the Security Council to serve as the basis for the discussion. In his opening remarks, the President (Ukraine), recalling that the meeting constituted a follow-up to the high-level meeting held by the Council on 7 September 2000 on the same item, stated that the debate would focus on evaluating the progress achieved in the implementation of the declaration contained in resolution 1318 (2000) and on exploring further ways to enhance the role of the Council in the maintenance of international peace and security.<sup>122</sup>

At the meeting, the Council was briefed by the Secretary-General and statements were made by a majority of Council members,<sup>123</sup> and by the representatives of Algeria, Argentina, Australia, Belarus, Brazil, Canada, Croatia, Egypt, Japan, Namibia, Pakistan, Peru and Sweden (on behalf of the European Union<sup>124</sup>).

The Secretary-General, recalling his statement during the high-level meeting on 7 September 2000 that the Council was facing a crisis of credibility, expressed the hope that the current meeting would assess whether that was still true and what progress had been made in overcoming the crisis. Stressing that the impact of the Council's resolutions depended on a great deal of effort by Member States as well as by the Secretariat, he stated that continuous dialogue was needed with Member States to translate the aspirations of each resolution into real change on the ground. Referring to resolutions 1318 (2000) and 1327 (2000), and recognizing that by adopting such resolutions the Council had undertaken important new commitments, the Secretary-General hoped that the most strenuous effort would be made by Member States to translate into action the important provisions included therein.<sup>125</sup>

Focusing their statements on the implementation of resolutions 1318 (2000) and 1327 (2000), the majority of speakers reiterated the need to strengthen

<sup>113</sup> Ibid., p. 9.

<sup>114</sup> Ibid., p. 7.

<sup>115</sup> Ibid., p. 3 (Jamaica); and p. 16 (Mali).

<sup>116</sup> Ibid., p. 16.

<sup>117</sup> S/2000/1081.

<sup>118</sup> S/PV.4220, p. 3.

<sup>119</sup> Ibid., pp. 15-16.

<sup>120</sup> For more information on the discussion at this meeting, see chap. VI, part VI, case 18, with regard to relations with the Military Staff Committee; chap. XI, part III, sect. B, with regard to the discussion relating to Article 41 of the Charter, chap. XI, part V, sect. F, with regard to the discussions relating to Articles 46 to 47; chap. XI, part VIII, sect. B, with regard to the discussion relating to Article 50; and chap. XII, part III, sect. A, with regard to general considerations of the provisions of Chapter VIII of the Charter.

<sup>121</sup> S/2001/185.

<sup>122</sup> S/PV.4288, p. 2.

<sup>123</sup> The representative of Ukraine did not make a statement in his national capacity.

<sup>124</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>125</sup> S/PV.4288, pp. 2-3.



the efficiency and effectiveness of United Nations peacekeeping operations, while highlighting the importance of conflict prevention and the need to address the root causes of conflicts; welcomed the establishment of the Working Group of the whole on United Nations Peacekeeping Operations;<sup>126</sup> and stressed the importance of enhancing the Council's cooperation with regional and subregional organizations as well as with troop-contributing countries.

With respect to consultations with troop-contributing countries, the representative of Canada emphasized that, to develop a meaningful three-way relationship between the Security Council, the Secretariat and the troop-contributing countries, a mechanism should be found for troop contributors to participate fully in the decision-making process for Council-mandated operations.<sup>127</sup> Similarly, the representative of Egypt called for the formalization and institutionalization of the method of consultation between troop-contributing countries and the Council at all stages of the formulation of the mandates of peacekeeping operations, and during all steps taken by the Council to revise, review, extend or terminate those mandates.<sup>128</sup> Several representatives noted that while in recent years the Council had paid more attention to the conflicts in Africa, its involvement came too late or was inadequate.<sup>129</sup> The representative of Singapore concluded that the Council's responses to conflict situations had remained inconsistent.<sup>130</sup> In response, the representative of France pointed out that the United Nations could not entrust the same objectives to all of its missions, as each operation had to be judged by what could and should be accomplished.<sup>131</sup> The representatives of the United Kingdom and the Russian Federation acknowledged that the Council could not give equal priority to all conflicts, but instead had to concentrate on those crises that were most susceptible to treatment.<sup>132</sup> The representative of Norway held that the authority of the Council depended to a great extent

on its ability to demonstrate that it gave equal priority to the maintenance of international peace and security in every region of the world.<sup>133</sup>

On the issue of peacebuilding, the representative of Sweden, speaking on behalf of the European Union, held that it was essential to give the Secretariat an information and analysis capacity that would permit it to understand both the profound and immediate causes of conflict.<sup>134</sup> The representative of Japan underlined the importance of ensuring a smooth transition from conflict prevention to peacebuilding.<sup>135</sup> Noting that peacebuilding was well beyond the responsibilities of the Council alone, the representative of Brazil stated that peacebuilding required strong political will and commitment on the part of both the recipient country and the donor community and that the involvement of the General Assembly and the Economic and Social Council was necessary.<sup>136</sup> In that sense, a number of speakers generally stressed the need for cooperation between the Council and other organs of the United Nations, including the General Assembly and the Economic and Social Council.<sup>137</sup> The representative of Mauritius believed that a special unit should be set up in the Secretariat to facilitate coordination between the Security Council and various United Nations bodies in the area of post-conflict peacebuilding.<sup>138</sup>

At its 4302nd meeting, on 22 March 2001, the Council resumed consideration of the letter dated 28 February 2001 from the representative of Ukraine addressed to the Secretary-General.<sup>139</sup>

The President (Ukraine) made a statement on behalf of the Council,<sup>140</sup> by which the Council, *inter alia*:

Noted the progress achieved in translating the commitments made at its summit meeting into practical results and expressed its determination to intensify efforts to that end;

Underlined the importance of the declaration on ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa, as a

<sup>126</sup> For more information, see chap. V, part I, sect. C, with regard to informal and ad hoc working groups.

<sup>127</sup> S/PV.4288, p. 4.

<sup>128</sup> *Ibid.*, p. 13.

<sup>129</sup> *Ibid.*, p. 10 (Algeria); p. 12 (Egypt); p. 18 (Pakistan); and p. 22 (Namibia).

<sup>130</sup> S/PV.4288 (Resumption 1), p. 3.

<sup>131</sup> *Ibid.*, p. 6.

<sup>132</sup> *Ibid.*, p. 11 (United Kingdom); and p. 14 (Russian Federation).

<sup>133</sup> *Ibid.*, p. 19.

<sup>134</sup> S/PV.4288, p. 6.

<sup>135</sup> *Ibid.*, pp. 7-8.

<sup>136</sup> *Ibid.*, p. 17.

<sup>137</sup> *Ibid.*, pp. 20-21 (Peru); and p. 24 (Belarus); S/PV.4288 (Resumption 1), pp. 11-12 (United Kingdom); and p. 14 (Russian Federation).

<sup>138</sup> S/PV.4288 (Resumption 1), p. 23.

<sup>139</sup> S/2001/185.

<sup>140</sup> S/PRST/2001/10.

contribution towards the development of a well-targeted strategy and shared vision in the maintenance of international peace and security and of the deeper and broader involvement of Member States and the wider international community in that regard;

Underlined the need for closer cooperation and interaction within the United Nations system in addressing the challenges to

peace and security, including the root causes of conflicts, and intended to continue taking concrete steps in advancing that goal;

Decided to conduct a further review, with the active participation of non-members, of the implementation of the commitments made at its meeting at the level of Heads of State and Government.

## **38. Children and armed conflict**

### **Decision of 11 August (4185th meeting): resolution 1314 (2000)**

On 19 July 2000, the Secretary-General submitted the first report on children and armed conflict,<sup>1</sup> which contained an overview of the fate of children in conflict areas, traced the progress made in addressing the situation of children and indicated the challenges that lay ahead. Drawing on concrete activities from the field, the Secretary-General made a number of recommendations related to the normative foundation of the protection of children; the protection of children in the midst of conflict; integrating the protection of children into peacemaking and peacekeeping; post-conflict peacebuilding for children; regional initiatives on behalf of children affected by armed conflict; and the role of non-governmental organizations and civil society in shaping the agenda regarding children affected by armed conflict. With regard to the Security Council, the Secretary-General recommended, inter alia, that the Council urge armed groups to commit themselves to the child protection standards embodied in the Convention on the Rights of the Child and its Optional Protocol and in international humanitarian law, and to accept and cooperate in the monitoring of adherence to those standards; demand that parties involved in armed conflict not commit egregious crimes against children, or face the possibility of targeted sanctions if they failed to comply; call on all parties to conflict and other concerned actors to give systematic consideration to the special needs and particular vulnerabilities of girls; develop a coordinated and integrated approach to minimize the unintended consequences of sanctions on civilian populations, especially children, primarily through the establishment of effective humanitarian exemptions; reaffirm the responsibility of targeted States and armed groups to ensure the humanitarian

protection of all those under their control, particularly children; and encourage collaboration between the United Nations and regional organizations for the protection of children affected by armed conflict.

At its 4176th meeting,<sup>2</sup> on 26 July 2000, the Council included in its agenda the above-mentioned report.<sup>3</sup> The Council was briefed by the Deputy Secretary-General, the Special Representative of the Secretary-General for Children and Armed Conflict and the Executive Director of the United Nations Children's Fund (UNICEF). Statements were made by most Council members<sup>4</sup> and by the representatives of Austria (in his capacity as Chairman-in-Office of the Organization for Security and Cooperation in Europe), Barbados, Colombia, the Democratic Republic of the Congo, Ecuador, India, Indonesia, Iraq, Japan, Kenya, Lesotho, Mozambique, Nepal, New Zealand, Nigeria, Norway, Senegal, Sierra Leone, South Africa, the Sudan, the United Republic of Tanzania and Uganda, as well as by the head of the delegation of the International Committee of the Red Cross and the Permanent Observer of the Organization of the Islamic Conference.

Introducing the report, the Deputy Secretary-General noted that since the adoption of resolution 1261 (1999), which had placed the issue of children and armed conflict on the peace and security agenda,

<sup>2</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter; and chap. XI, part III, sect. B, with regard to the discussion relating to Article 41.

<sup>3</sup> S/2000/712.

<sup>4</sup> The representative of Mali did not make a statement. The representative of France spoke on behalf of the European Union; Bulgaria, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>1</sup> S/2000/712, submitted pursuant to paragraph 20 of resolution 1261 (1999).

progress had been achieved on the issue of protection of children in war-torn areas. Achievements included the adoption of the Optional Protocol to the Convention on the Rights of the Child, which focused on the involvement of children in armed conflict, and the deployment of child protection advisers in Sierra Leone and the Democratic Republic of the Congo. Despite those positive developments, children continued to be killed, maimed, sexually abused, recruited into armed forces or deprived of life-saving humanitarian assistance. She concluded by expressing the hope that the Council would show the necessary political leadership in the fight against those who exploited children.<sup>5</sup>

The Special Representative of the Secretary-General for Children and Armed Conflict detailed some of the progress that had been achieved on the agenda, which included an increase in public awareness; raising the minimum age for compulsory recruitment and deployment from 15 to 18; the systematic inclusion of child protection concerns into peace operation mandates by the Council; the insertion of sections on the protection and well-being of children in reports to the Council on specific conflict situations; the establishment and deployment of child protection advisers; the placing of children's concerns on peace agendas; the elaboration of training programmes for peacekeepers in the domain of the rights and protection of children and women; the increasing and widespread engagement of non-governmental organizations in advocacy work; increasing focus and resource allocation for children in post-conflict situations; and some innovative national initiatives on behalf of war-affected children, such as the National Commission for War-Affected Children in Sierra Leone and the enactment of a new law in Rwanda which opened the way for girls to inherit land and other property. He stressed that the challenge ahead was how to ensure that parties in conflict adhered to the commitments made concerning the protection of children. In that regard, the Council and other key actors could make a big difference by using their collective weight and influence to lean on parties in conflict. He stressed that the international community should make any assistance to parties in armed conflict contingent on their observing standards for the protection of children, and should encourage the corporate sector to develop voluntary codes of conduct regarding illicit trade with

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<sup>5</sup> S/PV.4176, p. 3.

parties in conflict where children and women are the primary victims. In the context of peace processes, he believed that crimes against children should be excluded from any amnesty provisions and legislation. He further hoped that the Council would continue to explore measures to ease the impact of sanctions on children. The Special Representative also praised the actions taken by regional groups and hoped that the Council would encourage regional organizations to systematically incorporate the rights and protection of children into their policies, activities and programmes. In his opinion, the international community needed to fill three gaps within the existing mode of response: the special needs of girls, the vulnerability of the adolescent and the importance of providing more consistent education to children both caught in the midst of, and in the aftermath of, conflict.<sup>6</sup>

The Executive Director of UNICEF asked Council members to do everything in their power to ensure that the words contained in the Secretary-General's report and in Council resolutions became deeds that made a difference to the lives of children. On the basis of the experiences of UNICEF in conflict areas, she highlighted several critical issues, such as the need for education programmes to be restarted as soon as possible, even when conflict still raged, and for hospitals, clinics, schools and other sites where children were more likely to be found to be protected from attacks and violence. Furthermore, she held that children should have their own demobilization programmes; that the parties to a conflict must be actively engaged in upholding the international standards protecting children; that the vulnerability of girls, especially to sexual abuse and other forms of violence and abuse, must be addressed; that the lack of security for humanitarian personnel reduced access to children in need; and that landmine-awareness programmes could significantly reduce death and injury rates. She expressed the hope that the Council's response to the report would be strong and unambiguous, with determined and intensive follow-up. That meant that in authorizing any peacekeeping missions, imposing sanctions, facilitating a ceasefire or finding ways to prevent conflict, the Council would ensure that children's rights were addressed in a practical and effective way. When warring parties or others violated the provisions of any resolution, including resolution 1261 (1999), she urged Council

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<sup>6</sup> *Ibid.*, pp. 3-5.

members to speak out collectively and individually, to make it clear that violators were overstepping the bounds of decent and acceptable behaviour.<sup>7</sup>

In their statements, speakers welcomed the adoption of the Optional Protocol to the Convention on the Rights of the Child by the General Assembly and insisted that the development of new legal standards had to be supported by effective efforts in the field to ensure their implementation. In that connection, they recommended the establishment of monitoring and reporting mechanisms to ensure the compliance of armed groups and non-State actors with their commitments regarding the protection of children. Referring to the necessity of ending impunity both for crimes committed against children and for the use of children as soldiers, most speakers welcomed the conclusion of the Rome Statute for the establishment of the International Criminal Court.

Observing that the best way to protect children was to prevent conflict, speakers also stressed the need to address the economic, social and political causes of conflict and establish systems which protected children before conflict broke out, and to improve access to education, which could play an important role in protecting children from forced recruitment. To achieve those goals, they called for improved coordination among the agencies of the United Nations and for enhanced cooperation with regional organizations, non-governmental organizations and civil society. Equally important, in their view, was the disarmament, demobilization and reintegration of child soldiers, which should be an integral part of the humanitarian relief and peacebuilding strategy. In the post-conflict phase, the emphasis should be on the reintegration of former child soldiers to avoid their return to armed groups. Speakers also expressed support for the recommendations in the report of the Secretary-General addressing gender violence and stressed the need for rehabilitation and reintegration programmes to take into account the special needs of girl soldiers.

Noting that the proliferation of small arms and light weapons had not only exacerbated conflicts around the world, but had also led to the increased use of children as combatants, speakers called for concrete measures to stem their illegal flow. Furthermore, they deplored the use of landmines, which

disproportionately affected children and women, and espoused support for landmine-awareness programmes.

Referring to the unintended consequences of sanctions regimes on children, speakers called for the adoption of mechanisms to monitor and assess their impact on children.

Speakers, in general, agreed with the Secretary-General's recommendations. The representative of India held that the recommendations contained in the report did not delve into the larger implications, or lacked the necessary clarity. Furthermore, he held that several recommendations asked the Council to take actions well beyond its mandate, as they should be addressed by the Economic and Social Council or Member States. He concluded that where armed conflicts could be stopped or curbed if strong peacekeeping operations were quickly set up, the Council must do so.<sup>8</sup> The representative of Iraq cautioned that the Council's discussion of the issue of children and armed conflict should in no way prejudice the competence of the General Assembly or the Economic and Social Council.<sup>9</sup>

The representative of Colombia protested against the use of the Arria formula for the Council's meetings with non-governmental organizations, as it did not allow States that were not members of the Council to participate in the discussions.<sup>10</sup> Several speakers welcomed the Council's meetings with non-governmental organizations, which could serve as an early warning of impending crisis.<sup>11</sup>

At its 4185th meeting, on 11 August 2000, the Council again included in its agenda the report of the Secretary-General on the implementation of resolution 1261 (1999) on children and armed conflict.<sup>12</sup>

The President (Malaysia) drew the attention of the Council to a draft resolution;<sup>13</sup> it was put to the vote and adopted unanimously and without debate as resolution 1314 (2000), by which the Council, *inter alia*:

<sup>8</sup> S/PV.4176 (Resumption 1), pp. 19-20.

<sup>9</sup> *Ibid.*, p. 14.

<sup>10</sup> *Ibid.*, p. 4.

<sup>11</sup> S/PV.4176, p. 11 (United Kingdom); p. 17 (Bangladesh); p. 19 (Namibia); and p. 20 (China).

<sup>12</sup> S/2000/712.

<sup>13</sup> S/2000/787.

<sup>7</sup> *Ibid.*, pp. 5-7.

Urged all parties to armed conflict to respect fully international law applicable to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989 and the Optional Protocol on the involvement of children in armed conflict of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

Urged Member States in a position to do so to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

Requested parties to armed conflict to include, where appropriate, provisions for the protection of children, including the disarmament, demobilization and reintegration of child combatants, in peace negotiations and in peace agreements, and for the involvement of children, where possible, in those processes;

Underlined the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, *inter alia*, those heading households, orphaned, sexually exploited and used as combatants, and urged that their human rights, protection and welfare be incorporated in the development of policies and programmes, including those for prevention, disarmament, demobilization and reintegration;

Urged Member States and relevant parts of the United Nations system to strengthen the capacities of national institutions and local civil society for ensuring the sustainability of local initiatives for the protection of children;

Called upon Member States, relevant parts of the United Nations system, and civil society to encourage the involvement of young persons in programmes for peace consolidation and peacebuilding.

**Decision of 20 November 2001  
(4423rd meeting): resolution 1379 (2001)**

On 7 September 2001, the Secretary-General submitted a report on children and armed conflict, describing the progress made in the implementation of existing Council resolutions and identifying areas where further action was needed.<sup>14</sup> In that respect, the Secretary-General presented a series of action points with regard to consolidation of the normative framework; monitoring of obligations and commitments and eliciting compliance; placing child protection on the United Nations peace and security agenda; the impact on children of illicit exploitation of natural resources in zones of conflict; child soldiers and abducted children; HIV/AIDS; the involvement

and protection of children in the truth- and justice-seeking process; peacebuilding for children during and after conflict; and regional responses to child protection concerns. More specifically, the Secretary-General called upon the Council to continue to ensure compliance by all parties to armed conflict with their child protection obligations. He recommended that the mandates of peace operations explicitly include provisions for the monitoring of the rights of children as well as child protection elements, and provide for child protection advisers and child-focused rights officers, where appropriate. He further observed that the Council might wish to continue to consider targeted measures against parties to armed conflict whose actions were contributing to the illegal exploitation of natural resources and decide to continue its development of strategic maps of resource flows in zones of conflict characterized by egregious harm to children and civilians. In that context, he called upon the Council to consider the inclusion, where feasible, of specific provisions in the mandates of peacekeeping operations to monitor such activity. He suggested that future Council missions might decide to include an assessment of the HIV/AIDS situation, with particular focus on the impact of that situation on children.

At its 4422nd meeting,<sup>15</sup> on 20 November 2001, the Council included in its agenda the above-mentioned report.<sup>14</sup> The Council was briefed by the Secretary-General, the Special Representative of the Secretary-General for Children and Armed Conflict and the Executive Director of UNICEF. Statements were made by all Council members and the representatives of Belgium (on behalf of the European Union<sup>16</sup>), Canada, Egypt, Iraq, Israel, Japan, Malaysia, Mexico, Nigeria, the Republic of Korea, Slovenia and South Africa. Additionally, the Council heard testimony from Alhaji Babah Sawaneh, a 14-year-old former child soldier from Sierra Leone.<sup>17</sup>

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<sup>15</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter; and chap. XI, part III, sect. B, with regard to the discussion relating to Article 41.

<sup>16</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>17</sup> S/PV.4422, pp. 7-8.

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<sup>14</sup> S/2001/852, submitted pursuant to paragraph 21 of resolution 1314 (2000).

In his opening remarks, the Secretary-General drew attention to the draft resolution before the Council,<sup>18</sup> which contained measures for protecting children in armed conflict. He stressed the importance of field monitoring through the presence of child protection advisers at the field level and the conveyance of accurate and timely information to the Council regarding the implementation of its resolutions. He further expressed readiness to bring to the Council's attention the identities of parties that were in violation of the draft resolution.<sup>19</sup>

The Special Representative of the Secretary-General for Children and Armed Conflict noted that despite an impressive body of practice that had developed over the past four years, which had been registered at the levels of advocacy to policies and programmes, the overall situation of children exposed to war remained grave and unacceptable. He highlighted the need to monitor and report more systematically and effectively the conduct of parties to conflict in relation to their treatment of children; take practical measures on the ground to apply the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; strengthen and give wider application to the appointment of child protection advisers to peacekeeping operations; integrate child protection into peacemaking, peacekeeping and peacebuilding processes; and pay more attention to the protection and rehabilitation of girls.<sup>20</sup>

Calling attention to the Optional Protocol and the Rome Statute, the Executive Director of UNICEF stated that understanding and awareness of the situation of children in armed conflict had come a long way. However, access to children caught up in conflict remained a major problem. She commended the inclusion in the draft resolution of the issue of HIV/AIDS and the pledge to put children at the centre of recovery and rehabilitation efforts.<sup>21</sup>

Saying he was speaking on behalf of all child soldiers, Alhaji Babah Sawaneh provided a description of his life as a child soldier in Sierra Leone. He spoke of his release, his fear of re-recruitment, the reaction of the local community to his being a former child soldier,

and his experience under the disarmament, demobilization and reintegration programme. He appealed to the Council to help all the children of his country who, like himself, had experienced life as a child soldier.<sup>22</sup>

Speakers noted that continued progress in the Council's efforts would require full cooperation with the United Nations system in general, particularly with UNICEF and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and also with non-governmental organizations operating in the field and civil society. Speakers also advocated better and more effective cooperation and coordination with regional and subregional organizations.

Speakers also stressed the need for international legal standards to be upheld in the area of child protection and children's rights, and urged Member States to ratify all relevant legal instruments, including the Rome Statute of the International Criminal Court and International Labour Organization Convention No. 182 concerning the prohibition and elimination of the worst forms of child labour. They welcomed the fact that the Optional Protocol to the Convention on the Rights of the Child was due to enter into force by February 2002, establishing a minimum of 18 years of age for the recruitment of soldiers.

Reaffirming their commitment to keeping children and armed conflict high on the Council's agenda, some representatives emphasized that the issue remained within the Council's primary mandate to maintain international peace and security.<sup>23</sup> The representative of the United Kingdom held that the failure to recognize the issue of children and armed conflict and tackle its effects would have a damaging effect on the international peace and security efforts of the Council.<sup>24</sup> The representative of South Africa observed that while the consideration of the issue of children and armed conflict raised its political profile, the Council needed to take a lead in establishing the parameters of acceptable conduct with regard to children in armed conflict.<sup>25</sup>

In their interventions, speakers, *inter alia*, endorsed the recommendations contained in the

<sup>18</sup> S/2001/1093.

<sup>19</sup> S/PV.4422, pp. 2-3.

<sup>20</sup> *Ibid.*, pp. 3-5.

<sup>21</sup> *Ibid.*, pp. 5-7.

<sup>22</sup> *Ibid.*, pp. 7-8.

<sup>23</sup> *Ibid.*, p. 9 (United Kingdom); and p. 14 (Mali).

<sup>24</sup> *Ibid.*, p. 9.

<sup>25</sup> S/PV.4422 (Resumption 1), p. 22.

Secretary-General's report; stressed the need to effectively monitor compliance with commitments and obligations by parties to conflict and mobilize resources for supporting activities to help child victims; held that there should be no impunity for those found guilty of inflicting pain on children or recruiting children as soldiers; highlighted the well-documented link between the flow of small arms and children's involvement in armed conflict; noted the link between armed conflict, sexual exploitation and abuse of children and the spread of HIV/AIDS; underlined the importance of education for children in the post-conflict phase; and highlighted the situation of refugees and internally displaced children in and around Afghanistan. In addition, a number of speakers drew attention to the plight of children in Palestine.<sup>26</sup>

At its 4423rd meeting, on 20 November 2001, the Council again included in its agenda the report of the Secretary-General on children and armed conflict.<sup>27</sup>

At the same meeting, the President (Jamaica) drew the attention of the Council to a draft resolution;<sup>28</sup> it was put to the vote and adopted unanimously and without debate as resolution 1379 (2001), by which the Council, *inter alia*:

Expressed its readiness explicitly to include provisions for the protection of children when considering the mandates of peacekeeping operations, and reaffirmed, in that regard, its readiness to continue to include child protection advisers in peacekeeping operations;

Supported the ongoing work of the Secretary-General, the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights, other agencies of the United Nations system and other international organizations dealing with children affected by armed conflict;

Expressed its intention to consider taking appropriate steps to address the linkages between armed conflict and terrorism, the illicit trade in precious minerals, the illicit trafficking in small arms and light weapons, and other criminal activities;

Undertook to consider the economic and social impact of sanctions on children, with a view to providing appropriate humanitarian exemptions that take account of their specific needs and their vulnerability, and to minimize such impact;

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<sup>26</sup> *Ibid.*, p. 6 (Tunisia); p. 16 (Egypt); p. 25 (Iraq); and pp. 28-29 (Malaysia).

<sup>27</sup> S/2001/852.

<sup>28</sup> S/2001/1093.

Requested the Secretary-General to submit a report to the Council by 31 October 2002 on the implementation of the resolution and of resolutions 1261 (1999) and 1314 (2000).

**Decision of 7 May 2002 (4528th meeting):  
statement by the President**

At its 4528th meeting, on 7 May 2002, the Council was briefed by the Special Representative of the Secretary-General for Children and Armed Conflict, the Executive Director of UNICEF and the former independent expert of the Secretary-General on the impact of armed conflict on children.<sup>29</sup> The Council also heard personal testimonies from three child delegates to the Children's Forum of the special session of the General Assembly on children.<sup>30</sup>

Noting that the meeting was being held in support of the special session of the General Assembly on children, the President of the Council (Singapore) traced the decisions taken by the Council since 1998, comprehensively laying out the Council's extensive support and guidance for international efforts to protect and assist children in armed conflict.<sup>31</sup>

Stressing that the greatest burdens of war were borne by children, the Special Representative of the Secretary-General for Children and Armed Conflict commended the Council for its commitment to incorporate the protection of children into the peace and security agenda of the United Nations. He, *inter alia*, called on the Council to do more to ensure that child protection would become part of peace accords and the mandates of peacekeeping operations.<sup>32</sup>

The former independent expert of the Secretary-General on the impact of armed conflict on children echoed the Special Representative's praise of the Council and pointed to successes achieved on the ground, including the demobilization of child soldiers in the Sudan. She stressed, however, that the prevention of armed conflict, which was the primary mandate of the Council, remained the best means of protecting children. She further called upon the Council to implement means of monitoring its child

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<sup>29</sup> Cameroon was represented by its Minister of State in charge of External Relations; Norway was represented by its Minister for International Development. Also present were the Minister of Children and Family Affairs of Norway and the Minister for Social Affairs of Guinea.

<sup>30</sup> S/PV.4528, pp. 7-9.

<sup>31</sup> *Ibid.*, pp. 2-3.

<sup>32</sup> *Ibid.*, p. 4.

protection mandates and to take new measures when implementation thereof was deemed too slow.<sup>33</sup>

The Executive Director of UNICEF welcomed the Council's engagement with non-governmental organizations, stressing that only through such a partnership could UNICEF advocate policy, programmes and strategies to strengthen the protection of children in armed conflict. She indicated that UNICEF would continue to invest in education, particularly in the education of girls, as a means of ensuring the long-term well-being and sustainable protection of the rights of war-affected children.<sup>34</sup>

The three child delegates to the Children's Forum of the special session of the General Assembly on children, from Liberia, Bosnia and Herzegovina, and East Timor respectively, each described how conflict in their homelands had affected them and other children, and appealed for an end to conflict and for the protection of children.<sup>35</sup>

The President then made a statement on behalf of the Council,<sup>36</sup> by which the Council, *inter alia*:

Expressed its concern at the grave impact of armed conflict on children and reiterated its strong condemnation of the continued targeting and use of children in armed conflicts, and called on all parties to conflict to desist from such practices immediately;

Reaffirmed its call for the inclusion of provisions for the protection of children, with particular attention to the special needs of girls in, *inter alia*, peacekeeping and peacebuilding operations;

Looked forward to a successful final document concerning the protection of children affected by armed conflict on the occasion of the special session of the General Assembly on children;

Urged Member States to consider ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

Underscored the importance of unhindered humanitarian access for the benefit of children.

**Decision of 30 January 2003 (4695th meeting):  
resolution 1460 (2003)**

<sup>33</sup> *Ibid.*, pp. 4-5.

<sup>34</sup> *Ibid.*, pp. 6-7.

<sup>35</sup> *Ibid.*, pp. 7-9.

<sup>36</sup> S/PRST/2002/12.

At its 4684th meeting,<sup>37</sup> on 14 January 2003, the Council included in its agenda the report of the Secretary-General on children and armed conflict dated 26 November 2002.<sup>38</sup> In his report, the Secretary-General reviewed activities and progress made with respect to the protection of children affected by situations of armed conflict and in post-conflict situations, as well as in the implementation of resolutions 1261 (1999), 1314 (2000) and 1379 (2001). The Secretary-General provided an overview of the issue of child protection on the peace and security agenda of the United Nations, welcoming the inclusion of child protection provisions in the mandates of peacekeeping operations and the deployment of child protection advisers or units in the United Nations missions in Angola, the Democratic Republic of the Congo and Sierra Leone. As requested in paragraph 16 of resolution 1379 (2001), the Secretary-General, for the first time, presented a list of parties to armed conflict that recruited or used children as soldiers in violation of relevant international obligations, in situations of which the Council was seized, in an annex to his report. He stressed the need for action to promote and disseminate the standards and norms put in place to protect children and to raise awareness about them on the ground. Similarly, he underscored the need to put in place strengthened monitoring and reporting mechanisms to identify the violators and to take measures against them. Dissemination, advocacy, monitoring and reporting were seen as the key components of an era of application.

At the meeting, the Council was briefed by the Secretary-General, the Special Representative of the Secretary-General for Children and Armed Conflict and the Executive Director of UNICEF. Statements were made by all Council members, the representatives of Austria (in his capacity as Chair of the Human Security Network), Bahrain, Burundi, Canada, Colombia, Costa Rica, the Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Greece (on behalf of the European Union<sup>39</sup>), Indonesia, Israel, Japan,

<sup>37</sup> For more information on the discussion at this meeting, see chap. X, part IV, with regard to the recourse to investigation by the Security Council in the light of Article 34 of the Charter; and chap. X, part IV, with regard to referrals by the Secretary-General in the light of Article 99.

<sup>38</sup> S/2002/1299, submitted pursuant to paragraph 15 of resolution 1379 (2001).

<sup>39</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary,



Liechtenstein, Malawi, Monaco, Myanmar, Namibia, Nepal, the Philippines, Rwanda, Sierra Leone, Slovenia, Switzerland and Ukraine, and the Permanent Observer of Palestine.

Expressing satisfaction with the steady progress that had been made in embedding the protection, rights and well-being of children affected by armed conflict into the United Nations peace and security agenda, and with the progressive development of a body of international norms and standards on the subject, the Secretary-General stressed that it was time to ensure that those norms and standards were put into practice on the ground. He reported that the list contained 23 parties in five conflict situations on the Council's agenda and highlighted other conflicts not on the Council's agenda where children were recruited or used. By naming parties that continued to recruit or use child soldiers, the international community was serving notice that it was finally willing to back expressions of concern with action. He urged the Council to maintain its resolve on the issue.<sup>40</sup>

Joining the Secretary-General's call for translating words into action, the Special Representative for Children and Armed Conflict called on the Council to lead the way by example and action. The list annexed to the report provided an important opportunity for the Council to respond. In that context, he recommended the following measures for the Council's consideration: a call on the parties on the list to immediately end recruiting and using child soldiers and to provide full information on measures they had taken to that effect; consideration of imposing targeted measures against parties where substantial progress was not found to have been made; and a comprehensive list in the next report of the Secretary-General to include all parties involved in armed conflict which continued to recruit and use child soldiers. Child soldiering was only one aspect of the impact of war on children, he added, emphasizing that all child victims of war deserved the attention and protection of the international community.<sup>41</sup>

The Executive Director of UNICEF was convinced that the naming and shaming of parties who

recruited and used children in armed conflict would help to establish a culture of accountability, which could, in turn, prevent such abuses from occurring in the future. She thus encouraged the Council to consider the Secretary-General's list in all its deliberations, and to update it regularly, expanding its scope to include parties to armed conflict in situations not on the Council's agenda at the time. For its part, UNICEF would use the list to intensify its advocacy efforts, both globally and locally. In closing, she noted that the recent allegations of sexual exploitation and abuse of refugee and internally displaced children and women in West Africa by peacekeepers served as a wake-up call for the entire international community, and called on the Council to follow up on the statement by the President of 20 December 2002<sup>42</sup> on the protection of civilians, which encouraged States, in particular troop-contributing countries, to adopt six core principles to prevent sexual abuse and exploitation.<sup>43</sup>

In their interventions, speakers reaffirmed that using children as a tool of war was intolerable, and that the international community and the Council had to commit to a new era of action, as called for by the Secretary-General. While welcoming the progress achieved since the adoption of resolution 1379 (2001), and expressing support for the work of the Office of the Special Representative for Children and Armed Conflict, as well as the role played by United Nations agencies and non-governmental organizations, speakers noted that much remained to be done. Pointing to the interconnectedness of the items relating to children and armed conflict and those relating to the protection of civilians in armed conflict and women, peace and security, the representatives of the United Kingdom and Japan called for an integrated approach to address them, with the representative of Japan suggesting that the Council consider them as a single item.<sup>44</sup>

Referring to the normative framework for child protection in armed conflict, speakers welcomed the entry into force of the two landmark international instruments, namely, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Rome Statute of the International Criminal Court, which classified conscription, enlistment or use in

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Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>40</sup> S/PV.4684, pp. 3-4.

<sup>41</sup> *Ibid.*, pp. 4-6.

<sup>42</sup> S/PRST/2002/41.

<sup>43</sup> S/PV.4684, pp. 6-8.

<sup>44</sup> *Ibid.*, p. 18 (United Kingdom); S/PV.4684 (Resumption 1), p. 40 (Japan).

hostilities of children below the age of 15 as a war crime in both international and internal armed conflicts. Speakers concurred that those two legal instruments strengthened the international framework for the protection of children in situations of armed conflict. Nevertheless, they stressed that the challenge was to ensure that those standards were implemented on the ground. The representative of the Russian Federation held the view that the International Criminal Court would merge harmoniously with the existing United Nations system and the role of the Council in making sure that there could be no evasion of punishment for crimes against children.<sup>45</sup>

Speakers stated that the list of parties to armed conflict that recruited or used child soldiers, annexed to the report of the Secretary-General, represented an important step forward in the efforts to induce compliance by parties to conflict with international child protection obligations. A number of speakers called for the list to be updated regularly and suggested that the criteria for inclusion on the list be broadened to include all situations where children were recruited or used as soldiers or where their protection was severely threatened.<sup>46</sup> In that connection, the representative of the United States expressed regret that some of the worst violators of children in armed conflict were not included on the list, pointing to Myanmar, Uganda and Colombia.<sup>47</sup> Expressing similar views, the representative of the United Kingdom also noted that Myanmar had not been included on the list despite consistent reports indicating wide, systematic and forced recruitment and training of children for use in combat.<sup>48</sup> In contrast, the representative of Myanmar stressed that there had been no credible evidence of the use and recruitment of children in his country's armed forces, while it was a practice of armed insurgent groups in Myanmar to recruit and abuse child soldiers. He stated that such information should be verified before it was presented to the Council.<sup>49</sup> While his country was included on the list, the representative of the Democratic Republic of the Congo reaffirmed that his country had ended the enlistment of children in the Congolese armed forces, unlike the armed groups

operating in certain occupied provinces.<sup>50</sup> The representative of Burundi, while recognizing the existence of child soldiers on the Government side who were recruited on a voluntary basis, pointed out that a project for the demobilization of child soldiers had been established in cooperation with UNICEF. With respect to the non-State armed groups in Burundi, however, he remarked that the situation for children remained distressing.<sup>51</sup>

Speakers joined the Secretary-General's appeal for the creation of monitoring and reporting mechanisms aimed at identifying violators and taking measures against them. The representative of Pakistan proposed that the mandate of existing peacekeeping operations and observer missions be broadened to encompass such monitoring and reporting activities.<sup>52</sup> The representative of Canada, echoed by the representative of Austria, suggested that the Council dispatch missions to visit those conflict situations mentioned specifically in the report of the Secretary-General. He held that the Council should ask for a six-month interim report, evaluate progress made in those situations, and commit itself to follow up in one year on the parties named in the report.<sup>53</sup> The representative of Mexico noted that at the 13 January 2003 Arria formula meeting, the establishment of an informal Security Council group had been proposed, which would assess compliance with international norms by the parties to conflict.<sup>54</sup>

Speakers commended the Secretary-General's call for child protection to be an explicit feature of the mandates of peacekeeping operations and for those operations to include child protection units, and welcomed the implementation of those recommendations to date in Angola, the Democratic Republic of the Congo and Sierra Leone. The representative of the United Kingdom was pleased that an inter-agency working group would do further work on developing guidelines on the integration of child protection issues in the context of United Nations peace efforts, and expected the working group to play an active part in

<sup>45</sup> S/PV.4684, p. 14.

<sup>46</sup> Ibid., p. 21 (United States); and pp. 25-26 (Guinea); S/PV.4684 (Resumption 1), p. 7 (Switzerland); p. 18 (Austria); p. 24 (Costa Rica); and p. 29 (Slovenia).

<sup>47</sup> S/PV.4684, p. 21.

<sup>48</sup> Ibid., p. 19.

<sup>49</sup> S/PV.4684 (Resumption 1), p. 30.

<sup>50</sup> Ibid., p. 36.

<sup>51</sup> Ibid., p. 39.

<sup>52</sup> S/PV.4684, p. 23.

<sup>53</sup> S/PV.4684 (Resumption 1), p. 8 (Canada); and p. 18 (Austria).

<sup>54</sup> S/PV.4684, p. 13.

the regular briefings provided to the Council and in the Council's subsequent discussions of those countries.<sup>55</sup>

Speakers also underlined the importance of ensuring that children were able to participate in the process of post-conflict reconstruction, and the need to focus on child soldiers in disarmament, demobilization and reintegration programmes, while calling for the allocation of sufficient resources to that end.

Speakers also reiterated their condemnation of reports of sexual exploitation and abuse of refugee and internally displaced women and children in West Africa and elsewhere, involving aid workers and peacekeepers among others. The representative of the Russian Federation called for comprehensive training for United Nations personnel, as well as monitoring and measures to prevent impunity.<sup>56</sup> Several representatives welcomed the Plan of Action, submitted by the Inter-Agency Standing Committee's Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, which called for the incorporation of the Committee's codes of conduct of six core principles.<sup>57</sup>

Many speakers emphasized the need to mitigate the impact on children of illicit commercial exploitation of natural resources in conflict zones, speed up the clearance of anti-personnel mines and regulate the proliferation of small arms and light weapons.

At its 4695th meeting, on 30 January 2003, at which no statements were made, the Council again included in its agenda the report of the Secretary-General on children and armed conflict.<sup>58</sup>

The President (France) drew attention to a draft

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<sup>55</sup> Ibid., pp. 17 and 19.

<sup>56</sup> Ibid., p. 14.

<sup>57</sup> S/PV.4684, p. 13 (Mexico); and pp. 17-19 (United Kingdom); S/PV.4684 (Resumption 1), p. 9 (Canada); and p. 33 (Malawi).

<sup>58</sup> S/2002/1299.

resolution;<sup>59</sup> it was put to the vote and adopted unanimously and without debate as resolution 1460 (2003), by which the Council, inter alia:

Supported the call of the Secretary-General for "an era of application" of international norms and standards for the protection of children affected by armed conflict;

Expressed its intention to enter into dialogue, as appropriate, or to support the Secretary-General in entering into dialogue with parties to armed conflict in violation of the international obligations applicable to them on the recruitment or use of children in armed conflict, in order to develop clear and time-bound action plans to end that practice;

Noted with concern the list annexed to the Secretary-General's report, and called on the parties identified in that list to provide information on steps they had taken to halt their recruitment or use of children in armed conflict in violation of the international obligations applicable to them to the Special Representative of the Secretary-General for Children and Armed Conflict, bearing in mind the provisions of paragraph 9 of its resolution 1379 (2001);

Reiterated its determination to continue to include specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including provisions recommending child protection advisers on a case-by-case basis and training for United Nations and associated personnel on child protection and child rights;

Noted with concern all the cases of sexual exploitation and abuse of women and children, especially girls, in humanitarian crisis, including those cases involving humanitarian workers and peacekeepers, and requested contributing countries to incorporate the six core principles of the Inter-Agency Standing Committee on Emergencies into pertinent codes of conduct for peacekeeping personnel and to develop appropriate disciplinary and accountability mechanisms;

Requested the Secretary-General to ensure that in all his reports to the Security Council on country-specific situations, the protection of children in armed conflict was included as a specific aspect of the report.

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<sup>59</sup> S/2003/112.

## 39. Items relating to terrorism

### A. Threats to international peace and security caused by terrorist acts

#### **Decision of 12 September 2001 (4370th meeting): resolution 1368 (2001)**

At the 4370th meeting of the Security Council, on 12 September 2001, the President (France) drew the attention of the Council to a draft resolution.<sup>1</sup> At the meeting, statements were made by all members of the Council and the Secretary-General.

At the outset of the meeting, the Council observed a minute of silence in memory of all the victims of the terrorist attacks of 11 September 2001.

Speaking before the vote, the Secretary-General stated that the Council was meeting under exceptionally grave circumstances in which the host country and the host city had been subjected to a terrorist attack that horrified all. He reiterated that terrorism was an international scourge and the United Nations had condemned it many times. He stated that a terrorist attack on one country was an attack on humanity as a whole and he called for all nations to work together to identify the perpetrators and bring them to justice.

All members of the Council expressed their deepest condolences and sympathy to the Government and people of the United States and to the victims of the terrorist attack on 11 September 2001. Several speakers suggested that international terrorism should be addressed through efforts of the whole international community and through international cooperation.<sup>2</sup> Some representatives also supported the idea of holding a special summit of the Council to discuss ways and means of combating terrorism.<sup>3</sup>

The representative of the United Kingdom stated that his country was determined to eradicate terrorism globally, in cooperation with and in support of the United States. He stated that the international spirit of the response was exemplified by the European Union

in a meeting of ministers the same morning, which had stated that the horrendous attacks were an attack not only on the United States, but against humanity itself and the values and freedoms they all shared. He stated that mass terrorism was the new evil in the world today, perpetrated by fanatics, who were utterly indifferent to the sanctity of human life. He noted that terrorism was a global issue that needed a global response.<sup>4</sup>

The representative of Mauritius condemned the attacks as inhuman and barbaric terrorist acts and underlined that all who believed in the cardinal values of democracy stood shoulder-to-shoulder with the American people in the struggle to preserve peace and the rule of law. He stated that terrorism represented a major threat to international peace and security. His delegation also stood ready to cooperate with the United States and the international community to find the perpetrators of the terrorist acts of 11 September 2001 and bring them to justice.<sup>5</sup>

The representative of Singapore emphasized that terrorism anywhere should not be condoned for any reason whatsoever and held that the Council and the international community had to come together to ensure that the events of 11 September were not repeated.<sup>6</sup> The representative of Tunisia stated that no civilization condoned and no cause whatsoever could justify the attacks, and that it was time for all societies of the international community to cooperate in preventing and combating terrorism and organized crime.<sup>7</sup>

The representative of Ireland stated that the perpetrators of the attacks on 11 September had sought to destroy the values that formed the fundamental principles of the United Nations, including the right of every human being to live in freedom and dignity, and

<sup>1</sup> S/2001/861.

<sup>2</sup> S/PV.4370, p. 3 (Mauritius); p. 3 (Ukraine); p. 4 (Singapore); p. 4 (Tunisia); p. 6 (Jamaica); and p. 6 (Bangladesh).

<sup>3</sup> *Ibid.*, p. 3 (Mauritius); p. 4 (Ukraine); and p. 6 (Jamaica).

<sup>4</sup> *Ibid.*, pp. 2-3.

<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> *Ibid.*, p. 4.

<sup>7</sup> *Ibid.*, p. 4.

he called for the international community to work together to bring the perpetrators to justice.<sup>8</sup>

The representative of China stated that international terrorism seriously endangered human society as well as the political and economical order of countries and was a serious potential danger to international peace and security. He held that the attacks represented an open challenge to the international community as a whole. China was in favour of enhanced cooperation among Member States through the practical implementation of the relevant international conventions against terrorists. He underlined that the Council, as the organ with the primary responsibility of maintaining international peace and security, should play a leading role in that respect.<sup>9</sup>

The representative of the Russian Federation stated that the attack had been a brazen challenge to all of humankind. It highlighted the timeliness of the task of joining the efforts of the international community in combating terror. In that respect, he recalled resolution 1269 (1999), which had been unanimously adopted by the Council on the initiative of the Russian Federation. The draft resolution on the table demonstrated unconditionally the resolve of Council members to leave not one terrorist act unpunished and to increase efforts to prevent and end terrorism.<sup>10</sup>

The representative of Norway stated that the attacks had been directed against freedom and democracy itself and had been an effort to undermine the value that constituted the foundations of the civilized world. He held that the Council had been established to defend those values and that a unified Council must show that it was ready to support efforts to do just that.<sup>11</sup>

The representative of Colombia informed the Council that the Organization of American States had adopted a vigorous condemnation of terrorist attacks and expressed the need to strengthen hemispheric cooperation to combat terrorism. He expressed his delegation's willingness to participate with all members of the Council in the adoption of immediate

measures in keeping with the responsibilities of the Council under the Charter of the United Nations.<sup>12</sup>

The representative of France also stated that the events constituted an attack upon all of humanity and against the values and principles that the Charter embodied and constituted a challenge to the international community as a whole. He emphasized that it was time for unity and resolve. He stated that France stood with the United States in deciding upon any appropriate action to combat those who resorted to terrorism, those who aided them and those who protected them. He called for a global strategy and held that the Council should work on the issue as the principal organ entrusted with international peace and security.<sup>13</sup>

The representative of the United States, while thanking all Members for their support and resolve, underlined that the attack was an assault not just on the United States, but on all who supported peace and democracy and the values for which the United Nations stood. He stated that his country looked for all those who stood for peace, justice and security in the world to stand together with the United States to win the war against terrorism. He emphasized that there would be no distinction between the terrorists who committed those acts and those who harboured them. The United States would bring those responsible to account.<sup>14</sup>

The draft resolution was then put to the vote and adopted unanimously as resolution 1368 (2001), by which the Council, *inter alia*:

Unequivocally condemned in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C., and Pennsylvania and regarded such acts, like any act of international terrorism, as a threat to international peace and security;

Expressed its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States;

Called upon all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of those terrorist attacks, and stressed that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of those acts would be held accountable;

Called upon the international community to redouble their efforts to prevent and suppress terrorist acts, including by

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<sup>8</sup> *Ibid.*, pp. 4-5.

<sup>9</sup> *Ibid.*, p. 5.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> *Ibid.*, p. 6.

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<sup>12</sup> *Ibid.*, pp. 6-7.

<sup>13</sup> *Ibid.*, p. 7.

<sup>14</sup> *Ibid.*, pp. 7-8.

increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions;

Expressed its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001 and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations.

**Decision of 28 September 2001  
(4385th meeting): resolution 1373 (2001)**

At the 4385th meeting, on 28 September 2001, the President (France) drew the attention of the Council to a number of letters, by which the representatives of Belgium (on behalf of the European Union),<sup>15</sup> Pakistan,<sup>16</sup> Qatar (on behalf of the Organization of the Islamic Conference (OIC)),<sup>17</sup> Mali,<sup>18</sup> Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Uzbekistan (the GUUAM States)<sup>19</sup> and China<sup>20</sup> expressed condemnation of the attacks on 11 September 2001, offered their support to the Government of the United States and called for the international community to work together to combat international terrorism.

In his letter, the representative of Qatar transmitted a statement by the Minister for Foreign Affairs, who stressed that Islam was a true religion, which denounces and rejects terrorism, repudiates violence and bloodshed and calls for the protection of human beings and non-aggression against innocent persons.

By a letter dated 25 September 2001, addressed to the Secretary-General and the President of the Security Council, the representative of Belgium transmitted the conclusions and plan of action of the European Council meeting of 21 September 2001, in which the European Council stated that it would cooperate with the United States in bringing to justice and punishing the perpetrators, sponsors and accomplices of the barbaric acts, and that on the basis of resolution 1368 (2001), a riposte by the United States was legitimate. It stated that the member States of the European Union were prepared to undertake

such actions, which must be targeted and might also be directed against States abetting, supporting or harbouring terrorists.

By his letter, the representative of China transmitted the position paper of the Government of China, recommending that the Council establish an anti-terrorism mechanism to explore, formulate and conduct concrete programmes for the fight against terrorism, and that the Secretariat strengthen its capacity for information collection and analysis in the field of anti-terrorism.

By his letter, the representative of Georgia transmitted a letter from the President of Georgia, who suggested that the United Nations convene a summit of heads of States Members of the United Nations to address the fight against terrorism, genocide, ethnic cleansing, mass murder and the sources that fed them, such as aggressive nationalism, aggressive separatism, xenophobia, fanaticism and bigotry.<sup>21</sup>

By a letter dated 14 September 2001 addressed to the Secretary-General, the representative of Afghanistan transmitted a letter from the President of Afghanistan,<sup>22</sup> in which the President stated that the attacks on the United States established how terrorism constituted a threat to international peace and security. He noted that the officials of Afghanistan had made every attempt over the years during the General Assembly and special sessions to warn of the threat of terrorist activities emanating from the Taliban-occupied parts of Afghanistan. He stressed that the people of Afghanistan were not only victims of terrorism but were in fact hostage to it. He called upon the international community to put effective and bold pressure on the Government of Pakistan to cease immediately their aggression in Afghanistan and withdraw their armed personnel from Afghanistan, and invoked Article 35 of the Charter to propose the convening of a special meeting of the Council to address the presence of foreign military and armed personnel in Afghanistan. He also asked the international community to establish a multi-ethnic, broad-based and fully representative government, which would secure the right of the Afghan people to self-determination.

<sup>15</sup> S/2001/894 and S/2001/909, letters dated 12 and 25 September 2001, respectively.

<sup>16</sup> S/2001/877, letter dated 13 September 2001.

<sup>17</sup> S/2001/869, letter dated 14 September 2001.

<sup>18</sup> S/2001/895, letter dated 18 September 2001.

<sup>19</sup> S/2001/906, letter dated 25 September 2001.

<sup>20</sup> S/2001/914, letter dated 27 September 2001.

<sup>21</sup> S/2001/893.

<sup>22</sup> S/2001/870.

By a letter dated 18 September 2001 addressed to the Secretary-General, the representative of Iraq transmitted two letters from the President of Iraq,<sup>23</sup> who maintained that it was irresponsible of the Government of the United States to accuse Islamic countries of committing the 11 September 2001 attacks without having the minimum evidence or allowing enough of an opportunity to verify things. He maintained that the security of the United States and the security of the world would be achieved if the United States and its constituents became rational and if the United States disengaged itself from the evil alliance with Zionism, which had been scheming to plunder the world and plunge it into blood and darkness by exploiting the United States and some Western countries. He accused the United States of committing attacks against other countries, which were the main cause of instability in the world.

By a letter dated 25 September 2001 addressed to the Secretary-General,<sup>24</sup> the representative of the United Arab Emirates transmitted a statement from the Ministry of Foreign Affairs stating that the Government had severed all diplomatic relations with the Government of Afghanistan, as the latter had refused to comply with the request of the Council to hand over Osama bin Laden.

The President then drew the attention of the Council to a draft resolution;<sup>25</sup> it was put to the vote and adopted unanimously and without debate as resolution 1373 (2001), by which the Council, acting under Chapter VII of the Charter of the United Nations, *inter alia*:

Decided that all States should:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets

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<sup>23</sup> S/2001/888.

<sup>24</sup> S/2001/903.

<sup>25</sup> S/2001/921.

or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

Declared that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

Decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution;

Directed the Committee to delineate its tasks, to submit a work programme within 30 days of the adoption of the resolution, and to consider the support it required, in consultation with the Secretary-General.

#### **Decision of 12 November 2001 (4413th meeting): resolution 1377 (2001)**

At the 4413th meeting,<sup>26</sup> on 12 November 2001, the President (Jamaica) drew the attention of the Council to a draft resolution.<sup>27</sup> At the meeting, statements were made by all members of the Council and the Secretary-General.<sup>28</sup>

In his statement before the vote, the Secretary-General applauded the Council for acting so swiftly in adopting resolution 1373 (2001) to enshrine in law the first steps to carry the fight against terrorism forward with new vigour and determination. He recalled that this was a broad resolution aimed at targeting terrorists and those which had harboured, aided, or supported them. It required Member States to cooperate in a wide range of areas, namely suppressing the financing of terrorism, providing early warning, cooperating in criminal investigations and exchanging information on possible terrorist acts. He reported that the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism had produced a work programme that focused on the first 90 days of the work of the Committee and had

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<sup>26</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to the discussion relating to Article 51 of the Charter.

<sup>27</sup> S/2001/1060.

<sup>28</sup> The meeting was held at the ministerial level: all delegations were represented by their respective State Minister for Foreign Affairs, Minister for Foreign Affairs or Secretary of State.

established mechanisms for States to report progress. He encouraged all States to ensure the full implementation of resolution 1373 (2001). In addition, he reported that he had established a working group, bringing together senior officials from the United Nations system, as well as outside experts, to identify the longer-term implications and broad policy dimensions of the issue of terrorism for the United Nations and formulate recommendations on steps that the United Nations system might take. He pointed out that the United Nations was uniquely placed to facilitate cooperation between Governments in the fight against terrorism, as it could convey the necessary legitimacy to ensure that States would take the necessary and difficult diplomatic, legal and political steps needed to defeat terrorism. He stated that the first step would be to ensure that the 12 existing legal instruments on international terrorism would be ratified and implemented without delay by all States. In addition, it would be important to obtain agreement on a comprehensive convention on international terrorism. He also called for a strengthening of the global norms against the use or proliferation of weapons of mass destruction, the banning of the sale of small arms to non-State groups, the elimination of landmines, improvement of the physical protection of sensitive industrial facilities, specifically nuclear and chemical plants, and increased vigilance against cyberterrorist threats. He held that there was a need for moral clarity and expressed the view that there could be no acceptance of those who sought to justify the deliberate taking of innocent civilian life, regardless of cause or grievance. Nevertheless, he warned against treating terrorism as a single phenomenon, emphasizing that it was, like war, an immensely complicated phenomenon with multiple objectives and causes, a multitude of weapons and agents and virtually limitless manifestations, with the only common denominator being the calculated use of deadly violence against civilians for political purposes.<sup>29</sup>

In their statements before the vote, most representatives emphasized that full cooperation at the international level was needed to address international terrorism. The speakers supported the measures taken by the Council so far and called for the full implementation of the recently adopted resolutions. In that regard, many speakers held that the creation of the

Counter-Terrorism Committee would prove helpful in ensuring the implementation of those resolutions. Most representatives expressed their country's commitment to the fight against terrorism and reported progress in the ratification and implementation of the existing legal instruments against terrorism. Many speakers held that, as a matter of priority, the international community should cooperate to track the financial resources of terrorist networks and should strengthen the exchange of information that could lead to the dismantling of terrorist networks. A number of speakers reported on the approach taken by several regional organizations and called for enhanced coordination of the national, regional, subregional and international levels to strengthen the global response to international terrorism.

In addition, several representatives called for a renewed commitment to address such global problems as poverty, regional conflicts and a lack of sustainable development, which could constitute the wider conditions on which terrorism could thrive.<sup>30</sup>

The representative of Jamaica also noted that not all States had an equal capacity to fully implement the measures provided in resolution 1373 (2001), and called for countries with the capacity to provide financial and technical assistance to assist those countries that were in need of assistance.<sup>31</sup>

The representative of China, while emphasizing that terrorism was a brazen challenge to all of human civilization, also held that the strike against terrorism should be clearly targeted and try to avoid injuring innocent people, and should be in compliance with the purposes and principles of the Charter. He also opposed linking terrorism to any specific religion or ethnicity, and believed that there should be no double standards with regard to counter-terrorism and that the international community should take a common stand against all forms of terrorist acts and carry out a resolute fight against them. He pointed out that China had also been threatened by terrorism and that the "East Turkestan" terrorist forces had received training, financial aid and support from international terrorist groups.<sup>32</sup>

<sup>30</sup> Ibid., p. 4 (Jamaica); p. 4 (China); pp. 7-8 (Ireland); p. 9 (Mauritius); pp. 10-11 (Russian Federation); p. 13 (Tunisia); p. 14 (Ukraine); and p. 17 (Mali).

<sup>31</sup> Ibid., p. 4.

<sup>32</sup> Ibid., pp. 4-5.

<sup>29</sup> S/PV.4413, pp. 2-3.



The representative of Colombia drew the attention of the Council to the role played by the world market in illicit drugs as a factor in the financing of violence and terror.<sup>33</sup>

The representatives of France and Norway reaffirmed that the armed response of the United States against Osama bin Laden, the Al-Qaida network and the Taliban was undertaken pursuant to resolution 1368 (2001) and in exercise of the United States right of self-defence, and declared that they supported that action.<sup>34</sup>

The representative of Mauritius pointed out that the attacks of 11 September 2001 had seriously affected the economies of poor countries, which did not have the resilience of the major economies.<sup>35</sup>

The representative of the Russian Federation welcomed the fact that the Council, as the body entrusted with the primary responsibility for the maintenance of peace and security, was demonstrating its central coordinating role in uniting the efforts of the world community to combat international terrorism, which he regarded as the most acute threat to global stability. He held that the adoption, by the Council, of resolutions of unprecedented scope, especially resolution 1373 (2001), laid a solid political and legal basis for the neutralization of the terrorist threat. He believed that the creation of the Counter-Terrorism Committee would facilitate the implementation of those resolutions and reiterated that they were binding on all States. He also emphasized that there should be no double standards with regard to terrorism, but held that it would be a mistake to identify terrorism with any religion, nationality or culture. In that regard, he called for the establishment of dialogue and mutual understanding between different civilizations on the basis of the common values of protecting the life and dignity of human beings. In addition, he called for the Council to appeal to the General Assembly to adopt at its fifty-sixth session the draft international convention on the suppression of acts of nuclear terrorism.<sup>36</sup>

The representative of the United Kingdom declared that terrorism, the deliberate targeting of innocent people for political ends, was criminal, and there was no political, religious or ideological cause

that could justify the use of such indiscriminate violence. He also welcomed military advances in the north of Afghanistan as a first step to the overall liberation of Afghanistan, to the establishment there of a broad-based, representative and multi-ethnic Government, and to the goal of a world free from the twin scourges of terrorism and war.<sup>37</sup>

The representative of the United States declared that action was needed and action was needed now. In reference to the question on the definition of terrorism, he responded that those who sought to define terrorism needed to look no further; no one could defend such heartless acts against innocent people. It was not about a clash of civilizations or religions. It was an attack on civilization and religion themselves. That was what terrorism meant. He stated that the United States was taking the fight against terrorism directly to the terrorists as well as their supporters and that the United States had declared war on all terrorist organizations with a global reach. He held that since those organizations were global, the United States needed the support of the international community, and especially the help of police forces, intelligence services and banking systems around the world to isolate and eradicate the common enemies. He welcomed the swift action by the Council and stated that resolution 1373 (2001) was a mandate to change fundamentally how the international community responded to terrorism, and reiterated that its obligations were urgent and binding. He acknowledged that, for many States, its implementation would necessitate changes in their financial and legal systems and offered technical assistance ranging from aviation security to financial tracking measures and law enforcement.<sup>38</sup>

The President drew the attention of the Council to the draft resolution;<sup>27</sup> it was put to the vote and adopted unanimously as resolution 1377 (2001), by which the Council decided to adopt a declaration, annexed to the resolution, on the global effort to combat terrorism.

**Decision of 15 April 2002 (4513th meeting):  
statement by the President**

At its 4453rd meeting, on 18 January 2002, the Council heard a briefing by the Chairman of the

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<sup>33</sup> Ibid., p. 6.

<sup>34</sup> Ibid., pp. 6-7 (France); and p. 10 (Norway).

<sup>35</sup> Ibid., p. 9.

<sup>36</sup> Ibid., pp. 10-11.

<sup>37</sup> Ibid., pp. 15-16.

<sup>38</sup> Ibid., pp. 16-17.

Counter-Terrorism Committee.<sup>39</sup> Statements were also made by the Secretary-General, most members of the Council, the representatives of Bangladesh, Belarus, Brunei Darussalam (on behalf of the Association of Southeast Asian Nations (ASEAN)), Canada, Costa Rica (on behalf of the Rio Group), India, the Islamic Republic of Iran, Israel, Jamaica (on behalf of the Caribbean Community (CARICOM)), Japan, Mongolia, Morocco (on behalf of the Group of Arab States), Nauru (on behalf of the Pacific Islands Forum Group), Nepal, Pakistan, Peru, Poland, Portugal,<sup>40</sup> Qatar, Spain (on behalf of the European Union<sup>41</sup>), Tajikistan and Uzbekistan, and the Permanent Observer of Palestine.

Speaking first, the Secretary-General welcomed the energy and spirit of cooperation prevailing among Member States in response to the terrorist attacks of 11 September, and held that the work of the Counter-Terrorism Committee and the cooperation it had received from Member States were unprecedented and exemplary. He stressed that through the work of the Committee, Member States were, for once, really using the Organization in the way that its founders had intended — as an instrument through which to forge a global defence against a global threat. He expressed the hope that Member States could apply that same spirit to other global threats, ranging from weapons of mass destruction to HIV/AIDS or climate change. In addition, he pointed to the interrelationship between terrorism and other threats, including organized crime and illicit trafficking in weapons drugs and diamonds, and underlined the need for the various United Nations bodies dealing with those threats to coordinate their work closely. Further, he noted that there was no trade-off between effective action against terrorism and the protection of human rights, which, on the contrary, along with democracy and social justice, was one of the best prophylactics against terrorism. He held, therefore, that human rights and other key principles should not be sacrificed in the fight against terrorism and that there was a need to make sure that the

measures adopted by the Council did not unduly curtail human rights or would give others a pretext to do so. Finally, he pointed to the lack of capacity of many States to adopt effective counter-terrorist measures and the ensuing need for technical and financial assistance.<sup>42</sup>

The Chairman of the Counter-Terrorism Committee, in his briefing, noted that the Council had reacted strongly and quickly to the threat which international terrorism in its latest form posed to international peace and security by, inter alia, the adoption of resolution 1373 (2001), which imposed binding obligations on all States to take immediate action to suppress and prevent terrorism. Those measures, monitored by the Committee, intended to improve the capacity of every State to fight terrorism and ensure that there was no weak part of the chain. Resolution 1377 (2001), he noted, had given the Committee the task of identifying assistance programmes and best practices, which it had started to do by inviting States and international and regional organizations to contribute to a directory of available assistance. In addition, the Chairman had requested the Secretary-General to consider establishing a United Nations trust fund to ensure that such essential work was adequately funded. The Chairman welcomed the fact that 123 States had to that date submitted reports to the Committee on the implementation of resolution 1373 (2001), but pointed out that some States remained. He reported that the Committee hoped to have reviewed two thirds of the reports received to that date by the end of March 2002. In its review, the Committee intended to write to each State, in confidence, offering comments, requesting more information or outlining areas in which legislation or further executive measures might be needed. He held that it was not the role of the Committee to act as a tribunal for judging States. Nor would the Committee trespass on to areas of competence of other parts of the United Nations system. The Committee would not define terrorism in a legal sense, nor would it issue lists of terrorist organizations. Where a matter of political controversy arose, that matter would be referred back to the Council. While the mandate of the Committee was to monitor the implementation of resolution 1373 (2001), rather than monitor performance against other international conventions, including human rights, the Chairman held that the

<sup>39</sup> The representative of the United Kingdom, who delivered the briefing in his capacity as the Chairman of the Committee, did not make a statement in his national capacity.

<sup>40</sup> In the capacity of Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE).

<sup>41</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>42</sup> S/PV.4453, pp. 2-3.

Committee would remain aware of the interaction with human rights concerns. Other organizations were free to study the reports and take up their content in other forums, he added.<sup>43</sup>

In their statements, all speakers condemned terrorism with several speakers highlighting that terrorist attacks victimized the innocent civilian population.<sup>44</sup> Most speakers recognized the important role of the Committee as a follow-up mechanism for the implementation of resolution 1373 (2001) and commended its Chairman for the work achieved to date and for the transparent approach taken by the Committee vis-à-vis the wider membership. They underlined support for the 12 international conventions against terrorism and highlighted the importance of having those conventions ratified by as many States as possible. A number of speakers reported on the measures taken by regional organizations and groups.<sup>45</sup> Most speakers noted that some States would need technical assistance to enable them to fulfil their obligations under resolution 1373 (2001). Several other speakers reiterated their countries' readiness to provide a range of technical assistance programmes in areas related to counter-terrorism.<sup>46</sup> Several speakers agreed with the Secretary-General that there could be no trade-off between the fight against terrorism and the protection of human rights.<sup>47</sup> In addition, the representative of Peru maintained that the Council and the General Assembly should affirm that terrorist groups themselves were violators of human rights.<sup>48</sup>

Several speakers referred to the need to define terrorism. In that regard, several representatives expressed their support for the negotiations on the draft comprehensive convention on international terrorism in the General Assembly.<sup>49</sup>

The representative of the Syrian Arab Republic, while strongly condemning the brutal crime of 11 September 2001 and its impact on innocent civilians, also held that there was a need to define terrorism and to distinguish it from the just struggle of people to free themselves from foreign occupation. Referring to, inter alia, the Palestinian question, the representative of the Syrian Arab Republic, supported by the representative of the Islamic Republic of Iran, held that foreign occupation was the most brutal form of terrorism and that therefore, resistance to foreign occupation, in his opinion, constituted legitimate struggle. He regretted that the Council had not denounced Israeli State terrorism.<sup>50</sup> The representatives of Morocco (on behalf of the Group of Arab States) and Qatar also recognized a right to self-defence for the Palestinian people.<sup>51</sup> The representative of Palestine rejected suicide bombings carried out in Israel targeting Israeli civilians as terrorist acts. With regard to acts of violence in the occupied Palestinian territory, he stated that while they were incompatible with the current ceasefire, he regarded them as legitimate resistance to foreign occupation and did not accept any attempt to label them as terrorist acts. Moreover, he also accused Israel of committing State terrorism.<sup>52</sup> The representative of Pakistan also held that foreign occupation constituted a form of State terrorism and linked the concept to the situation in Kashmir.<sup>53</sup> The representative of India stressed that the existence of, and support for the activities of, terrorist groups such as Jaish-e-Mohammed and Lashkar-e-Tayyiba was in direct and complete contravention of resolution 1373 (2001).<sup>54</sup> The representative of Israel

<sup>43</sup> Ibid., pp. 3-5.

<sup>44</sup> Ibid., p. 8 (Syrian Arab Republic); and p. 10 (Costa Rica on behalf of the Rio Group).

<sup>45</sup> Ibid., pp. 10-11 (Costa Rica on behalf of the Rio Group); pp. 12-13 (Spain on behalf of the European Union); p. 14 (Canada on behalf of the Group of Eight); p. 17 (Bulgaria); p. 18 (China); and pp. 22-23 (Morocco on behalf of the Group of Arab States); S/PV.4453 (Resumption 1), pp. 12-13 (Brunei Darussalam on behalf of ASEAN); p. 13 (Portugal on behalf of OSCE); p. 15 (Nauru on behalf of the Pacific Islands Forum); p. 17 (Nepal); and pp. 28-29 (Mauritius).

<sup>46</sup> S/PV.4453, p. 6 (United States); p. 7 (France); p. 12 (Spain on behalf of the European Union); p. 15 (Canada); and p. 28 (Norway); S/PV.4453 (Resumption 1), p. 3 (Japan).

<sup>47</sup> S/PV.4453, p. 10 (Costa Rica on behalf of the Rio Group); p. 15 (Ireland); and p. 21 (Peru); S/PV.4453 (Resumption 1), p. 4 (Bangladesh) and p. 27 (Mexico).

<sup>48</sup> S/PV.4453, p. 22.

<sup>49</sup> Ibid., p. 6 (United States); p. 13 (Spain on behalf of the European Union); p. 16 (Ireland); and p. 23 (Morocco on behalf of the Group of Arab States); S/PV.4453 (Resumption 1), p. 10 (Mongolia); p. 19 (Qatar); p. 26 (Cameroon); and p. 27 (Mexico).

<sup>50</sup> S/PV.4453, pp. 7-8 (Syrian Arab Republic); S/PV.4453 (Resumption 1), pp. 21-22 (Islamic Republic of Iran).

<sup>51</sup> S/PV.4453, p. 23 (Morocco on behalf of the Group of Arab States); S/PV.4453 (Resumption 1), p. 19 (Qatar).

<sup>52</sup> S/PV.4453 (Resumption 1), p. 23.

<sup>53</sup> S/PV.4453, p. 31.

<sup>54</sup> Ibid., p. 21.

regretted the baseless allegations made by the representative of the Syrian Arab Republic and held that States that provided support, assistance or safe harbour to terrorist organizations had to be targeted no less than the terrorists themselves.<sup>55</sup> The Chairman of the Committee noted that neither resolution 1373 (2001) nor the 12 international conventions relating to terrorism referred to a concept of “State terrorism”. He stated that the Committee had to proceed within the given consensus. He further held that States should be judged against the international instruments dealing with war crimes, crimes against humanity and international human rights and humanitarian law.<sup>56</sup>

Several speakers held that efforts to address other global challenges facing the United Nations, including in the area of development, would strengthen the fight against terrorism.<sup>57</sup> Several speakers held that nothing could justify the deliberate taking of innocent civilian life, regardless of cause or grievance.<sup>58</sup> The representative of Morocco (on behalf of the Group of Arab States) held that it was necessary to address the fundamental causes of terrorism, which would not in any way constitute an attempt to justify or rationalize terrorism.<sup>59</sup> The representative of Pakistan also held that the roots of terrorism, which in his view lay in inequality, the denial of fundamental rights and in a sense of injustice, needed to be addressed.<sup>60</sup> In contrast, the representative of Canada held that the root cause of terrorism was terrorists.<sup>61</sup>

The representative of Costa Rica (on behalf of the Rio Group) maintained that extreme poverty and the violation of human rights fed extremism and terrorism, and that a multilateral strategy against terrorism needed to tackle the problems of extreme poverty, hunger, destitution, illness and the lack of housing and education. He also held that respect for human rights and democracy constituted the best line of defence

against terrorism and that the struggle against terrorism should not become an excuse to disregard fundamental rights. He expressed his belief that the fight against terrorism should not lend itself to fuelling ethnic hatred or promoting discord among the different religions and civilizations.<sup>62</sup> The representative of Morocco (on behalf of the Group of Arab States) held that the international community should act to prevent all slander and defamation campaigns against the Arab and Muslim communities.<sup>63</sup>

The representative of Spain (on behalf of the European Union) emphasized that the European Union could not remain indifferent to States who did not comply with the obligations established by resolution 1373 (2001), and that the importance that the European Union attached to combating terrorism would be reflected in its relations with those States.<sup>64</sup>

Several speakers voiced support for the establishment of a United Nations trust fund to support Member States in their implementation of resolution 1373 (2001).<sup>65</sup>

The representative of Peru also highlighted the potential of a biological terrorist threat and asked the Committee to consider that threat, and promote international cooperation on nuclear and radiological safety.<sup>66</sup> The representative of Colombia put special emphasis on the need to combat the financing of terrorism.<sup>67</sup> Several speakers highlighted the linkages between terrorism and drug-trafficking, organized crime, money-laundering and the illicit trafficking of arms.<sup>68</sup>

At its 4512th meeting,<sup>69</sup> on 15 April 2002, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee, following which statements were made by most members of the

<sup>55</sup> S/PV.4453 (Resumption 1), pp. 20-21.

<sup>56</sup> S/PV.4453, pp. 24-25.

<sup>57</sup> *Ibid.*, p. 10 (Costa Rica on behalf of the Rio Group); p. 18 (China); and p. 28 (Norway); S/PV.4453 (Resumption 1), p. 10 (Mongolia); p. 11 (Jamaica on behalf of CARICOM); and pp. 18-19 (Qatar).

<sup>58</sup> S/PV.4453, p. 6 (United States); p. 10 (Costa Rica on behalf of the Rio Group); p. 20 (India); and p. 28 (Norway); S/PV.4453 (Resumption 1), p. 11 (Jamaica on behalf of CARICOM); p. 16 (Nepal); and p. 20 (Israel).

<sup>59</sup> S/PV.4453, p. 23.

<sup>60</sup> *Ibid.*, p. 32.

<sup>61</sup> *Ibid.*, p. 15.

<sup>62</sup> *Ibid.*, p. 10.

<sup>63</sup> *Ibid.*, p. 24.

<sup>64</sup> *Ibid.*, p. 12.

<sup>65</sup> *Ibid.*, p. 16 (Ireland); and p. 18 (China); S/PV.4453 (Resumption 1), p. 6 (Guinea).

<sup>66</sup> *Ibid.*, p. 22.

<sup>67</sup> *Ibid.*, p. 28.

<sup>68</sup> *Ibid.*, p. 10 (Costa Rica on behalf of the Rio Group); p. 17 (Bulgaria); and p. 29 (Colombia); S/PV.4453 (Resumption 1), p. 11 (Jamaica on behalf of CARICOM); and p. 17 (Nepal).

<sup>69</sup> For more information on the discussion at this meeting, see chap. XI, part IX, sect. B, with regard to the discussion relating to Article 51 of the Charter.

Council<sup>70</sup> and the representatives of Australia, Cambodia (on behalf of ASEAN), Canada, Chile, Costa Rica (on behalf of the Rio Group), Israel, Japan, Malawi, Malaysia, Pakistan, Peru, Spain (on behalf of the European Union),<sup>71</sup> Turkey and Ukraine.

In his briefing, the Chairman of the Committee reviewed the structure and activities of the Committee six months after its establishment pursuant to resolution 1373 (2001). He informed the Council that the Committee had so far received 143 reports from Member States, had reviewed and responded to 62 States and was following up with the 50 States that had not yet submitted reports. He stressed that the Committee would continue the excellent dialogue with all Member States and continue to perform on the basis of transparency and even-handedness until the Committee was confident that each State had taken action on all the issues covered by resolution 1373 (2001). In introducing the work programme for the following 90-day period,<sup>72</sup> the Chairman stated that the Committee would continue to check the facts given in the country reports concerning the legislation in place, the administrative action taken and the way in which those tools were used to prevent the territory of each State being abused by terrorists. He held that, as the preliminary review of the reports received was completed, the Committee would, in a second review of the second round of reports, be more direct in identifying potential gaps and in asking States what action they intended to take to address issues of concern. It would also expect the experts to recommend where assistance would be needed and inform States where to find the required assistance. He emphasized that there was agreement that the Committee and the Council would, if necessary, consider what action was needed to address failures to meet the requirements of resolution 1373 (2001). While expressing understanding for the lack of capacity in some countries to prepare a full report, he requested those States that had not yet done so to begin their written exchange with the Committee before 31 May 2002. In addition, he reported that the Committee intended to deepen its contacts with

regional organizations and continue to make contact with other international organizations, including the Financial Action Task Force, the International Civil Aviation Organization and the International Maritime Organization, to encourage them to take action on issues within their area of expertise.<sup>73</sup>

In their statements, most speakers stated that they were impressed with the work achieved so far by the Committee and endorsed its programme of work. Most speakers underlined the importance of providing assistance to States to implement their obligations under resolution 1373 (2001) and called on the Committee for facilitation. In that regard, most speakers welcomed the imminent appointment of an additional expert dealing with technical assistance. Several speakers underlined the need for equitable geographical representation in the group of experts.<sup>74</sup>

In a similar vein, while stressing the obligation of the remaining States to submit reports to the Committee as soon as possible, most speakers recognized that many States lacked the financial, technical and administrative resources to do so. Several speakers suggested that the Committee should assist those States in their responses.<sup>75</sup>

In addition, most speakers emphasized the need for cooperation with regional organizations. As in previous meetings, a number of speakers reported on the measures taken by regional organizations and groups.<sup>76</sup>

Many speakers reiterated that the fight against terrorism should never come at the expense of human rights.<sup>77</sup> Several speakers also held that terrorism itself

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<sup>70</sup> The representative of the United Kingdom, who delivered the briefing in his capacity as the Chairman of the Committee, did not make a statement in his national capacity.

<sup>71</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>72</sup> S/2002/318.

<sup>73</sup> S/PV.4512, pp. 2-4.

<sup>74</sup> *Ibid.*, p. 5 (Guinea); p. 9 (Syrian Arab Republic); and p. 17 (Russian Federation on behalf of the Commonwealth of Independent States).

<sup>75</sup> *Ibid.*, p. 7 (Bulgaria); and p. 9 (Syrian Arab Republic).

<sup>76</sup> *Ibid.*, p. 17 (Russian Federation on behalf of the Commonwealth of Independent States); pp. 18-19 (Spain on behalf of the European Union); and pp. 22-23 (Canada on behalf of the Group of Eight); S/PV.4512 (Resumption 1), pp. 2-3 (Costa Rica on behalf of the Rio Group); p. 6 (Cambodia on behalf of ASEAN); p. 9 (Malawi on behalf of SADC); and pp. 10-11 (Malaysia, on behalf of OIC).

<sup>77</sup> S/PV.4512, p. 9 (Norway); p. 13 (Mexico); p. 15 (Mauritius); p. 16 (Ireland); pp. 18-19 (Spain on behalf of the European Union); and p. 20 (Chile); S/PV.4512 (Resumption 1), pp. 7-8 (Peru).

represented a violation of fundamental human rights.<sup>78</sup> In addition, the representative of Malawi (on behalf of the Southern African Development Community) held that terrorism represented the antithesis of socio-economic development.<sup>79</sup>

The representative of Singapore noted that support for the Committee would become stronger if it became clear in which way it impacted the struggle against terrorism, and noted four concrete areas where the impact of the Committee went beyond reports and discussions, including by forcing Member States to review their national legislation and assessing its adequacy in the struggle against terrorism; increasing the momentum towards the ratification of international conventions related to counter-terrorism; deepening the mechanisms for information and intelligence exchange; and pushing for an increase in assistance to Member States in the fight against terrorism.<sup>80</sup> The representative of Australia observed that the terrorist attacks of 11 September 2001 had revealed that existing counter-terrorism instruments, while enjoying wide adherence, had not provided sufficient accountability or verification of their implementation and that other weaknesses in the international counter-terrorism regime had included insufficient information exchange and the lack of assistance for capacity-building.<sup>81</sup>

The representative of Norway emphasized the importance of cutting terrorist financing and noted, in that regard, that information obtained suggested that terrorist groups were already finding it difficult to receive funding through international channels.<sup>82</sup>

In addition, the representative of Mexico insisted that all efforts in the fight against terrorism conform to the provisions of the Charter and of international law. He emphasized that the use of force was not without limits, had to be governed by a valid interpretation of the legitimate right of self-defence and should in all circumstances conform to the principle of proportionality.<sup>83</sup>

<sup>78</sup> S/PV.4512 (Resumption 1), p. 2 (Costa Rica on behalf of the Rio Group); p. 4 (Turkey); and p. 9 (Malawi on behalf of SADC).

<sup>79</sup> *Ibid.*, p. 9.

<sup>80</sup> S/PV.4512, p. 4.

<sup>81</sup> S/PV.4512 (Resumption 1), p. 3.

<sup>82</sup> S/PV.4512, p. 9.

<sup>83</sup> *Ibid.*, p. 14.

The representative of Mauritius, reflecting on his experiences with respect to his Vice-Chairmanship of the Committee, shared some of the concerns that Member States had expressed when presented with the response of the Committee to their reports, including concerns as to whether some questions in the response might not be beyond the scope and purview of the mandate of resolution 1373 (2001), whether answers by Member States to the questions of the Committee would help in understanding if a country had complied with resolution 1373 (2001) and what the next course of action would be after the reports of all Member States had been thoroughly studied by the Committee.<sup>84</sup> The representative of Ireland stressed that as the Committee progressed into more detailed assessments regarding the implementation by States of resolution 1373 (2001), it should be careful not to micromanage or prescribe beyond the requirements of resolution 1373 (2001).<sup>85</sup> The representative of the Russian Federation held that the Council had a clear general understanding that the Committee should and would not function as a repressive organ or in any way go beyond the limits of its mandate.<sup>86</sup> The Chairman of the Committee, responding to those questions, maintained that the text of resolution 1373 (2001) was extremely broad and that the Committee had agreed to implement nothing less and nothing more than the mandate. Addressing the question of non-compliance with resolution 1373 (2001), the Chairman stated that this had not happened so far, and that the Committee would address the question if and when it would arise.<sup>87</sup>

The representative of Spain (on behalf of the European Union) welcomed the initiative of the Secretary-General to create a working group to review and improve actions undertaken by the various departments of the Secretariat in the fight against terrorism. While indicating that the European Union was carrying out an assessment of its relations with third countries in the light of their attitude towards terrorism, he also emphasized that the actions of the European Union were aimed at individuals or groups of terrorists, never at peoples, religions or cultures.<sup>88</sup>

<sup>84</sup> *Ibid.*, p. 15.

<sup>85</sup> *Ibid.*, p. 16.

<sup>86</sup> *Ibid.*, p. 17.

<sup>87</sup> S/PV.4512 (Resumption 1), p. 13.

<sup>88</sup> S/PV.4512, p. 19.

The representative of Costa Rica (on behalf of the Rio Group) held that extremism was fueled by political oppression, extreme poverty, hunger, destitution, disease and the violation of fundamental human rights. He also expressed his conviction that the fight against terrorism required the building of societies reigned by a true culture of peace, tolerance and solidarity.<sup>89</sup>

The representative of Chile condemned both the appalling violence unleashed against the population of Palestine and the atrocity of the acts of terrorism committed against civilians in Israel and held that the international community, in addition to combating terrorism, should address situations, such as the one in the Middle East, which in his view, fostered a climate contributing to a spiral of violence and terror. He also expressed the conviction that the oppression of peoples, ignorance accompanied by extreme ideologies and conditions of extreme poverty were increasingly creating a climate of marginalization and dehumanization that encouraged recourse to violence and legitimized the actions of terrorists through the degradation it perpetrated. He underlined the limitations of strategies that reduced combating terrorism to a simple question of military strength and held that the international strategy should be based on a multifaceted and resolute approach. In that regard, he proposed that the Committee participate in the elaboration of new, twenty-first century concepts of security.<sup>90</sup>

The representative of the Syrian Arab Republic reiterated his country's position on the need to include "State terrorism" in the definition of terrorism and called the acts of destruction and killing being perpetrated against the Palestinian people the most severe form of terrorism.<sup>91</sup> The representative of Pakistan, also reiterating his position on State terrorism, held that to confront terrorism, it was necessary to address the source and the roots of the problem and that it was time for correcting historical wrongs and for redressing endemic injustices, and in the same vein to find a just, lasting and honourable settlement of the Kashmir and Palestine issues.<sup>92</sup>

The representative of Malaysia quoted a declaration of the Organization of the Islamic

Conference, in which OIC stressed that terrorism had no association with any religion, civilization or nationality and underlined that preventive action taken to combat terrorism should not result in ethnic or religious profiling or in the targeting of a particular community. While referring to the concept of State terrorism, he stressed the legitimacy of resistance to foreign occupation in the struggle for national liberation and self-determination and called for an internationally agreed definition of terrorism that differentiated such struggles from acts of terrorism. The statement also emphasized the importance of addressing the root causes of international terrorism, which included foreign occupation, injustice and exclusion. While it reaffirmed the commitment of OIC to international action in combating terrorism in conformity with the principles of the Charter, including the principles of non-intervention in internal affairs and respect for sovereignty and territorial integrity, it rejected any unilateral action taken against any Islamic country on the pretext of combating international terrorism. The Organization of the Islamic Conference also reiterated the call to convene an international conference under the auspices of the United Nations to formulate a joint, organized response of the international community to terrorism in all its forms and manifestations.<sup>93</sup>

The representative of Turkey, regretting that Turkey could not align itself with the statement of the European Union, stressed that the problem of terrorism should not be addressed partially and selectively with regard to terrorist groups and organizations, and expressed the belief that the terrorist list of the European Union was incomplete and deficient in its current form.<sup>94</sup>

The representative of Peru proposed that the Committee could develop or promote extensive cooperation programmes with requesting countries, including a programme for legal assistance, a programme of "smart borders" and a programme to strengthen awareness of human rights in the fight against terrorism.<sup>95</sup>

The representative of Israel, while underlining the role of States in providing support, assistance and safe harbour to terrorists, also called for ending

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<sup>89</sup> S/PV.4512 (Resumption 1), p. 3.

<sup>90</sup> S/PV.4512, p. 20.

<sup>91</sup> *Ibid.*, p. 10.

<sup>92</sup> S/PV.4512 (Resumption 1), p. 9.

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

<sup>94</sup> *Ibid.*, p. 5.

<sup>95</sup> *Ibid.*, p. 7.

encouragement, incitement and moral and religious sanctioning of terrorist acts.<sup>96</sup>

At the 4513th meeting, on 15 April 2002, the President (Russian Federation) made a statement on behalf of the Council,<sup>97</sup> by which the Council, *inter alia*:

Welcomed and confirmed the continuation of the current Chairmanship and Bureau arrangements for a further six months; invited the Counter-Terrorism Committee to continue its work as set out in the work programme for the Committee for the third 90-day period;<sup>98</sup>

Considered it essential that those Member States which had not yet submitted a report pursuant to paragraph 6 of resolution 1373 (2001) did so as soon as possible;

Invited the Counter-Terrorism Committee to report on its activities at regular intervals and expressed its intention to review the structure and activities of the Committee no later than 4 October 2002.

**Decision of 8 October 2002 (4619th meeting):  
statement by the President**

At its 4561st meeting, on 27 June 2002, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee, following which statements were made by most members of the Council<sup>99</sup> and the representatives of Brunei Darussalam (on behalf of ASEAN), Costa Rica (on behalf of the Rio Group) and Spain (on behalf of the European Union<sup>100</sup>). In his briefing, the Chairman drew the attention of the Council to a letter dated 17 June 2002 that he had written to the Council, explaining the way in which the Committee planned to follow up with the States that had not submitted a report to the Committee as at that date.<sup>101</sup> Encouraging States to make contact with the Committee, he reiterated the readiness of the Committee and the experts to discuss any difficulties States might have in submitting reports. Presenting the work programme for

the next 90-day period, the Chairman stated that the Committee would focus on reviewing the second reports submitted by many States on the implementation of resolution 1373 (2001). He stressed that the Committee, in its second response to States, intended to set out more clearly the gaps identified by the experts together with recommendations to improve the implementation of resolution 1373 (2001). He expected many States to submit a third report to the Committee setting out their response to those recommendations and including timetables for action. He also stressed that experts would indicate, where appropriate, how a State might benefit from technical or other assistance. He reiterated that the Committee did not intend to declare any Member State fully compliant with resolution 1373 (2001), as the Committee believed that there was always further work to improve counter-terrorism measures against a constantly evolving background. With regard to the Committee's outreach to regional organizations, the Chairman had called on those organizations to develop permanent mechanisms for dealing with terrorism, to use those forums to discuss counter-terrorism measures on a regional level and to develop their own assistance programmes. Turning to the achievements of the Committee, the Chairman held that widespread attention had been directed to resolution 1373 (2001) and that a broad range of regional and subregional organizations were now aware that there was a global structure for countering terrorism. He also pointed to ratifications of the 12 international conventions and protocols relating to terrorism, which had gone up by more than 15 per cent since July 2001, as an indicator of success.<sup>102</sup>

In their statements, most speakers commended the work of the Committee and committed themselves to cooperation against terrorism. Several speakers welcomed the scheduling of a full debate on the matter in three months time. Many speakers welcomed cooperation with regional and subregional organizations. The representative of the Russian Federation believed that cooperation between the Committee and the Commonwealth of Independent States anti-terrorism centre and the regional anti-terrorist structure of the Shanghai Cooperation Organization could be fruitful.<sup>103</sup>

<sup>96</sup> *Ibid.*, p. 12.

<sup>97</sup> S/PRST/2002/10.

<sup>98</sup> S/2002/318.

<sup>99</sup> The representative of the United Kingdom, who delivered the briefing in his capacity as the Chairman of the Committee, did not make a statement in his national capacity.

<sup>100</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>101</sup> S/2002/673.

<sup>102</sup> S/PV.4561, pp. 2-4.

<sup>103</sup> *Ibid.*, p. 12.



Many speakers reiterated the importance of providing assistance to States to implement their obligations under resolution 1373 (2001). The representative of Spain (on behalf of the European Union) expected that the Committee and countries or regions in need of assistance would provide specific requests to donors.<sup>104</sup> The representative of Norway stated that, in addition to other measures, his country considered a strong commitment to development cooperation to be a relevant contribution to combating terrorism by improving socially unjustifiable conditions.<sup>105</sup>

The representative of Singapore, although fully agreeing with the approach of the Committee not to declare any State completely in compliance with resolution 1373 (2001), questioned if it would not be possible to create some informal criteria against which Member States could assess whether they had fulfilled the requirements of that resolution.<sup>106</sup> In that regard, he was supported by the representative of Colombia.<sup>107</sup> In response, the Chairman of the Committee offered to provide to the Committee a synthesis of ongoing experience drawn from the reports of Member States, which would begin to amount to benchmarks for the implementation of resolution 1373 (2001).<sup>108</sup>

The representative of the United States held that the review of the second round of reports would, to a large extent, determine the level of impact that the Committee would have in the fight against terrorism and whether it would be anything more than an ongoing world audit of the capacity of Member States to combat terrorism. He stressed that the Committee should be prepared to be professionally critical and tough-minded but also constructive. He emphasized the need to focus attention on those States which lacked the capacity or the will to implement resolution 1373 (2001). He therefore welcomed that the Committee had informally agreed to identify, in the response to the second round of reports, gaps in each State's implementation of resolution 1373 (2001). He also emphasized that resolution 1373 (2001) and the Committee established to monitor it had no time limits

and would continue until the Council would be satisfied with the implementation of the resolution.<sup>109</sup>

The representative of Ireland held that the Committee should continue to be vigilant in the extreme not to go beyond the letter or the spirit of the mandate of resolution 1373 (2001). He noted that the role of the United Nations in the international counter-terrorism efforts was to provide legitimacy, to build a global consensus and to act as the defender and promoter of multilateralism and internationalism against those who were enemies of the international good. The Council should therefore avoid any actions that could undermine the sense of international legitimacy in the struggle against international terrorism. He also held that as the implementation of resolution 1373 (2001) advanced, it might be necessary to renew the mandate of the Committee in the light of the experiences gathered to that date.<sup>110</sup>

The representative of Spain (speaking on behalf of the European Union) emphasized that resolution 1373 (2001) was not complied with through mere presentation of reports and that the reports should reflect the reality of legal and practical measures adopted at the national or regional level.<sup>111</sup> The representative of China noted that the Security Council should focus on how the counter-terrorism efforts of the United Nations could be integrated into the international fight against terrorism.<sup>112</sup> In addition, several speakers underlined the connection between terrorism and organized crime.<sup>113</sup>

With regard to the relationship between counter-terrorism efforts and human rights, the representative of Ireland quoted the United Nations High Commissioner for Human Rights, who warned that order and security had become overriding priorities, and that in the past, emphasis on national order and security had often involved the curtailment of democracy and human rights.<sup>114</sup> The representative of Spain (on behalf of the European Union) held that individual human rights had to be taken into account in the design and implementation of sanctions in the fight against terrorism and emphasized that States, in

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<sup>104</sup> *Ibid.*, p. 16.

<sup>105</sup> *Ibid.*, p. 7.

<sup>106</sup> *Ibid.*, p. 4.

<sup>107</sup> *Ibid.*, p. 13.

<sup>108</sup> *Ibid.*, p. 20.

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<sup>109</sup> *Ibid.*, p. 6.

<sup>110</sup> *Ibid.*, p. 11.

<sup>111</sup> *Ibid.*, p. 16.

<sup>112</sup> *Ibid.*, p. 10.

<sup>113</sup> *Ibid.*, p. 5 (Guinea); p. 9 (Cameroon); and p. 14 (Mauritius).

<sup>114</sup> *Ibid.*, p. 12.

fighting terrorism, must not condone acts of indiscriminate violence against civilians or use counter-terrorism as a pretext for political repression.<sup>115</sup>

The representative of Costa Rica (on behalf of the Rio Group) stressed that it was not a sustainable solution that the growing practical and financial requirements of the Committee were being met with resources earmarked for other programmes and mandates and held that it was essential that resources for the Committee be allocated within the regular budget of the organization.<sup>116</sup>

At its 4618th meeting,<sup>117</sup> on 4 October 2002, the Council heard a statement by the Secretary-General and a briefing by the Chairman of the Counter-Terrorism Committee, following which statements were made by all members of the Council and the representatives of Australia, Burkina Faso, Cambodia (on behalf of ASEAN), Costa Rica (on behalf of the Rio Group), the Democratic Republic of the Congo, Denmark (on behalf of the European Union),<sup>118</sup> Egypt, Ethiopia, Fiji (on behalf of the Pacific Islands Forum), Georgia, India, the Islamic Republic of Iran, Israel, Japan, Kazakhstan, Lebanon, Liechtenstein, Nepal, the Philippines, Pakistan, Peru, Qatar, the Republic of Korea, South Africa, Tunisia, Turkey, Ukraine (on behalf of GUUAM), Yemen, Yugoslavia and Zambia, the Permanent Observer of the Organization of the Islamic Conference and the Permanent Observer of the African Union.

In his statement, the Secretary-General reiterated that terrorism was a global threat with global effects which affected every aspect of the United Nations agenda, ranging from development to peace, to human rights and the rule of law. He held that terrorism was an assault on the fundamental principles of law, order, human rights and the peaceful settlement of disputes. He emphasized that the United Nations had an indispensable role in providing the legal and organizational framework for the international

campaign against terrorism. He noted that he had set up the Policy Working Group on the United Nations and Terrorism, which had submitted a report dated 28 June 2002 with recommendations for a strategic definition of priorities to orient the work of the United Nations.<sup>119</sup> He stated that following the strategy proposed in the report, the United Nations would set itself three goals: (a) dissuading would-be perpetrators of terror by setting effective norms and implementing relevant legal instruments, by mounting an active public information campaign and by rallying an international consensus against terrorism; (b) denying would-be perpetrators the opportunity to commit terrorist acts by supporting the efforts of the Committee to monitor compliance with resolution 1373 (2001), through greater efforts to achieve disarmament, especially through strengthening global norms against the use or proliferation of weapons of mass destruction and through technical assistance and support to States seeking to curb the flow of arms, funds and technology to terrorist cells; and (c) sustaining cooperation in the struggle against terrorism, especially by encouraging subregional, regional and global organizations to join forces in a common campaign.<sup>120</sup>

The Chairman, in his briefing, vowed to continue the work of the Committee on the basis of the principles of cooperation and transparency. He stated that the Committee was not a tribunal and did not judge States but expected every State to work at its fastest pace to implement the far-reaching obligations of resolution 1373 (2001), which for most States would mean to have legislation in place covering all aspects of resolution 1373 (2001) and an effective executive machinery for preventing and suppressing terrorist financing. The Chairman held that the global environment for terrorists had changed, whereby almost all States had reviewed their legislation and institutions to fight terrorism. Ratifications of the 12 international conventions and protocols related to terrorism had increased and the number of States working together to improve regional capacities against terrorism and cooperation between States, particularly in the form of assistance, had increased. The Chairman also reported that to date the Committee had received 265 reports from States and regional organizations on the implementation of resolution 1373 (2001), including 86 follow-up reports; however, 16

<sup>115</sup> *Ibid.*, p. 17.

<sup>116</sup> *Ibid.*, p. 18.

<sup>117</sup> For more information on the discussion at this meeting, see chap. XI, part IV, sect. B, with regard to the discussion relating to Article 51 of the Charter.

<sup>118</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>119</sup> S/2002/875, annex.

<sup>120</sup> S/PV.4618, pp. 3-4.

Member States had not yet filed a report, 7 of which had not made any type of written contact with the Committee.<sup>121</sup>

In their statements following the briefing, most speakers lauded the work and the achievements of the Committee in raising awareness of resolution 1373 (2001) and global counter-terrorism measures; in reviewing country reports, identifying areas for improvement in national legislation and implementation; and in facilitating counter-terrorism assistance. Many speakers appealed to the Member States that had not submitted their first report to contact the Committee without delay. Most speakers laid out the measures taken by their countries to adhere to resolution 1373 (2001) and effectively counter the threat of terrorism. They also reiterated the importance of regional and subregional approaches, with the representative of Bulgaria suggesting that regional and subregional organizations were often the most suited for the fight against terrorism.<sup>122</sup>

Many speakers underlined that there should be no contradiction between counter-terrorism measures and the protection of human rights. Several speakers held that terrorism itself was a threat to human rights.<sup>123</sup> The representative of Norway, supported by the representative of Ireland, emphasized that the effective implementation of anti-terrorist measures at the national level should not be perceived as an excuse to deny fundamental rights and freedoms.<sup>124</sup> The representative of Peru added that the humanitarian institution of political asylum should not be debased; that authorities should be careful not to extend refugee status to possible authors of terrorist acts.<sup>125</sup> The representative of the United States held that terrorists and their supporters were enemies of the rule of law. He held that effective counter-terrorism was also an effort to vindicate and defend the rule of law, as recognized by the obligation in resolution 1373 (2001) to strengthen domestic legal institutions and capacities to combat terrorism. He also stated that the effective protection of human rights was always the defence of the rule of law. Hence, there was no incompatibility

<sup>121</sup> *Ibid.*, pp. 4-7.

<sup>122</sup> *Ibid.*, p. 11.

<sup>123</sup> *Ibid.*, p. 14 (Mexico); and p. 17 (Norway); S/PV.4618 (Resumption 2), p. 2 (Peru); and p. 8 (Ukraine on behalf of GUUAM).

<sup>124</sup> S/PV.4618, p. 17 (Norway); and p. 18 (Ireland).

<sup>125</sup> S/PV.4618 (Resumption 2), p. 2.

between the effort to combat terrorism and developing the rule of law and, therefore, the protection of basic human rights.<sup>126</sup>

A number of speakers held that combating terrorism also required taking account of the political, diplomatic, economic, social and humanitarian dimension of the problem. In that regard, several speakers suggested that economic and social development and the fight against poverty would be an essential part of the fight against terrorism.<sup>127</sup> Other speakers suggested that it was necessary to find just and peaceful solutions to conflicts, with the representative of Lebanon suggesting that a comprehensive solution to the Middle East conflict could ease tensions in that region and eradicate most sources of violence and terrorism.<sup>128</sup> The representative of the Islamic Republic of Iran held that terrorist acts had roots in political issues, which neither justified the acts of its perpetrators nor necessarily demonized the cause they might embrace.<sup>129</sup> Several other speakers also referred to those factors as the roots or root causes of terrorism.<sup>130</sup> In response, the Chairman of the Committee held that poor development and poverty were a growth medium for support for terrorism and that the effective eradication of terrorism would both contribute to and be enhanced by effective sustainable development policies.<sup>131</sup>

Several speakers called for finalizing the draft comprehensive convention on international terrorism.<sup>132</sup>

A number of speakers, while sharply condemning terrorism, also held that there should be a clear

<sup>126</sup> S/PV.4618, p. 20.

<sup>127</sup> *Ibid.*, p. 14 (Mexico); S/PV.4618 (Resumption 1), p. 8 (Tunisia); p. 12 (Pakistan); and p. 17 (Costa Rica on behalf of the Rio Group); S/PV.4618 (Resumption 2), p. 7 (Democratic Republic of the Congo); p. 13 (Zambia); p. 15 (African Union); and p. 17 (Nepal).

<sup>128</sup> S/PV.4618, p. 14 (Mexico); and pp. 26-27 (Islamic Republic of Iran); S/PV.4618 (Resumption 1), p. 12 (Pakistan); S/PV.4618 (Resumption 2), p. 16 (Lebanon).

<sup>129</sup> S/PV.4618, p. 27.

<sup>130</sup> S/PV.4618 (Resumption 1), p. 8 (Tunisia); and p. 12 (Pakistan); S/PV.4618 (Resumption 2), p. 13 (Zambia); and p. 15 (African Union).

<sup>131</sup> S/PV.4618 (Resumption 2), p. 18.

<sup>132</sup> S/PV.4618 (Resumption 1), p. 2 (Japan); and p. 3 (Yemen); S/PV.4618 (Resumption 2), p. 6 (Democratic Republic of the Congo); p. 11 (Turkey); pp. 15-16 (Lebanon); and p. 17 (Nepal).

distinction between terrorism and the legitimate right to self-determination and the legitimate struggle against foreign occupation. In making that argument, many speakers pointed to their own struggles for independence as an example and to the fact that self-determination was a right confirmed by international law and the Charter.<sup>133</sup> In that regard, some speakers pointed to the need to define terrorism, with the Permanent Observer of the Organization of the Islamic Conference reiterating the call of its Member States to convene an international conference under the auspices of the United Nations to define terrorism and to differentiate between it and the right of peoples to resist occupation, and to take all necessary measures to completely eliminate international terrorism in all its forms and manifestations.<sup>134</sup> The representative of Yemen also held that a definition of terrorism should cover all acts of terrorism, whether undertaken by individuals, groups or States.<sup>135</sup> The representative of Zambia held that as a country which upheld the right of peoples to self-determination and independence, he knew very well the difference between a freedom fighter and a terrorist. He held that liberation movements were legal bodies with clear objectives and programmes of actions that are available to all those interested. On the contrary, terrorists had no missions, their activities were illegal and often they claimed to represent mysterious forces that existed only in the minds of the perpetrators.<sup>136</sup> The representative of Israel held that the distinctions between so-called good terrorism and bad terrorism, between the justifiable targeting of civilians and the unjustifiable targeting of civilians were not only wrong and contrary to the most basic principles of international law, but also profoundly dangerous. He held that the principle that no cause or grievance ever justified the deliberate and indiscriminate targeting of civilians had to be defended and that terrorism must be defined on the basis of what a perpetrator did, and not what he did it for.<sup>137</sup>

The representative of the Syrian Arab Republic expressed his bewilderment that despite the condemnation by the Arab States of the terrorist attacks on the United States and their expression of solidarity with the families of the victims, despite the efforts of the Committee and despite the fact that the events of 11 September 2001 had been officially linked to Al-Qaida and the Taliban regime, the blame had recently been shifted to Arab States, some of which were being threatened though none played a role in the attacks.<sup>138</sup>

The representative of Colombia suggested that the Committee should move on from a general framework of cooperation to the consideration of specific cases, developing actions and decisions specifically targeting States, individuals or organizations that were directly or indirectly involved in terrorist activities. To do this, he acknowledged that the committee would require a re-evaluated and possibly modified mandate. He also held that there should be more effective cooperation between the Counter-Terrorism Committee and the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan, which monitored the implementation of sanctions against Al-Qaida and the Taliban.<sup>139</sup>

The representative of Singapore noted that terrorist groups had gone through a privatization process by receiving private funding and training and that they had become highly networked organizational structures. She held that it was critical for Member States to deepen the exchange of information between intelligence and law enforcement officers at the regional and international levels, thereby also forming closely coordinated networks. In his opinion, it took a network to beat a network.<sup>140</sup>

The representative of the United States held that the adoption of resolution 1373 (2001) and the ensuing work of the Committee represented a chapter in the history of the Council and the United Nations in which everyone could take pride. He admitted to initial scepticism at the intent to create a body to monitor the implementation of resolution 1373 (2001), but stated that this scepticism had long since vanished, as without the creation of the Counter-Terrorism Committee, the international community would be far behind in the

<sup>133</sup> S/PV.4618 (Resumption 1), p. 3 (Yemen); p. 8 (Tunisia); p. 17 (Egypt); and p. 21 (Organization of the Islamic Conference); S/PV.4618 (Resumption 2), p. 14 (African Union); and pp. 15-16 (Lebanon).

<sup>134</sup> S/PV.4618 (Resumption 1), p. 8 (Tunisia); and p. 21 (Organization of the Islamic Conference); S/PV.4618 (Resumption 2), p. 14 (African Union).

<sup>135</sup> S/PV.4618 (Resumption 1), p. 3.

<sup>136</sup> S/PV.4618 (Resumption 2), p. 13.

<sup>137</sup> S/PV.4618 (Resumption 2), p. 4.

<sup>138</sup> S/PV.4618, p. 9.

<sup>139</sup> *Ibid.*, p. 10.

<sup>140</sup> *Ibid.*, p. 16.

fight against terrorism and in the effort to improve the world's capacity to conduct counter-terrorism operations.<sup>141</sup>

The representative of the Russian Federation held that, with regard to the recommendations made by the Committee, to eliminate identified weaknesses it was important to note that the general view in the Council was that the Committee was not a punitive body and that it would adhere strictly to its agreed mandate.<sup>142</sup>

The representative of the Islamic Republic of Iran, while underlining the priority of the fight against terrorism and the measures taken by the Government to cooperate with the international community in this regard, also pointed to the danger that the fight against terrorism would be employed as a means to bring pressure to bear on States that might pursue a different political outlook.<sup>143</sup>

The representative of the Republic of Korea suggested that the findings of the Committee regarding the strengths, setbacks and patterns of national counter-terrorism measures could be of benefit to the relevant deliberations in the General Assembly.<sup>144</sup>

The representative of Pakistan held that thanks to a successful international campaign in Afghanistan and elsewhere, Al-Qaida had been virtually destroyed and the Government that had harboured and protected Al-Qaida had been ejected from power, but warned that the war against terrorism in Afghanistan was not fully won and that failure to take timely action to consolidate security could prove to be very costly in the future. He also stated that agencies of the Government of Pakistan were engaged in successful operations to hunt down Al-Qaida and other terrorists that might have infiltrated the country. He warned, however, that the ability of Pakistan to support the international struggle against terrorism could be significantly eroded by the military threat against Pakistan from its eastern neighbour, which in his view had misused the rationale of the anti-terrorism campaign by denigrating the noble freedom struggle of the people of Jammu and Kashmir as cross-border terrorism and had deployed one million troops on the border with Pakistan and along the Line of Control in Kashmir. He also warned of the danger of unwittingly provoking a clash of religions and cultures. He held that the attempt to equate Islam and Muslims with terrorism was

exacerbating discrimination against Muslim minorities in various parts of the world, and pointing to events in Gujarat earlier in the year, he warned of organized pogroms against minorities and suppressed peoples. In that regard, he recalled the proposal by the President of Pakistan that the General Assembly adopt a declaration on religious and cultural understanding, harmony and cooperation.<sup>145</sup>

The representative of Georgia, while emphasizing the goodwill of his Government, accused the Russian Federation of subjecting his country to daily terror, intimidation and the threat of aggression. He held that Georgia had launched and completed an anti-terrorist and anti-criminal operation in the Pankisi Gorge, where it had rooted out Chechnyan fighters, terrorist suspects and mercenaries, in line with its obligations under resolution 1373 (2001). However, he held that a notorious international terrorist, wanted for assassination attempts against the President of Georgia, had been taking refuge in the Russian Federation for seven years. He also referred to the conflict in Abkhazia, Georgia, and contended that the Abkhazia and Tskhinvali — the former South Ossetia — regions of Georgia had become a breeding ground for terrorism, drug trafficking and illicit arms smuggling.<sup>146</sup>

The representative of Yugoslavia stated that his country had been faced with extremism in the province of Kosovo and Metohija and welcomed the efforts by the United Nations Interim Administration Mission in Kosovo to address those problems.<sup>147</sup>

The representative of Egypt, while forcefully condemning terrorism, held that the war against terrorism should be waged by a broad-based international coalition, rather than by a few nations.<sup>148</sup>

The representative of India, while lauding the work of the Committee, held that enforceability of violations of counter-terrorist conventions and resolutions remained an issue, as there was more than one instance of blatant non-compliance. He therefore questioned what the Committee and the Council would do to account for the complaint of a Member State that was a victim of cross-border terrorist acts.<sup>149</sup> The Chairman of the Committee, in response, recognized

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<sup>141</sup> Ibid., pp. 19-20.

<sup>142</sup> Ibid., p. 21.

<sup>143</sup> Ibid., pp. 26-27.

<sup>144</sup> S/PV.4618 (Resumption 1), p. 7.

<sup>145</sup> Ibid., p. 11.

<sup>146</sup> Ibid., pp. 13-14.

<sup>147</sup> Ibid., p. 15.

<sup>148</sup> Ibid., p. 18.

<sup>149</sup> Ibid., p. 20.

the importance of enforcement and enforceability, but held that the Committee had to start with capacity-building and creating political momentum to create objectivity in its work. He hoped that once objectivity had been established and the Committee felt able to move on in unanimity to some of the questions of enforcement, it could consider how to approach failures to meet the necessary standard. He also added that enforcement was a matter for the Council as a whole, and not for the Committee.<sup>150</sup>

The Permanent Observer of the Organization of the Islamic Conference emphasized that the phenomenon of terrorism was not restricted to one people, ethnic group or religion.<sup>151</sup>

The representative of Peru hoped that the Council would find a way to agree on a list of terrorist organizations. He also pointed to the activities of small groups of Shining Path militants in the United States and Europe.<sup>152</sup>

The representative of Burkina Faso held that the fall of the Taliban regime and the destruction of their sanctuary in Afghanistan had not yet served to eradicate the Al-Qaida organization and that its financial networks had been replaced. He also held that everything must be done to prevent the use of weapons of mass destruction by terrorists.<sup>153</sup> The representative of Nepal also pointed to the danger of an attack with radiological, chemical or biological weapons or against nuclear installations.<sup>154</sup>

The representative of the Democratic Republic of the Congo held that his country and its people had been victims of the most insidious and abject form of international terrorism — State terrorism perpetrated by neighbouring countries.<sup>155</sup>

At the 4619th meeting, on 8 October 2002, the President (Cameroon) made a statement on behalf of the Council,<sup>156</sup> by which the Council, *inter alia*:

Confirmed the continuation of the current arrangements for the Bureau of the Committee for a further six months; invited the Counter-Terrorism Committee to pursue its agenda as set out in the work programme for the Committee for the fifth

90-day period,<sup>157</sup> focusing on ensuring that all States had legislation in place covering all aspects of resolution 1373 (2001), a process in hand for ratifying as soon as possible the 12 international conventions and protocols relating to terrorism, and effective executive machinery for preventing and suppressing terrorism financing; exploring ways in which States could be assisted to implement resolution 1373 (2001), in particular in the areas of primary focus; and building a dialogue with international, regional and subregional organizations active in the areas covered by the resolution.

**Decision of 14 October 2002 (4624th meeting):  
resolution 1438 (2002)**

At the 4624th meeting, on 14 October 2002, the President (Cameroon) drew the attention of the Council to a draft resolution;<sup>158</sup> it was put to the vote and adopted unanimously and without debate as resolution 1438 (2002), by which the Council, *inter alia*:

Condemned in the strongest terms the bomb attacks in Bali, Indonesia, on 12 October 2002, as well as other recent terrorist acts in various countries, and regarded such acts as a threat to the international peace and security;

Urged all States to work together and to cooperate with and provide support and assistance to Indonesian authorities in their efforts to find and bring to justice the perpetrators, organizers and sponsors of those terrorist attacks;

Expressed its reinforced determination to combat all forms of terrorism in accordance with its responsibilities under the Charter.

**Decision of 24 October 2002 (4632nd meeting):  
resolution 1440 (2002)**

At the 4632nd meeting, on 24 October 2002, the President (Cameroon) drew the attention of the Council to a draft resolution;<sup>159</sup> it was put to the vote and adopted unanimously and without debate as resolution 1440 (2002), by which the Council, *inter alia*:

Condemned in the strongest terms the act of taking hostages in Moscow, Russian Federation, on 23 October 2002, as well as other recent terrorist acts in various countries, and regarded such acts as a threat to international peace and security;

Demanded immediate and unconditional release of all hostages in that terrorist act;

<sup>150</sup> *Ibid.*, p. 22.

<sup>151</sup> *Ibid.*, p. 21.

<sup>152</sup> S/PV.4618 (Resumption 2), p. 2.

<sup>153</sup> *Ibid.*, pp. 5-6.

<sup>154</sup> *Ibid.*, p. 17.

<sup>155</sup> *Ibid.*, p. 7.

<sup>156</sup> S/PRST/2002/26.

<sup>157</sup> S/2002/1075.

<sup>158</sup> S/2002/1145.

<sup>159</sup> S/2002/1189.

Urged all States to cooperate with the Russian authorities in their efforts to find and bring to justice the perpetrators, organizers and sponsors of those terrorist attacks;

Expressed its reinforced determination to combat all forms of terrorism, in accordance with its responsibilities under the Charter.

**Decision of 13 December 2002 (4667th meeting): resolution 1450 (2002)**

At the 4667th meeting, on 13 December 2002, the President (Colombia) drew the attention of the Council to a draft resolution, submitted by the United States.<sup>160</sup> A statement was made by the representative of the Syrian Arab Republic. Speaking before the vote, he stated that he would vote against the draft resolution because it departed from the pattern of resolutions 1438 (2002) and 1440 (2002). Rather, he stated, the scope of the draft resolution was expanded to include elements that implied direct intervention in the internal affairs of the country where the events took place. He also expressed concern about political references that reflected negatively on the situation in the Middle East region, including the situation in the occupied Arab territories, which he deemed unacceptable. He also held that the attempt to link Israel to efforts to combat terrorism exploited the international campaign against terrorism. He further emphasized that the Government of the Syrian Arab Republic condemned the terrorist attack in Kikambala, Kenya, and reiterated its condemnation of terrorism in all its forms, but that it would vote against the draft resolution because it could not accept the repeated mention of Israel in a manner that was not within the wording of the resolutions on Bali and Moscow.<sup>161</sup>

The draft resolution was then put to the vote; it received 14 votes in favour and 1 against (Syrian Arab Republic), and was adopted as resolution 1450 (2002), by which the Council, inter alia:

Condemned in the strongest terms the terrorist bomb attack at the Paradise Hotel, in Kikambala, Kenya, and the attempted missile attack on Arkia Israeli Airlines flight 582 departing Mombasa, Kenya, on 28 November 2002, as well as other recent terrorist acts in various countries, and regarded such acts, like any act of international terrorism, as a threat to international peace and security;

Urged all States, in accordance with their obligations under resolution 1373 (2001), to cooperate in efforts to find and

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<sup>160</sup> S/2002/1351.

<sup>161</sup> S/PV.4667, p. 2 (Syrian Arab Republic).

bring to justice the perpetrators, organizers and sponsors of those terrorist attacks.

**Decision of 17 December 2002 (4672nd meeting): statement by the President**

At the 4672nd meeting, on 17 December 2002, the President (Colombia) made a statement on behalf of the Council,<sup>162</sup> by which the Council, inter alia:

Requested the Counter-Terrorism Committee, with a view to improving the flow of information on experiences, standards and best practice, and to coordinating ongoing activity, to invite all relevant international, regional and subregional organizations:

(a) To contribute to a report information on their activities in the area of counter-terrorism;

(b) To send a representative to attend a special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on 7 March 2003;

Invited the Counter-Terrorism Committee to report on developments at regular intervals.

**Decision of 20 December 2002 (4678th meeting): resolution 1452 (2002)**

At the 4678th meeting, on 20 December 2002, the President (Colombia) drew the attention of the Council to a draft resolution;<sup>163</sup> it was put to the vote and adopted unanimously and without debate as resolution 1452 (2002), by which the Council, acting under Chapter VII of the Charter,<sup>164</sup> inter alia:

Decided that the provisions of paragraph 4 (b) of resolution 1267 (1999), and paragraphs 1 and 2 (a) of resolution 1390 (2002), did not apply to funds and other financial assets or economic resources that had been determined by the relevant State(s) to be:

(a) Necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources, after notification by the relevant State(s) to the Committee established pursuant to resolution 1267 (1999) of the intention to authorize, where appropriate, access to such

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<sup>162</sup> S/PRST/2002/38.

<sup>163</sup> S/2002/1384.

<sup>164</sup> For more information on the sanctions regime relating to Al-Qaida and the Taliban, see sect. 26 of the present chapter (The situation in Afghanistan).

funds, assets or resources and in the absence of a negative decision by the Committee within 48 hours of such notification;

(b) Necessary for extraordinary expenses, provided that such determination had been notified by the relevant State(s) to the Committee and had been approved by the Committee.

**Decision of 17 January 2003 (4686th meeting): resolution 1455 (2003)**

At the 4686th meeting, on 17 January 2003, the President (France) drew the attention of the Council to a draft resolution;<sup>165</sup> it was put to the vote and adopted unanimously and without debate as resolution 1455 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided to improve the implementation of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002);

Decided that the above-mentioned measures above would be further improved in 12 months, or sooner if necessary;

Requested the Committee to communicate to Member States the list referred to in paragraph 2 of resolution 1390 (2002) at least every three months, and stressed to all Member States the importance of submitting to the Committee the names of and identifying information, to the extent possible, about members of Al-Qaida and the Taliban and other individuals, groups, undertakings and entities associated with them so that the Committee could consider adding new names and details to its list, unless to do so would compromise investigations or enforcement actions;

Requested the Secretary-General to reappoint five experts, drawing on the expertise of the members of the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), to monitor for a further period of 12 months the implementation of the above-mentioned measures and to follow up relevant leads relating to any incomplete implementation of those measures.

**Decision of 13 February 2003 (4706th meeting): resolution 1465 (2003)**

At its 4706th meeting, on 13 February 2003, the Council invited the representative of Colombia to participate in the meeting. The President (Germany) then drew the attention of the Council to a draft resolution;<sup>166</sup> it was put to the vote and adopted unanimously and without debate as resolution 1465 (2003), by which the Council, *inter alia*:

<sup>165</sup> S/2003/48.

<sup>166</sup> S/2003/177.

Condemned in the strongest terms the bomb attack in Bogota, Colombia, on 7 February 2003 in which many lives were lost and people injured, and regarded such an act, like any act of terrorism, as a threat to peace and security;

Expressed its deepest sympathy and condolences to the people and the Government of Colombia and to the victims of the bomb attack and their families;

Urged all States to work together urgently and to cooperate with and provide support and assistance, as appropriate, to the Colombian authorities in their efforts to find and bring to justice the perpetrators, organizers and sponsors of that terrorist attack;

Expressed its reinforced determination to combat all forms of terrorism, in accordance with its responsibilities under the Charter.

**Decision of 4 April 2003 (4734th meeting): statement by the President**

At the 4710th meeting, on 20 February 2003, the President (Germany) drew the attention of the Council to the report of the Secretary-General submitted pursuant to resolution 1456 (2003).<sup>167</sup> In his report the Secretary-General, as requested, presented a summary of the proposals made by members of the Council at its 4688th meeting, held on 20 January 2003, and forwarded commentaries and responses to those proposals by four members of the Council.

At the meeting, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee, followed by statements by the representatives of Albania, Argentina, Australia, Bahrain, Belarus, Canada, Colombia, Croatia, Cuba, Egypt, El Salvador, Fiji (on behalf of the Pacific Islands Forum), Greece (on behalf of the European Union<sup>168</sup>), the Islamic Republic of Iran, Israel, Japan, Liechtenstein, Myanmar (on behalf of ASEAN), Peru (on behalf of the Rio Group), South Africa, the Syrian Arab Republic, Turkey, Ukraine and Yemen.

In his briefing, the Chairman of the Committee stated that its work programme for the period concentrated on three areas: first, working with Member States to raise their capacity to defeat terrorism; second, promoting assistance programmes to accelerate the capacity-building process; and third,

<sup>167</sup> S/2003/191; see also S/2003/191/Add.1.

<sup>168</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.



creating a global network of international and regional organizations to maximize the efficiency of each of them in dealing with terrorism and to share experience and best practice.<sup>169</sup>

The majority of speakers commended the work done so far by the Committee. Many representatives emphasized the need for a cooperative approach to combat terrorism bilaterally, as well as at the subregional, regional and international levels, and took the opportunity to outline their Governments' participation in and contribution to cooperative counter-terrorism initiatives. Some speakers expressed the view that the declaration adopted following the ministerial-level meeting on 20 January<sup>170</sup> was a valuable addition to resolution 1373 (2001) in helping to determine the Council's future approaches to fighting terrorism. In addition, they looked forward to the special meeting of the Committee and regional organizations.

A number of speakers underlined the need to further strengthen the international legal framework to combat terrorism more generally, and called on all States to ratify the 12 existing international conventions against terrorism. Several speakers also stressed the connections between terrorism, drug trafficking and other kinds of crime and the need to combat all of them in an integrated manner. Many speakers stressed the need for agreement on a universal definition of terrorism. A number of representatives highlighted the danger associated with the proliferation of weapons of mass destruction, particularly the risk of terrorists obtaining access to them.<sup>171</sup> Several representatives also underlined the importance of analysing and redressing the root causes of terrorism.<sup>172</sup>

Several representatives spoke in favour of a distinction between terrorism and legitimate resistance as well as the legitimate rights of peoples, particularly the people of Palestine, to self-determination.<sup>173</sup> The representative of the Syrian Arab Republic opined that

the greatest danger to the international campaign against terrorism was the Israeli terrorist approach to combating terrorism. He concluded by stating that occupation was terrorism.<sup>174</sup> The representative of Bahrain also pointed out that the most important component of international terrorism was State terrorism, as in the Balkans, Kosovo and Bosnia and Herzegovina, and which continues in the occupied Arab territories.<sup>175</sup>

The representative of Israel called for the Committee to be more transparent in its work as well as to name and shame those States that continued to support terrorism. He expressed the belief that to battle terrorism on all fronts meant making no distinctions between so-called bad terrorism and good terrorism. He stated that his country could never allow the apologists for terrorism to invoke the mantra of root causes to justify murder while laying the moral foundation for future attacks. He therefore called on the Security Council to implement a policy of zero tolerance for terrorism. He also pointed out the appalling contradiction between the membership of the Syrian Arab Republic on the Council and its continued, extensive and unapologetic support for no fewer than 10 separate terrorist organizations.<sup>176</sup>

The representative of Cuba declared that unilateral acts or pre-emptive war by a State or a group of States however powerful they may be, on the pretext of combating terrorism were totally unacceptable. Moreover, he added that it was impossible to eliminate terrorism if some terrorist acts were condemned while others were concealed, tolerated or justified.<sup>177</sup>

The representative of Turkey expressed the belief that the international community could not come up with degrees of leniency towards terrorism and that it was not possible to talk sensibly about better terrorisms.<sup>178</sup>

The representative of South Africa cautioned the Council and the Committee about the public perceptions with regard to terrorism, as many countries, particularly in the North, issued vague statements or advisories warning their citizens of the potential threat of terrorist attacks abroad, which had a

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<sup>169</sup> S/PV.4710, pp. 2-3.

<sup>170</sup> Resolution 1456 (2003), annex.

<sup>171</sup> S/PV.4710, p. 3 (Japan); p. 6 (Australia); pp. 21-22 (Ukraine); p. 28 (Greece on behalf of the European Union); and p. 34 (Canada).

<sup>172</sup> *Ibid.*, pp. 13-14 (Bahrain); pp. 3-4 (Japan); pp. 30-32 (South Africa); and pp. 25-26 (Yemen).

<sup>173</sup> *Ibid.*, pp. 13-14 (Bahrain); pp. 31-32 (Islamic Republic of Iran); and pp. 25-26 (Yemen).

<sup>174</sup> *Ibid.*, p. 38.

<sup>175</sup> *Ibid.*, p. 14.

<sup>176</sup> *Ibid.*, pp. 8-11.

<sup>177</sup> *Ibid.*, p. 11.

<sup>178</sup> *Ibid.*, p. 24.

negative impact on a country's standing, as well as on its security situation.<sup>179</sup>

At its 4734th meeting, on 4 April 2003, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee,<sup>180</sup> following which statements were made by all Council members and Afghanistan, Australia, Belarus, Brazil, Cambodia (on behalf of ASEAN), Colombia, Fiji (on behalf of the Pacific Islands Forum), Greece (on behalf of the European Union<sup>181</sup>), India, Israel, Japan, Norway, Peru (on behalf of the Rio Group), the Philippines and the Republic of Korea.

Speaking first, the Chairman of the Committee drew the attention of the Council to the work programme for its seventh 90-day period.<sup>182</sup> He highlighted the excellent cooperation established with the vast majority of Member States and the beginnings of a global network to tackle terrorism. He noted that, for those furthest ahead, the Committee was moving from examining legislation to establishing that executive machinery existed to prevent terrorist activities and bring terrorists to justice. For that reason, he believed that the Committee would need to deepen its understanding of what was required of States; there was no one standard pattern of counter-terrorism machinery for all countries. He also pointed out that a better flow of information on best practice, made available by an expanded Committee website, was necessary, as was its use by Member States and regional organizations.<sup>183</sup>

The majority of representatives commended the work of the Committee during the previous 18 months and welcomed the new work programme. A few representatives underlined the need to strengthen the provision of assistance on counter-terrorism to developing countries and to monitor the implementation

of resolution 1373 (2001) by States. Many representatives recalled that in combating terrorism, the international community had to respect national and international law, human rights and the Charter. Several representatives also called attention to the interlinked problems of transnational crime and drugs.

A number of speakers cautioned about the risk of terrorists gaining access to weapons of mass destruction.<sup>184</sup> Some representatives regretted that there had been no significant progress by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 in the elaboration of a draft comprehensive convention against terrorism and of a draft international convention on the suppression of nuclear terrorism.<sup>185</sup>

The representative of the United States believed that the Committee needed to expand its tool kit to conduct a credible review of implementation resolution 1373 (2001) and to enhance its effectiveness. He added that some form of site visits might be necessary to ascertain the truth on the ground in certain instances. He also emphasized that unwilling States needed to be encouraged and pressured, as necessary, to do more to fight terrorism.<sup>186</sup>

The representative of Pakistan maintained that it was essential to devise some safeguard mechanisms to prevent terrorist incidents and unsubstantiated allegations from becoming a *casus belli* for the use or threat of force, contrary to the Charter.<sup>187</sup>

The representative of Spain, noting his role as the new Chairman of the Committee, affirmed that from then on the Committee would focus on the implementation and effectiveness of national legislation.<sup>188</sup>

At the same meeting, the President made a statement on behalf of the Council,<sup>189</sup> by which the Council, *inter alia*:

<sup>179</sup> *Ibid.*, p. 31.

<sup>180</sup> The representative of the United Kingdom made statements in his capacity as the Chairman of the Committee and in his national capacity.

<sup>181</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>182</sup> S/2003/387; by this work programme, the Committee would strengthen international, regional and subregional cooperation, as well as improve coordination and information exchange.

<sup>183</sup> S/PV.4734, pp. 2-5.

<sup>184</sup> *Ibid.*, p. 5 (Germany); p. 7 (United States); p. 10 (Pakistan); p. 20 (Bulgaria); and p. 22 (Mexico); S/PV.4734 (Resumption 1), p. 11 (Greece); and p. 13 (Japan).

<sup>185</sup> *Ibid.*, p. 7 (Chile); p. 17 (Cameroon); and p. 20 (Bulgaria).

<sup>186</sup> S/PV.4734, pp. 7-9.

<sup>187</sup> *Ibid.*, pp. 10-12.

<sup>188</sup> *Ibid.*, pp. 13-14.

<sup>189</sup> S/PRST/2003/3.

Confirmed the appointment of Mr. Arias (Spain) as the new Chairman of the Counter-Terrorism Committee, and the continuation in office of Mr. Gaspar Martins (Angola), Mr. Aguilar Zinser (Mexico) and Mr. Lavrov (Russian Federation) as Vice-Chairmen of the Committee;

Invited the Committee to pursue its agenda as set out in the work programme for the seventh 90-day period;

Noted that three States had not yet submitted a report to the Committee and that 51 Member States were late in submitting a further report, in contravention of the requirements set out in resolution 1373 (2001); called on them urgently to do so, in order to maintain the universality of response which resolution 1373 (2001) required;

Invited the Committee to continue reporting on its activities at regular intervals and expressed its intention to review the structure and activities of the Committee no later than 4 October 2003.

**Decision of 20 August 2003 (4811th meeting):  
statement by the President**

At its 4752nd meeting, on 6 May 2003, the Council heard a statement by the Prime Minister of Spain, following which the representatives of Bulgaria, Cameroon, Chile, China, France, Germany, Guinea, Mexico, Pakistan, the Russian Federation, the Syrian Arab Republic, the United Kingdom and the United States made statements.<sup>190</sup>

The Prime Minister of Spain urged the international community not to fall into complacency. He advocated, *inter alia*, strengthening the Counter-Terrorism Committee and the mechanisms aimed at curbing the proliferation of weapons of mass destruction; cooperating with the disarmament agencies, especially those responsible for weapons of mass destruction; considering the possibility of empowering the Committee to draw up a general list of terrorist organizations; incorporating counter-terrorism assistance into international, bilateral and multilateral cooperation programmes; preventing terrorist groups from using the United Nations system as a platform for conveying their violent message to the world; giving a clear voice to the victims of terrorism; and addressing the social factors that terrorist organizations used as excuses.<sup>191</sup>

Most speakers supported Spain's leadership of the Committee and the efforts of the Committee to foster a

global counter-terrorism network. Some representatives emphasized that strengthening the Committee's assistance to States in need should be a priority. Several representatives also stressed the need to legitimize the fight against terrorism under international law, human rights and the Charter, and increase attention to other security threats that were linked to terrorist organizations, such as the proliferation of weapons of mass destruction and drug trafficking.

The representative of the United Kingdom believed that it was time for the Committee to take action with respect to States that were falling behind on the implementation of resolution 1373 (2001) and organize visits to Member States. He cautioned against the drawing up of a list of global terrorist organizations because of the lack of a definition of terrorism.<sup>192</sup>

The representative of the Russian Federation expressed his disappointment at the stagnation in the work on the draft comprehensive convention against terrorism and the draft convention against nuclear terrorism.<sup>193</sup>

The representative of Pakistan maintained that the Council needed to ensure that counter-terrorism measures did not mutate into measures used to cloak or justify violations of human rights, and that the right to self-determination could not be delegitimized through association with terrorism.<sup>194</sup>

At its 4792nd meeting on 23 July 2003, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee, followed by statements by all members of the Council and the representatives of Colombia, Indonesia (on behalf of ASEAN), Israel, Italy (on behalf of the European Union<sup>195</sup>), Japan, Nepal, Peru (on behalf of the Rio Group), the Republic of Korea, Uganda and Ukraine.

The President then drew the attention of the Council to a letter dated 15 July 2003 from the

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<sup>192</sup> *Ibid.*, p. 6.

<sup>193</sup> *Ibid.*, p. 10.

<sup>194</sup> *Ibid.*, pp. 13-14.

<sup>195</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

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<sup>190</sup> The Secretary-General also attended the meeting, but did not make a statement.

<sup>191</sup> S/PV.4752, pp. 2-4.

Chairman of the Committee, which outlined its eighth 90-day work programme.<sup>196</sup>

The Chairman of the Committee announced that technical assistance and strengthening cooperation with international organizations would be priorities for the next three months. He remarked that the Committee needed to be able to ensure that the needs of the countries that requested assistance were truly met.<sup>197</sup>

Most of the representatives welcomed the new work programme of the Committee as well as the Chairman's suggestions about expanding technical assistance programmes and increasing regional and subregional cooperation. The majority of speakers agreed that the Committee had succeeded in providing assistance to Member States to enhance their capacities to combat terrorism and align their legislation with the requirements of resolution 1373 (2001). A number of representatives also highlighted the need to increase and evaluate the effectiveness of the measures adopted by the States, which was part of the next phase of the Committee's work. Several speakers called for the establishment, under the auspices of the United Nations, of an international fund to combat terrorism. A few speakers pointed out the link between terrorism and the illicit trade of small arms and light weapons.

The representatives of Cameroon, Chile, Guinea and Mexico highlighted the establishment of cooperation between the Counter-Terrorism Committee and the Committee established pursuant to resolution 1267 (1999).<sup>198</sup>

The representative of Colombia suggested that an initiative that deserved attention was the possibility for the Counter-Terrorism Committee and the Council to draw up a general list of international terrorist organizations worldwide, similar to the one kept by the Security Council Committee established pursuant to resolution 1267 (1999) for Al-Qaida and the Taliban. He did not believe that a formal definition of terrorism was a prerequisite to devising such a list; indeed, such a definition had not been achieved in more than 30 years.<sup>199</sup> The representative of Mexico, however, warned against having the Counter-Terrorism Committee become distracted by the drawing up of

lists until a satisfactory solution was found to the matter of a generally accepted definition of terrorism.<sup>200</sup>

The representative of the Russian Federation maintained that the international community had at its disposal scarcely any standard anti-terrorist models that would be equally effective in all countries. Looking for solutions in specific situations would require individual approaches. Therefore, the focus should be placed on stepping up the Counter-Terrorism Committee's cooperation with profiling, regional and sectoral organizations.<sup>201</sup>

At its 4798th meeting, on 29 July 2003, the Council heard a briefing by the Chairman of the Committee established pursuant to resolution 1267 (1999), following which statements were made by all Council members, by the representatives of Argentina, Australia, Colombia, India, Israel, Italy (on behalf of the European Union<sup>202</sup>), Japan, Liechtenstein and Ukraine, and by the Chairman of the Monitoring Group established pursuant to resolution 1363 (2001).

The President (Spain) drew the attention of the Council to a letter dated 7 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) addressed to the President, which included the report of the Monitoring Group.<sup>203</sup> In the report, the Monitoring Group observed that members of the original command team of Osama bin Laden had been arrested, denting its operational capability and providing critical intelligence concerning the network. Nevertheless, recent bombings had demonstrated that Al-Qaida and associated groups still posed a significant threat to international peace and security.

In his briefing, the Chairman of the Committee established pursuant to resolution 1267 (1999) stated that the effectiveness of the measures adopted to confront the threat to international peace and security posed by Al-Qaida and the Taliban needed to be examined in detail in order to improve and strengthen them. He highlighted, inter alia, the improvements in

<sup>196</sup> S/2003/710.

<sup>197</sup> S/PV.4792, pp. 2-4.

<sup>198</sup> Ibid., p. 6 (Guinea); p. 9 (Chile); p. 15 (Mexico); and p. 16 (Cameroon).

<sup>199</sup> Ibid., p. 27.

<sup>200</sup> Ibid., p. 15.

<sup>201</sup> Ibid., p. 4.

<sup>202</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>203</sup> S/2003/669 and Corr.1.

the format and content of the consolidated list of persons and entities belonging to or associated with the Taliban and Al-Qaida; the review and expansion of the guidelines to assist States in submitting additional list-related information; the preparation and dissemination of guidelines for the preparation of implementation reports; the contacts between the Committee established pursuant to resolution 1267 (1999) and the Counter-Terrorism Committee; the overall disappointing response in the timely submission of the reports; and the current work of the Monitoring Group, including its programme of visits to Member States. He highlighted the need for the international community to exercise greater control over the accounting methods and transparency of charities.<sup>204</sup>

Speaking after the Chairman, many representatives supported the efforts and work of the Committee established pursuant to resolution 1267 (1999) and of the Monitoring Group. Most of them called on the Committee to deepen cooperation between Member States, the Monitoring Group experts and the Counter-Terrorism Committee to avoid duplication, as well as with other subregional, regional and international organizations. Several representatives expressed concern about States on whose territory the Al-Qaida network was presumed to be operating that had not submitted their reports, and urged them to do so without further delay. Several representatives underscored the difficulties in implementing the travel ban measures. Some representatives emphasized the need to prevent Al-Qaida from using financial networks and from gaining access to weapons of mass destruction. A number of speakers cautioned about the growing link between drug trafficking and terrorist activities.

A number of representatives pointed out that the regulation of such informal money transfer systems as *hawala* also warranted closer Council attention.<sup>205</sup>

The representative of China proposed that the Committee established pursuant to resolution 1267 (1999), *inter alia*, strengthen its capacity for analysis and research; implement and improve sanctions against Al-Qaida and the Taliban; and improve and enhance the practicality of the consolidated list.<sup>206</sup>

<sup>204</sup> S/PV.4798, pp. 2-6.

<sup>205</sup> *Ibid.*, p. 13 (Guinea); p. 18 (United States); p. 23 (Japan); and p. 28 (Colombia).

<sup>206</sup> *Ibid.*, pp. 6-7.

The representative of Bulgaria asked the Chairman of the Committee established pursuant to resolution 1267 (1999) for information in his next report on the main difficulties encountered by States in the implementation of the measures imposed by resolution 1455 (2003).<sup>207</sup>

The representatives of Guinea, Germany and Ukraine pointed out the need for accurate identification data for the consolidated list as well as the de-listing issue to avoid impacts on innocent individuals.<sup>208</sup> Regarding the sanctions list, the representative of Liechtenstein observed that, at a time when the Council was increasingly making decisions that had a direct impact on the rights of individuals, it was important to provide for avenues that allowed individuals to address concerns stemming from such decisions.<sup>209</sup> The representative of India stressed that Member States needed to be proactive in proposing all names available to them for inclusion on the list.<sup>210</sup>

The representative of the United States urged the 39 States that had not yet introduced domestic legislation enabling terrorist-linked assets to be frozen to enact appropriate laws.<sup>211</sup>

The representative of Italy (on behalf of the European Union) pointed out that the European Union had strengthened its cooperation with the Committee and that a unique regulatory framework directly applicable in all European Union member States had ensured proper and timely implementation of Security Council resolutions in this field.<sup>212</sup>

The representative of Colombia suggested a broadening of the guidelines for the preparation and submission of national reports to include information about suspicious transactions from traffic in illicit drugs.<sup>213</sup>

At the 4811th meeting, on 20 August 2003, the President made a statement on behalf of the Council,<sup>214</sup> by which the Council, *inter alia*:

<sup>207</sup> *Ibid.*, p. 10.

<sup>208</sup> *Ibid.*, p. 13 (Guinea); p. 14 (Germany); and p. 30 (Ukraine).

<sup>209</sup> *Ibid.*, p. 22.

<sup>210</sup> *Ibid.*, p. 25.

<sup>211</sup> *Ibid.*, p. 18.

<sup>212</sup> *Ibid.*, p. 21.

<sup>213</sup> *Ibid.*, p. 28.

<sup>214</sup> S/PRST/2003/13.

Unequivocally condemned the terrorist attack that took place on 19 August 2003 against the United Nations Headquarters in Baghdad;

Condemned also in the strongest terms the perpetrators of that attack and underlined the need to bring them to justice;

Reaffirmed the imperative to respect, in all circumstances, the safety and security of United Nations personnel and the need for adequate security measures to be taken in that regard;

Reaffirmed its determination to assist the Iraqi people to build peace and justice in their country and to determine their own political future by themselves; welcomed in that regard the determination of the United Nations to continue its operation in Iraq to fulfil its mandate in the service of the Iraqi people, and would not be intimidated by such attacks.

**Decision of 16 October 2003 (4845th meeting): statement by the President**

At its 4845th meeting, on 16 October 2003, the Council heard a briefing by the Chairman of the Counter-Terrorism Committee, followed by statements by all Council members and the representatives of Armenia, Azerbaijan, Brazil, Colombia, Ecuador, India, Indonesia (on behalf of ASEAN), Israel, Italy (on behalf of the European Union<sup>215</sup>), the Libyan Arab Jamahiriya, Liechtenstein, Peru (on behalf of the Rio Group), South Africa, Switzerland, Uganda and Yemen.

In his briefing, the Chairman of the Counter-Terrorism Committee presented its ninth work programme. He observed that the rate of review had slowed down because the Committee was gradually entering a more complex phase requiring more careful evaluation, as States moved from stage A, related to the verification of adequate anti-terrorist legislation, to stage B, focusing on the implementation of those measures. He noted the agreement between the Counter-Terrorism Committee and the Committee established pursuant to resolution 1267 (1999) to establish periodic meetings to ensure better coordination between the two bodies. He pointed out that the Counter-Terrorism Committee had decided that the Chairman would submit to the Council a list of all States that were late in submitting reports. Finally, he indicated his intention to submit a report identifying problems being encountered by States in implementing

<sup>215</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

resolution 1373 (2001), as well as difficulties with the structure and functioning of the Committee itself.<sup>216</sup>

Most representatives welcomed the new work programme, including the plans to submit a report on the difficulties encountered. Many representatives expressed concern about the delay of 48 States in submitting their reports. A number of speakers called for a more practical orientation of the Counter-Terrorism Committee and stressed the need to balance reporting requirements with actual action on the ground. Some representatives perceived a weakness in the structure of the Committee and encouraged its members to propose reforms in order to fully implement its mandate. A few speakers called on the United Nations to redouble its efforts in the fields of economic development and poverty eradication in order to fight against terrorism.

The representative of Cameroon suggested that as a purely legal matter there was an urgent need for an overall international regulatory instrument to combat terrorism. He regretted that political differences were delaying consensus in the Sixth Committee of the General Assembly on the drafting of an overall convention and a convention for the suppression of acts of nuclear terrorism.<sup>217</sup>

The representative of Germany suggested the creation of a high-level authority — such as a United Nations counter-terrorism coordinator — to better focus and streamline enhanced United Nations activities to counter terrorism in all its aspects and on a global basis.<sup>218</sup>

The representative of France believed that the Committee needed to focus further on ensuring that the efforts undertaken by States in the implementation of resolution 1373 (2001) were commensurate with the terrorist threats against them. He also highlighted that the work of the Committee needed to be more actively linked to the political level through the Security Council.<sup>219</sup>

The representative of Pakistan held the view that it was important that the Committee consolidate its

<sup>216</sup> S/PV.4845, pp. 2-4.

<sup>217</sup> *Ibid.*, p. 4.

<sup>218</sup> *Ibid.*, p. 9.

<sup>219</sup> S/PV.4845 (Resumption 1), pp. 2-3.

activities within its existing mandate, avoiding the assumption of a policing role.<sup>220</sup>

The representative of Mexico, noting the importance of the Committee maximizing its efforts to ensure that counter-terrorism was carried out in full compliance with international humanitarian law and human rights, suggested that the Council take account of the need to include a human rights expert on the Committee.<sup>221</sup>

The representative of India suggested that the Committee would need to go beyond the stage of inexhaustible reporting to a more serious examination of the actual actions taken by States in their international counter-terrorism effort and hold countries accountable for their actions. Finally, he stressed that the undue emphasis on cooperation with other international and regional organizations in the work of the Committee would require careful consideration, as several partner organizations of the Committee that had been placed on an equal pedestal with Member States did not bear the same responsibility or accountability and might lack the mandate or competence to deal with the area of work of the Committee.<sup>222</sup>

The representative of South Africa cautioned about regulating or monitoring cultural practices, such as informal donations to charitable causes, to uphold civil liberties.<sup>223</sup>

Following the discussion, the President (United States) made a statement on behalf of the Council,<sup>224</sup> by which the Council, *inter alia*:

Confirmed the continuation of the current arrangements for the Bureau of the Counter-Terrorism Committee for a further six months; invited the Committee to pursue its agenda as set out in the work programme for the Committee's ninth 90-day period;<sup>225</sup>

Noted that 48 Member States were late in submitting their reports, as called for in resolution 1373 (2001); called on them urgently to do so, in order to maintain the universality of response which resolution 1373 (2001) required;

Invited the Committee to continue reporting on its activities at regular intervals and expressed its intention to review the structure and activities of the Committee no later than 4 April 2004.

**Decision of 20 November 2003 (4867th meeting): resolution 1516 (2003)**

At the 4867th meeting, on 20 November 2003, the representative of Turkey made a statement. He condemned the recent attacks in Istanbul. Observing that while the international community had been more successful in reaching a broader understanding not to distinguish between the motivations, forms and so-called causes of terrorism, it had not been as successful in showing the same sensitivity in not making a distinction between the victims of terrorism, adding that all victims of terrorism deserved to be treated in the same manner.<sup>226</sup>

The President (Angola) drew the attention of the Council to a draft resolution;<sup>227</sup> it was put to the vote and adopted unanimously as resolution 1516 (2003), by which the Council, *inter alia*:

Condemned in the strongest terms the bomb attacks in Istanbul, Turkey, on 15 and 20 November 2003 in which many lives were lost and people injured, as well as other terrorist acts in various countries, and regarded such acts, like any act of terrorism, as a threat to peace and security;

Expressed its deepest sympathy and condolences to the people and Governments of Turkey and the United Kingdom and to the victims of the terrorist attacks and their families;

Urged all States, in accordance with their obligations under resolution 1373 (2001), to cooperate in efforts to find and bring to justice the perpetrators, organizers and sponsors of those terrorist attacks.

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<sup>220</sup> *Ibid.*, p. 4.

<sup>221</sup> *Ibid.*, p. 7.

<sup>222</sup> *Ibid.*, p. 22.

<sup>223</sup> *Ibid.*, p. 26.

<sup>224</sup> S/PRST/2003/17.

<sup>225</sup> S/2003/995.

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<sup>226</sup> S/PV.4867, p. 2.

<sup>227</sup> S/2003/1106.

## B. High-level meeting of the Security Council on the anniversary of 11 September 2001: acts of international terrorism

### Initial proceedings

#### Decision of 11 September 2002 (4607th meeting): statement by the President

At its 4607th meeting, on 11 September 2002, the Council included in its agenda the item entitled “High-level meeting of the Security Council on the anniversary of 11 September 2001: acts of international terrorism”.

Statements were made by the Secretary-General and the representative of the United States.<sup>228</sup> In his opening remarks, the President (Bulgaria) stated that the meeting was to pay solemn tribute to the memory of the victims of the terrorist attacks that had struck the United States on 11 September 2001.<sup>229</sup>

The Secretary-General emphasized the role of the Council as the most central body in the fight against terrorism, being the forum for building the broadest possible international coalition. Recalling the adoption by the Council of strong resolutions after the attacks, the Secretary-General noted the cooperation of Member States in a wide range of counter-terrorism areas. He stressed that, one year after the attacks, the importance of global legitimacy in the fight against terrorism had only grown, and called on the Council to strive even harder to win the widest possible support in

the struggle ahead.<sup>230</sup>

The Secretary of State of the United States affirmed that following the attacks, it was clear that terrorism was a threat to international peace and security and that concerted and long-term action was necessary to eradicate that menace. He referred to the combined efforts of members of the United Nations to combat terrorism to date, including the instalment of an interim governing authority in Afghanistan. He held that the international community must be prepared for a long effort measured in years, not months, to eliminate terrorism as a global menace.<sup>231</sup>

At the same meeting, the President made a statement on behalf of the Council,<sup>232</sup> by which the Council, *inter alia*:

Honoured those innocents killed and injured in the attacks of 11 September 2001;

Affirmed that those attacks had been an assault on global civilization and the common efforts to make the world a better and safer place;

Called upon all States and regional and subregional organizations to carry forward and build on their cooperation with the Counter-Terrorism Committee and the Security Council Committee established pursuant to resolution 1267 (1999).

<sup>228</sup> Bulgaria was represented by its President; all other Council members except Mexico were represented at the ministerial level.

<sup>229</sup> S/PV.4607, p. 2.

<sup>230</sup> *Ibid.*, pp. 2-3.

<sup>231</sup> *Ibid.*, pp. 3-4.

<sup>232</sup> S/PRST/2002/25.

## C. High-level meeting of the Security Council: combating terrorism

### Initial proceedings

#### Decision of 20 January 2003 (4688th meeting): resolution 1456 (2003)

At its 4688th meeting, on 20 January 2003, the Council included in its agenda the item entitled “High-level meeting of the Security Council: combating terrorism”.

During the meeting, statements were made by all members of the Council,<sup>233</sup> the Secretary-General and the Chairman of the Counter-Terrorism Committee.

The Secretary-General stressed that the threat of terrorism, if it were to be addressed successfully,

<sup>233</sup> Except for Chile and the Syrian Arab Republic, the Council members were represented at the ministerial level.



required a global response as well as long-term action. He urged the United Nations to set effective international norms in order to play an increasing role in dissuading potential perpetrators of terror. He assigned the key role for this to the Counter-Terrorism Committee which had the responsibility to ensure the implementation of international anti-terrorism conventions and standards and therefore was at the centre of global efforts to fight terrorism. He also warned about collateral damage of the war on terrorism, by sacrificing crucial liberties or the rule of law on the domestic level, and by using the fight against terrorism as an excuse for military action on the international level. He further held that to the extent the Organization succeeded in fighting poverty, injustice, suffering and war in line with the goals of the Charter, it was also likely to help to end the conditions serving as a justification for those who committed acts of terror.<sup>234</sup>

The Chairman of the Committee stated that although the vast majority of States had begun to implement resolution 1373 (2001) by starting to consider or adopting new laws, more and faster action was needed. He named the States that had not yet submitted their reports to the Committee for a number of reasons, setting a deadline for submission after which any non-reporting State would be held to be non-compliant with the resolution. He also emphasized the complexity of resolution 1373 (2001) for implementation and therefore stressed that the Committee was offering a variety of guidance and advice to States that might require help. In that context, he also pointed out the benefits to individual States of working within the collective efforts of their regions and asked for support from international and regional organizations. He drew the attention to potential links between terrorism and other forms of international organized crime which had already been taken up in resolution 1373 (2001) and stated that the structures the Committee was helping to put in place for counter-terrorism might also be useful for the fight against international crime of all kinds.<sup>235</sup>

In their statements, most speakers commended the work of the Committee and saw a continued need for its coordinating and assisting role in the implementation of resolution 1373 (2001). They

<sup>234</sup> S/PV.4688, pp. 2-30.

<sup>235</sup> Ibid., pp. 3-5.

reaffirmed the need for a comprehensive approach and strengthened cooperation in the fight against terrorism, and in that regard acknowledged the leading role played by the United Nations.

Some speakers pleaded for cooperation at various levels, in particular at the regional and international levels, and welcomed the special meeting of the Committee with regional and international organizations to be held in March 2003 in order to strengthen cooperation and improve coordination at various levels in the fight against terrorism.<sup>236</sup> According to the representative of Chile, the draft resolution before the Council<sup>237</sup> marked a turning point in the Committee's work since it emphasized the establishment of horizontal relationships between countries and international and regional organizations and put cooperation among States at the centre of the efforts to combat terrorism.<sup>238</sup>

Many speakers recognized the need to strengthen the international anti-terrorist legal framework and hoped that the work on the draft conventions on international terrorism and on the suppression of acts of nuclear terrorism would be finalized.<sup>239</sup> Some speakers reminded the Council that while combating terrorism, it had to respect the principles of the Charter of the United Nations and of international law.<sup>240</sup>

Several speakers also addressed the importance of tackling the root causes underlying terrorism<sup>241</sup> and regarded conflict prevention and conflict settlement as an essential effort to eliminate terrorism.<sup>242</sup> Others drew attention to the fact that terrorism was often related to other illegal activities, in particular arms

<sup>236</sup> Ibid., p. 9 (Bulgaria); p. 14 (Mexico); p. 19 (United States); p. 21 (Guinea); and p. 25 (Chile).

<sup>237</sup> S/2003/60.

<sup>238</sup> S/PV.4688, pp. 24-25.

<sup>239</sup> Ibid., p. 6 (Germany); p. 8 (Cameroon); p. 10 (Bulgaria); p. 11 (Angola); pp. 15-16 (Russian Federation); p. 18 (United States); p. 21 (Guinea); p. 25 (Chile); and p. 26 (France).

<sup>240</sup> Ibid., pp. 5-6 (Germany); p. 14 (Mexico); p. 15 (Russian Federation); p. 20 (China); and p. 22 (Syrian Arab Republic).

<sup>241</sup> Ibid., p. 6 (Germany); p. 6 (Cameroon); p. 9 (United Kingdom); p. 11 (Angola); p. 16 (Russian Federation); p. 20 (China); p. 22 (Guinea); p. 23 (Syrian Arab Republic); and p. 26 (France).

<sup>242</sup> Ibid., p. 6 (Germany); p. 9 (United Kingdom); p. 14 (Mexico); p. 16 (Russian Federation); p. 20 (China); p. 22 (Guinea); and p. 26 (France).

trafficking, money-laundering and the acquisition of weapons of mass destruction.<sup>243</sup> The representative of Spain proposed consideration of an adjustment of the Committee's mandate in that regard.<sup>244</sup> Some other speakers in particular expressed concern at the risk of terrorists acquiring weapons of mass destruction and emphasized the need to address the issue.<sup>245</sup> To prevent terrorist groups from using radioactive sources to make dirty bombs, the representative of France announced concrete proposals with a view to formulating an international convention strengthening controls over the use and transfer of such radioactive sources.<sup>246</sup>

The link between terrorism and States possessing weapons of mass destruction was addressed in particular in relation to the situation in Iraq: while the representatives of the Russian Federation, the United States and the United Kingdom unanimously hoped that the crisis would be resolved peacefully, the representative of the United Kingdom warned of a potential use of force in the event that Iraq did not actively comply with its Security Council obligations and cooperate fully with inspectors.<sup>247</sup> Similarly, the representative of the United States stressed that if Iraq did not come into full compliance, States must not shrink from the responsibilities set before themselves

unanimously in resolution 1441 (2002).<sup>248</sup> The representative of the Syrian Arab Republic took up the link between terrorism and weapons of mass destruction in the Middle East region and called for international conferences to define terrorism and to make the Middle East a zone free of such weapons.<sup>249</sup>

As to the role of the Committee, referring to resolution 1373 (2001), which required States also to take measures against accomplices of terrorists, the representative of the Russian Federation proposed that the Committee pursue the matter, given the importance of not only assisting Member States in improving their anti-terrorist laws but also in examining the application of those laws in accordance with current requirements.<sup>250</sup> The representative of Spain stressed that the Committee should not be limited to a review of reports submitted by States and must propose concrete legal and political measures with regard to preventing the financing of terrorism, proposing instruments for information exchange and recommending effective border control.<sup>251</sup>

The President (France) drew the attention of the Council to the draft resolution,<sup>252</sup> it was then put to the vote and adopted unanimously as resolution 1456 (2003), by which the Council decided to adopt a declaration annexed to the resolution, on the issue of combating terrorism.

<sup>243</sup> Ibid., p. 10 (Bulgaria); p. 15 (Russian Federation); p. 18 (United States); p. 21 (Guinea); and p. 26 (France).

<sup>244</sup> Ibid., p. 17.

<sup>245</sup> Ibid., p. 6 (Germany); p. 8 (United Kingdom); p. 15 (Russian Federation); p. 17 (Spain); and p. 18 (United States).

<sup>246</sup> Ibid., p. 26.

<sup>247</sup> Ibid., pp. 8-9 (United Kingdom); p. 15 (Russian Federation); and p. 18 (United States).

<sup>248</sup> Ibid., p. 18.

<sup>249</sup> Ibid., p. 23.

<sup>250</sup> Ibid., p. 15.

<sup>251</sup> Ibid., p. 17.

<sup>252</sup> S/2003/60.

## 40. Promoting peace and security: humanitarian assistance to refugees in Africa

### Initial proceedings

#### **Decision of 13 January 2000 (4089th meeting): statement by the President**

At its 4089th meeting, on 13 January 2000, the Security Council included in its agenda the item entitled "Promoting peace and security: humanitarian assistance to refugees in Africa". The Council heard a briefing by the United Nations High Commissioner for Refugees, following which an interactive discussion took place and statements were made by all Council members.

The High Commissioner stated that the past few years had witnessed significant changes in the pattern of refugee crises, notably the increase in internally displaced persons. While the Office of the United Nations High Commissioner for Refugees (UNHCR) had assisted internally displaced persons upon the request of the Secretary-General or when their situation was closely linked to a refugee or returnee issue, and other humanitarian agencies had intervened in some situations, she noted with concern that there was no

established mechanism for the assistance, and particularly the protection, of the internally displaced. The High Commissioner held that it was the countries which had most generously hosted refugees that had paid the highest price, as the security, socio-economic and natural environments of those countries were severely affected by large, forced population movements. She noted that war-induced mass population movements had contributed to the spreading of conflicts and cautioned that if wars that forced people to flee were not stopped, there could be no solutions to refugee crises. In that context, she urged the Council to seek more decisive measures to address such critical problems as the indiscriminate struggle for resources, the uncontrolled flow of arms, the lack of conflict resolution mechanisms and weak support to post-conflict situations.

Assessing the respective refugee crises in Burundi, the Democratic Republic of the Congo, Angola, the Horn of Africa and West Africa, the High Commissioner observed that humanitarian action alone would not be able to solve any of the problems leading to forced human displacement and stressed that it could not substitute for Governments and the Council in areas for which they had a clear responsibility, such as peacekeeping and peacebuilding. She emphasized that the Council had an essential role to play in preventing, containing and resolving conflicts — and, hence, refugee problems — in Africa. To that end, she urged the Council to put aside differences, take clear, strong and united positions and translate discussion into concrete action to support more decisively, rapidly and substantively the follow-up to peace agreements, and promote the mobilization of resources for reconstruction and peacebuilding. The High Commissioner, while demanding quick solutions to the refugee crises, emphasized that States must continue to uphold the rights of refugees and provide asylum to people who had fled war and persecution. Meanwhile, donor Governments must share the burden of asylum by ensuring an adequate level of basic assistance in camps and settlements, and for returnees going back home. In that connection, she considered it unacceptable that the assistance provided to refugees in Africa, including food and other basic survival items, was far less than in other parts of the world. She hoped that the international community would address seriously that grave imbalance in material assistance. Finally, she informed the Council that UNHCR was planning to launch a special refugee education trust,

which would allow refugees, especially in Africa, to pursue post-primary education during their exile.<sup>1</sup>

Council members expressed concern at the dire situation of many refugees in Africa and underlined the importance of taking action without delay to address the plight of refugees and internally displaced persons. In that context, most speakers highlighted the need urgently to address the root causes of population displacement, particularly by putting an end to the conflicts and political tensions on the African continent. They also emphasized the need to ensure adequate protection for all refugees and internally displaced persons, particularly women and children, and to guarantee the safety of the humanitarian workers and their access to the population in need.

Echoing comments by the High Commissioner, many members emphasised that all refugees around the world must be treated in the same manner and that the imbalances in material assistance provided to African refugees ought to be corrected.<sup>2</sup> Drawing particular attention to the situation of internally displaced persons, the representatives of the United Kingdom and the Netherlands noted the complexity of assisting people in areas where State authorities or rebel forces were part of the cause of their predicament.<sup>3</sup> For his part, the representative of the United States, who had worked on the refugee issue since 1978, expressed concern that two thirds of the world's refugees were designated as internally displaced persons and did not fall under the purview of UNHCR. While recognizing that the distinction between refugees and internally displaced persons raised complex legal issues of international sovereignty, he stressed that both were equal victims in terms of what had happened to them. He thus urged the leadership of UNHCR and the Secretary-General to expand the definition of refugees, erode the distinction between refugees and internally displaced persons, and treat internally displaced persons in such a way that they did not fall between the bureaucratic cracks. He suggested that responsibility for internally displaced persons should be fixed in a single bureaucratic entity.<sup>4</sup>

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<sup>1</sup> S/PV.4089, pp. 2-7.

<sup>2</sup> *Ibid.*, p. 8 (Namibia); p. 13 (Jamaica); p. 19 (Argentina); p. 20 (Mali); p. 21 (Bangladesh); and p. 22 (China).

<sup>3</sup> *Ibid.*, p. 18 (United Kingdom); and p. 23 (Netherlands).

<sup>4</sup> *Ibid.*, pp. 24-25.

Several members underlined the need to assist host countries, pointing to the negative impact of refugees on their economies and societies.<sup>5</sup> In that regard, the representative of Ukraine voiced deep concern at the cases where refugees and internally displaced persons themselves became a source of instability and renewed strife. He proposed that following conflict situations, the Council consider sending special missions to major refugee camps and areas to assess the situation on the ground, or establishing, with the consent of the host country, preventive deployment missions, if circumstances so required.<sup>6</sup> Similarly, the representative of Jamaica regretted the fact that sometimes refugees became potential pools for rebel recruitment, thereby posing a threat to the peace and security of the host communities.<sup>7</sup> The High Commissioner, however, held that it was very difficult to maintain the civilian character of refugee camps since most of the refugees were victims of internal conflict who had fled their countries either temporarily or in an effort to fight back.<sup>8</sup>

Some members underlined the need to respect the sovereignty of States when addressing the refugee problem.<sup>9</sup> In that context, the representative of Malaysia reiterated that humanitarian assistance must be apolitical in nature and predicated on the principles

<sup>5</sup> Ibid., p. 8 (Namibia); p. 12 (Jamaica); p. 14 (Canada); and p. 20 (Mali).

<sup>6</sup> Ibid., p. 17.

<sup>7</sup> Ibid., p. 13.

<sup>8</sup> Ibid., p. 14.

<sup>9</sup> Ibid., p. 16 (Tunisia); and p. 22 (China).

of strict neutrality and non-selectivity. He urged donors to resist the temptation to use humanitarian aid as a means of exerting political pressure on the parties in a conflict.<sup>10</sup> Nevertheless, the representative of Canada held that sovereignty did not exempt the concerned countries of their responsibility to provide full access to others in order that the basic needs of refugees and internally displaced persons could be met.<sup>11</sup>

At the same meeting, the President (United States) made a statement on behalf of the Council,<sup>12</sup> by which the Council, *inter alia*:

Stressed the need to address the root causes of armed conflict in a comprehensive manner in order to prevent those circumstances that lead to internal displacement and the outflow of refugees; emphasized that national authorities had the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction;

Urged all parties concerned to comply strictly with their obligations under international humanitarian, human rights and refugee law, and emphasized the need for better implementation of relevant norms with regard to internally displaced persons;

Reaffirmed the responsibility of States hosting refugees to ensure the security and the civilian and humanitarian character of refugee camps and settlements, in accordance with existing international standards and international humanitarian, human rights and refugee law; underlined the unacceptability of using refugees and other persons in refugee camps and settlements to achieve military purposes in the country of asylum or the country of origin.

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

<sup>11</sup> Ibid., p. 15.

<sup>12</sup> S/PRST/2000/1.

## 41. Protection of civilians in armed conflict

### **Decision of 19 April 2000 (4130th meeting): resolution 1296 (2000)**

On 8 September 1999, the Secretary-General submitted to the Security Council the first report on the protection of civilians in armed conflict.<sup>1</sup> The Secretary-General presented the realities faced by civilians in armed conflict and the challenges those situations posed to the international community. Stressing that protection of civilians was fundamental

to the central mandate of the United Nations, the Secretary-General stated that the Council should play a leading role in compelling parties to conflict to respect the rights guaranteed to civilians by international law and convention. To strengthen the capacity of the Council and the United Nations to protect civilians, he recommended, *inter alia*, that the Council take steps to strengthen the Organization's capacity to plan and deploy rapidly by enhancing the participation in the United Nations Standby Arrangements System and increasing the numbers of civilian police and specialized civil administration and humanitarian personnel. Furthermore, the Council should establish a

<sup>1</sup> S/1999/957, submitted pursuant to the presidential statement of 12 February 1999 (S/PRST/1999/6).

permanent technical review mechanism of United Nations and regional sanctions which could be used to ascertain the probable impact of sanctions on civilians. In case an outbreak of violence against civilians was imminent, the Council should impose arms embargoes; consider the deployment of a preventive peacekeeping operation or of another preventive monitoring presence; make greater use of targeted sanctions to deter and contain those who committed egregious violations of international humanitarian and human rights law; and deploy international military observers to monitor the situation in camps for internally displaced persons and refugees when the presence of arms, combatants and armed elements was suspected. To alleviate the suffering of civilians, the Council should underline in its resolutions, at the onset of a conflict, the imperative for civilian populations to have unimpeded access to humanitarian assistance; ensure that, whenever required, peacekeeping and peace enforcement operations were authorized and equipped to control or close down hate media assets; and consider the imposition of appropriate enforcement action in the face of massive and ongoing abuses. He concluded by underscoring that the Council needed to act rapidly to ensure that the legal protection conferred upon civilians in armed conflict was accompanied by physical security.

At its 4130th meeting,<sup>2</sup> on 19 April 2000, the Council included in its agenda the above-mentioned report. The Council was briefed by the Secretary-General and the President of the International Committee of the Red Cross (ICRC). Statements were made by all Council members<sup>3</sup> and the representatives of Australia, Austria, Azerbaijan,<sup>4</sup> Bahrain, Colombia, Egypt, Indonesia, Israel, Japan, New Zealand, Portugal

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<sup>2</sup> For more information on the discussion at this meeting, see chap. VI, part I, sect. F, case 3, with regard to relations with subsidiary organs established by the General Assembly; chap. X, part IV, with regard to the constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter; chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter; and chap. XII, part I, sect. E, case 8, with regard to Article 2, paragraph 7.

<sup>3</sup> Canada was represented by its Minister for Foreign Affairs.

<sup>4</sup> The representative of Azerbaijan spoke on behalf of Georgia, Uzbekistan, Ukraine, Azerbaijan and the Republic of Moldova (GUUAM).

(on behalf of the European Union)<sup>5</sup>, the Republic of Korea and Singapore, and by the Permanent Observer of Switzerland.<sup>6</sup>

The Secretary-General urged the Council to give greater consideration to the creation of a rapid deployment force to be readily used in cases of humanitarian need. Highlighting the positive impact of preventive measures taken in the Central African Republic and Prevlaka, he stressed that preventive missions, including the dispatch of monitors and fact-finding missions, could make the difference between the peaceful settlement of disputes and violent conflict. In cases where the mass exodus of a civilian population could not be prevented, the security of refugee camps should be enhanced. He underscored the importance of improving the protection of civilians by setting up temporary security zones and safe corridors, noting that a credible force must be deployed in such security zones if the consent of the parties was not forthcoming.<sup>7</sup>

The President of the International Committee of the Red Cross reiterated the distinction made in the Secretary-General's report between physical protection and legal protection. Arguing that coercive measures should be envisaged only in extreme cases to protect civilians, he stressed that the legitimacy of the cause being defended could, in no circumstance, exempt a military operation from the obligations laid down in international humanitarian law. Confusion between military action, designed to address the causes of conflict, and humanitarian action, intended to address its effects, was dangerous and a cause for concern since being associated with coercive action would jeopardize the work of humanitarian organizations by undermining their credibility and acceptance by the parties to a conflict. In his view, firm resolve on the part of the Council to take bold political decisions and create the conditions necessary for humanitarian organizations to preserve their indispensable independence would guarantee the effective

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

<sup>6</sup> The representative of the Sudan was invited to participate but did not make a statement.

<sup>7</sup> S/PV.4130 and Corr.1, pp. 2-4.

implementation of the shared objectives to protect civilians.<sup>8</sup>

Speakers expressed their support for the recommendations contained in the report of the Secretary-General<sup>9</sup> and noted that the provisions contained in the draft resolution under consideration<sup>10</sup> represented a concerted effort of the Council to take the issue forward. They agreed on the importance of promoting respect for international humanitarian, human rights and refugee law and stressed the need for early warning, preventive action or preventive deployment. They highlighted the importance of a comprehensive, integrated approach on the part of the international community, for greater efforts to address the root causes of conflict and emphasized the responsibility of State authorities in ensuring access to civilian populations at risk. They called for, inter alia, controlling the inflow of arms into conflict areas and keeping refugee camps safe from armed elements. Furthermore, speakers expressed support for the recommendations in the report related to the special protection needs of women and children.

The representative of the Netherlands underlined the importance of combining United Nations actions in the field of politics, human rights, humanitarian assistance, disarmament, demobilization and reintegration, and development. He encouraged the Secretary-General to make full use of the prerogatives conferred on him by the Charter of the United Nations and participate fully in the preparation of United Nations mandates.<sup>11</sup> The representative of the United Kingdom held that the proactive role of the Secretary-General needed to be strengthened to improve coordination and the flow of information within the United Nations system.<sup>12</sup>

Several representatives emphasized that the adoption of sanctions by the Council in cases of armed conflict should not contribute to a worsening of the situation for civilians.<sup>13</sup> To avoid the unintended humanitarian impact of sanctions regimes, the representative of Jamaica expressed support for the use

of humanitarian exemptions and “smart” sanctions.<sup>14</sup> Similarly, several speakers favoured targeted sanctions.<sup>15</sup>

The representative of the United States insisted that every specific situation of armed conflict must be dealt with individually, in its own context, bearing in mind the global standards set by international humanitarian law.<sup>16</sup> Similarly, the representative of China held that the Council should review and address the issue of the protection of civilians in armed conflict on a case-by-case basis, dealing with each situation on its own merits.<sup>17</sup> In that context, several speakers touched upon the issue of respect for political independence, sovereignty and territorial integrity in protecting civilians in armed conflict.<sup>18</sup>

The President (Canada) drew the attention of the Council to a draft resolution;<sup>19</sup> it was put to the vote and adopted unanimously as resolution 1296 (2000), by which the Council, inter alia:

Emphasized the need, when considering ways to provide for the protection of civilians in armed conflict, to proceed on a case-by-case basis, taking into account the particular circumstances, and affirmed its intention to take into account relevant recommendations contained in the report of the Secretary-General of 8 September 1999 when carrying out its work;

Expressed its intention to collaborate with representatives of the relevant regional and subregional organizations, where appropriate, in order further to improve opportunities for the resolution of armed conflicts and the protection of civilians in such conflict;

Emphasized the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities;

Requested the Secretary-General to disseminate appropriate guidance to United Nations personnel involved in peacemaking, peacekeeping and peacebuilding activities and to ensure that such personnel had the appropriate training, and

<sup>8</sup> Ibid., pp. 4-7.

<sup>9</sup> S/1999/957.

<sup>10</sup> S/2000/335.

<sup>11</sup> S/PV.4130 and Corr.1, p. 8.

<sup>12</sup> Ibid., p. 16.

<sup>13</sup> Ibid., p. 11 (France); p. 21 (Jamaica); and p. 26 (Canada); S/PV.4130 (Resumption 1) and Corr.1, p. 6 (Republic of Korea).

<sup>14</sup> S/PV.4130 and Corr.1, p. 21.

<sup>15</sup> Ibid., p. 25 (Mali); S/PV.4130 (Resumption 1) and Corr.1, p. 4 (Portugal on behalf of the European Union); and p. 6 (Republic of Korea).

<sup>16</sup> S/PV.4130 and Corr.1, p. 9.

<sup>17</sup> Ibid., p. 14.

<sup>18</sup> Ibid., p. 14 (China); p. 17 (Tunisia); and p. 22 (Ukraine); S/PV.4130 (Resumption 1) and Corr.1, p. 12 (Egypt); p. 15 (Bahrain); and p. 22 (Indonesia). For more information, see chap. XII, part I, sect. E, case 8, with regard to Article 2, paragraph 7.

<sup>19</sup> S/2000/335.

urged relevant Member States to disseminate appropriate instructions and to ensure that appropriate training was included in their programmes for personnel involved in similar activities;

Requested the informal working group of the Security Council on the general issue of sanctions to consider the recommendations contained in the report of the Secretary-General of 8 September 1999 relating to its mandate;

Requested the Secretary-General to submit by 30 March 2001 his next report on the protection of civilians in armed conflict, and further requested the Secretary-General to include in that report any additional recommendations on ways the Council and other organs of the United Nations, acting within their sphere of responsibility, could further improve the protection of civilians in situations of armed conflict.

**Decision of 15 March 2002 (4493rd meeting):  
statement by the President**

On 30 March 2001, the Secretary-General submitted to the Council the second report on the protection of civilians in armed conflict.<sup>20</sup> He noted that only a few of the recommendations in his first report had been implemented. Pointing out that the political and legal instruments available for the protection of civilians had been developed in a world where State actors were overwhelmingly dominant, he stressed the need to update them to reflect the internal nature of conflicts. Additionally, new mechanisms and strategies were required to deal with the changed circumstances. The Secretary-General recommended, *inter alia*, that the Council actively engage the parties to each conflict in a dialogue aimed at sustaining safe access for humanitarian operations and demonstrate its willingness to act where such access was denied; consider the establishment of arrangements addressing impunity and for truth and reconciliation, as appropriate, during the crafting of peacekeeping mandates; conduct more frequent fact-finding missions to conflict areas with a view to identifying the specific requirements for humanitarian assistance; make provision for the regular integration in mission mandates of media monitoring mechanisms for hate media; and emphasize in its resolutions the direct responsibility of armed groups under international humanitarian law. Moreover, he encouraged the Council to further develop the concept of regional approaches to regional and subregional crises, in particular when formulating mandates of peacekeeping operations. The Council should also develop a regular

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<sup>20</sup> S/2001/331, submitted pursuant to resolution 1296 (2000).

exchange with the General Assembly and other organs of the United Nations on issues pertaining to the protection of civilians in armed conflict.

The Secretary-General emphasized that reports and recommendations were no substitute for effective action and that the primary responsibility for the protection of civilians fell on Governments and armed groups involved in conflict situations. Where they did not honour those responsibilities, it was up to the Council to take action.

At its 4312th meeting,<sup>21</sup> on 23 April 2001, the Council included in its agenda the above-mentioned report. The Council was briefed by the Deputy Secretary-General, the United Nations High Commissioner for Human Rights and the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Statements were made by all Council members, the representatives of Argentina, Australia, Bahrain, Canada, Egypt, India, Indonesia, Iraq, Israel, Japan, Jordan, Malaysia, Mexico, Nepal, New Zealand, Pakistan, the Republic of Korea, Sierra Leone, South Africa, Sweden (on behalf of the European Union and associated and aligned countries), the Syrian Arab Republic, the United Arab Emirates and Yemen, and the Permanent Observers of Palestine, the Organization of the Islamic Conference and Switzerland.

In his introductory remarks, the President (United Kingdom) stressed the need for the discussion to centre on the implementation aspect of the Secretary-General's recommendations. At the same time, he emphasized that the Council had to respect the division of responsibilities in the United Nations system, in particular between the Council and other organs of the United Nations. The topic of coordination would therefore be relevant.<sup>22</sup>

Introducing the second report of the Secretary-General, the Deputy Secretary-General noted that the

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<sup>21</sup> For more information on the discussion at this meeting, see chap. I, part V, cases 11 and 15, with regard to the conduct of business (rules 27-36); chap. X, part IV, with regard to the constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter; and chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter, and part III, sect. B, with regard to the discussion relating to Article 41.

<sup>22</sup> S/PV.4312, p. 3.

report focused on several priorities for the international community: (a) the criminal prosecution of violations of international criminal law; (b) the question of access to vulnerable populations; and (c) the separation of civilians and armed elements in refugee camps or other settlements where displaced persons gathered. She pointed out that many of the main recommendations of the Secretary-General's first report<sup>23</sup> had gone unimplemented and hoped that the current meeting would facilitate the transition from words to deeds and from intention to implementation.<sup>24</sup>

On the subject of human rights fact-finding during situations of armed conflict, the High Commissioner observed that establishing the facts could play a crucial part in the protection of civilians, and pointed to past fact-finding missions in Afghanistan, East Timor, Sierra Leone and Kosovo. Regarding human rights mechanisms, she welcomed the fact that the Council was increasingly looking to and drawing on the expertise of the special mechanisms of the Commission on Human Rights. She also saw great merit in proposals for a focal point for civilians in peacekeeping missions and for increased emphasis on protection in peacekeeping mandates.<sup>25</sup>

The Under-Secretary-General welcomed, in particular, the idea of establishing a cross-cutting team in the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations to ensure that issues related to the protection of civilians were adequately addressed in the mandates of peacekeeping operations. He elaborated on several proposals contained in the second report of the Secretary-General for which the Office had a leading role, such as the work of the Inter-Agency Standing Committee on developing a manual of best practices and guidance for access negotiations and strategies, and the strengthening of collaboration with non-governmental organizations on the issue of staff security in the field.<sup>26</sup>

Speakers endorsed the Secretary-General's call for a culture of protection and stressed the need to implement the recommendations made in the two reports. They reaffirmed the need for all States to comply strictly with their obligations under

international humanitarian and human rights law, emphasizing that national Governments had the primary responsibility for ensuring the protection of civilians. They also reaffirmed the importance of preventing conflicts from occurring in the first place.

Several speakers stressed the need for those who had committed gross violations of international criminal law, including non-State actors, to be brought to justice through recourse to the International Criminal Court, the existing Tribunals or truth and reconciliation mechanisms.<sup>27</sup> In that regard, many speakers emphasized the need for all States to sign and ratify the Rome Statute of the International Criminal Court.<sup>28</sup> The representative of India expressed the view that the Council should weigh whether ad hoc international tribunals gave value for the money they already had.<sup>29</sup>

Turning to non-State actors, speakers held that the Council must consistently urge armed groups to commit themselves to the standards contained in international humanitarian and human rights law. Pointing out the need for the United Nations and other humanitarian actors to negotiate with non-State actors in order to provide assistance to affected populations, several speakers welcomed the proposal for the Inter-Agency Standing Committee to develop a manual of guidelines for access negotiations and strategies, as mentioned in the report of the Secretary-General.<sup>30</sup> Noting that the Geneva Conventions did not contain a right of unimpeded access, the representative of India questioned the legal basis of the Secretary-General's recommendation. In his view, such a right violated international humanitarian law and the Council had no power to grant it. He argued that the denial of access needed not and usually would not constitute a threat to

<sup>23</sup> S/1999/957.

<sup>24</sup> S/PV.4312, pp. 3-4.

<sup>25</sup> *Ibid.*, pp. 4-7.

<sup>26</sup> S/PV.4312 (Resumption 1) and Corr.1, pp. 2-3.

<sup>27</sup> S/PV.4312, p. 8 (Bangladesh); pp. 21-22 (Russian Federation); p. 24 (Ireland); p. 29 (Norway); p. 31 (Mauritius); and p. 32 (United Kingdom); S/PV.4312 (Resumption 1) and Corr.1, p. 37 (Nepal).

<sup>28</sup> S/PV.4312, p. 24 (Ireland); p. 29 (Norway); p. 31 (Mauritius); and p. 32 (United Kingdom); S/PV.4312 (Resumption 1) and Corr.1, p. 4 (Canada); p. 6 (Sweden on behalf of the European Union); p. 34 (Israel); and p. 37 (Nepal).

<sup>29</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 16.

<sup>30</sup> S/PV.4312, p. 9 (Bangladesh); p. 11 (Ukraine); p. 13 (Singapore); and p. 23 (Ireland); S/PV.4312 (Resumption 1) and Corr.1, p. 11 (Switzerland).



international peace and security, the only trigger for Council action.<sup>31</sup>

Several representatives stressed the need to develop clear criteria and procedures for the identification and separation of armed elements from civilians as well as the need to send international military observers to monitor the situation in refugee camps.<sup>32</sup> The representative of India expressed scepticism with regard to the effectiveness of such criteria, while the representatives of Australia and Indonesia raised concern as to the difficulty of drafting such criteria.<sup>33</sup>

Commenting on the effects of hate media on the protection of civilians, several speakers highlighted the need to integrate media monitoring mechanisms into mission mandates.<sup>34</sup> With regard to the importance of disseminating accurate information on international humanitarian and human rights law and on the role of the United Nations, the representatives of Bangladesh and Jamaica held that a mass media component should be built into the mandate of missions and welcomed closer collaboration between the Department of Public Information and the Department of Peacekeeping Operations towards that end.<sup>35</sup>

Speakers underlined the need for effective cooperation and coordination among the plethora of actors involved in the protection of civilians in armed conflict and supported the Secretary-General's observation in his first report that the Council could play a leading role in devising an overall approach to crisis resolution and encouraging cooperation between all components of the United Nations system, regional forces, donors and non-State actors. Many speakers advocated stronger cooperation between the Council and regional organizations.<sup>36</sup> The representative of India,

however, noted that in the past the Council had often either sheltered behind regionalism to avoid having to take action or subcontracted its powers and abdicated its responsibilities to some regional organizations.<sup>37</sup>

Several speakers contended that the best means to ensure civilian protection started with conflict prevention.<sup>38</sup> The representative of Bangladesh held that strengthening the Organization's early-warning capacities would go a long way towards ensuring a better understanding of protection needs.<sup>39</sup> The representative of Singapore held that the Council should give serious consideration to working out clear criteria for intervention by force as a means of protection, as demonstrated by its role in Kosovo and East Timor.<sup>40</sup> The representative of Jamaica proposed that the Council should explore ways of integrating civilian protection issues into the Council's approach to prevention.<sup>41</sup> The representative of Canada pointed out that three recent peacekeeping missions, in the Democratic Republic of the Congo, East Timor and Sierra Leone, included provisions for civilian protection.<sup>42</sup> The representative of Jordan argued that where peacekeeping mandates included the protection of civilians, members of the Council should be first in line to offer their troops for service and not leave the Secretary-General to scramble for troops.<sup>43</sup>

Several speakers linked the issue of civilian protection with the impact of sanctions, and some expressed support for a permanent technical review mechanism on the impact of sanctions on civilians, and highlighted the importance of a pre-assessment of the humanitarian impact of sanctions.<sup>44</sup> The representative

<sup>31</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 17.

<sup>32</sup> S/PV.4312, p. 10 (Ukraine); pp. 11-12 (Tunisia); p. 13 (Singapore); p. 19 (United States); and p. 23 (Ireland); S/PV.4312 (Resumption 1) and Corr.1, p. 9 (Republic of Korea).

<sup>33</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 17 (India); p. 26 (Australia); and p. 33 (Indonesia).

<sup>34</sup> S/PV.4312, p. 9 (Bangladesh); p. 16 (Jamaica); p. 19 (United States); p. 24 (Ireland); and p. 33 (United Kingdom); S/PV.4312 (Resumption 1) and Corr.1, p. 6 (Sweden on behalf of the European Union).

<sup>35</sup> S/PV.4312, p. 9 (Bangladesh); and p. 16 (Jamaica).

<sup>36</sup> *Ibid.*, p. 15 (Jamaica); p. 22 (Russian Federation); p. 25 (Colombia); p. 26 (Mali); p. 31 (Mauritius); and p. 33 (United Kingdom); S/PV.4312 (Resumption 1) and

Corr.1, p. 8 (Argentina); p. 9 (Republic of Korea); p. 21 (Malaysia); p. 23 (New Zealand); p. 26 (Australia); p. 29 (Organization of the Islamic Conference); p. 34 (Indonesia); and p. 38 (Nepal).

<sup>37</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 17.

<sup>38</sup> S/PV.4312, p. 8 (Bangladesh); p. 15 (Jamaica); p. 17 (China); p. 22 (Russian Federation); p. 27 (Mali); and p. 31 (Mauritius); S/PV.4312 (Resumption 1) and Corr.1, p. 13 (South Africa); p. 16 (United Arab Emirates); p. 22 (Pakistan); p. 33 (Mexico); and p. 36 (Nepal).

<sup>39</sup> S/PV.4312, p. 8.

<sup>40</sup> *Ibid.*, p. 14.

<sup>41</sup> *Ibid.*, p. 14.

<sup>42</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 4.

<sup>43</sup> *Ibid.*, p. 13.

<sup>44</sup> S/PV.4312, p. 9 (Bangladesh); p. 15 (Jamaica); p. 18 (China); and p. 25 (Colombia); S/PV.4312 (Resumption 1) and Corr.1, p. 9 (Republic of Korea); and p. 12 (Switzerland).

of Pakistan contended that there were no smart sanctions, or targeted sanctions, only unjust sanctions.<sup>45</sup>

In respect of future action, several speakers favoured, *inter alia*, setting up a Security Council working group to study the implementation of the recommendations and decisions relating to the protection of civilians, with a view to providing the Council with information for decision-making.<sup>46</sup> The representative of Norway advocated the elaboration of a road map establishing a targeted plan of action guiding the different actors in implementing the recommendations.<sup>47</sup> The representative of Jamaica called for drawing up a checklist for drafting resolutions and elaborating peacekeeping and peacebuilding mandates.<sup>48</sup> In concurring with the idea, the representative of Ireland opined that all peacekeeping operations should include a human rights component.<sup>49</sup> The representative of Singapore, echoed by the representative of Canada, proposed an objective and impartial annual audit of the Council's work *vis-à-vis* the protection of civilians.<sup>50</sup> Several speakers recommended mainstreaming the protection of civilians into the work of the Secretariat and the Council, including through the reports of the Secretary-General, the Secretariat's briefings to the Council and Council missions to conflict areas.<sup>51</sup>

By a letter dated 21 June 2001 from the President of the Council to the Secretary-General,<sup>52</sup> the Council members requested that the recommendations on the protection of civilians contained in the Secretary-General's two reports<sup>53</sup> be reorganized with the aim of clarifying responsibilities, enhancing cooperation and facilitating implementation. To ensure closer cooperation between the Office for the Coordination of Humanitarian Affairs and the Department of

Peacekeeping Operations, the Council encouraged the Secretary-General to establish a cross-cutting team for the two offices. To facilitate consideration by the Council of issues pertaining to the protection of civilians in its deliberations on the establishment, change or closing of peacekeeping mandates, Council members requested that an aide-memoire listing the relevant issues be drafted in close cooperation with the Council. In addition, Council members requested a briefing by the Secretariat on the status of those initiatives by November 2001.

At its 4424th meeting,<sup>54</sup> on 21 November 2001, held against the background of the above-mentioned letter,<sup>52</sup> the Council was briefed by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator on the implementation plan for the protection of civilians in armed conflict. During the interactive debate, questions were posed by the representatives of Bangladesh, Colombia, France, Ireland, Mali, Mauritius, Norway, Singapore, Tunisia, Ukraine and the United Kingdom.

In his briefing, the Under-Secretary-General elaborated on the three main initiatives taken by the Office for the Coordination of Humanitarian Affairs in response to suggestions made by the President of the Council in his letter of 21 June 2001. Regarding the suggestion to create a road map for the implementation of the Secretary-General's recommendations, the Under-Secretary-General indicated that an implementation chart would be included in a comprehensive report of the Secretary-General to the Council to be submitted in November 2002. To assist in the preparation of the road map, the Office had organized three workshops, with the participation of interested Member States, the Secretariat, agencies, the International Committee of the Red Cross, non-governmental organizations and other actors. At the workshops, participants had discussed such issues as States' obligations under international humanitarian and human rights law; operationalizing the guiding principles concerning internally displaced persons; and including elements related to the protection of civilians in the mandates of peacekeeping operations. Regarding the aide-memoire, he announced that a checklist of key issues to be considered by the Council in the design and planning of peacekeeping mandates was being

<sup>45</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 23.

<sup>46</sup> S/PV.4312, p. 12 (Tunisia); p. 14 (Jamaica); and p. 24 (Ireland); S/PV.4312 (Resumption 1) and Corr.1, p. 20 (Malaysia).

<sup>47</sup> S/PV.4312, pp. 29-30.

<sup>48</sup> *Ibid.*, p. 14.

<sup>49</sup> *Ibid.*, p. 24.

<sup>50</sup> *Ibid.*, p. 13 (Singapore); S/PV.4312 (Resumption 1) and Corr.1, p. 5 (Canada).

<sup>51</sup> S/PV.4312, p. 19 (United States); and p. 33 (United Kingdom); S/PV.4312 (Resumption 1) and Corr.1, p. 4 (Canada).

<sup>52</sup> S/2001/614.

<sup>53</sup> S/1999/957 and S/2001/331.

<sup>54</sup> For more information on the discussion at this meeting, see chap. I, part V, case 11, with regard to special cases concerning the application of rules 27-36.

developed. On the issue of strengthening the cooperation between the Office and the Department of Peacekeeping Operations, he pointed to the establishment of a cross-cutting team to facilitate consideration of issues related to the protection of civilians in the design, planning and implementation of peacekeeping operations.<sup>55</sup>

In response to questions raised by Council members, the Under-Secretary-General indicated that an inter-agency process had been initiated for the preparation of a manual for United Nations field staff, with guidance for practical steps on when, how and on what basis to engage or disengage armed groups. The manual would be shared in an appropriate forum with members of the Council. He further noted that some issues, such as women and peace and security, protection of civilians in armed conflict, children and armed conflict and conflict prevention, which were dealt with separately by the Council, were in fact complementary, and pointed out the need to identify the common threads.<sup>56</sup>

At the 4492nd meeting,<sup>57</sup> on 15 March 2002, at which the Council was briefed by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, statements were made by all Council members.

Underlining the need to keep the protection of civilians high on the Council's agenda, the Under-Secretary-General noted, *inter alia*, the increased dialogue and partnerships among United Nations agencies and offices, through coordinated efforts, in the areas of humanitarian access, child protection and other protection issues. Concerning the allegations of sexual exploitation of children in refugee camps in Guinea, Liberia and Sierra Leone, he reiterated the Secretary-General's policy of zero tolerance for any such acts perpetrated by anyone employed by or affiliated with the United Nations and referred to the investigation launched by the Office of Internal Oversight Services.

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<sup>55</sup> S/PV.4424, 2-4.

<sup>56</sup> *Ibid.*, pp. 7-9 and pp. 12-13.

<sup>57</sup> For more information on the discussion at this meeting, see chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter; and chap. XII, part II, sect. A, case 15, with regard to Article 24.

The Under-Secretary-General further informed the Council of progress that had been made in the development of the aide-memoire, which represented an unprecedented example of interactive cooperation between the Council and the Secretariat. He hoped that the document would serve as a checklist facilitating the Council's consideration of the establishment, change or phasing out of any peacekeeping operations. He pointed out that, in addition to identifying 13 core objectives for protecting civilians in armed conflict, it also provided, in part, a useful framework for considering interrelated and complementary thematic issues such as women and peace and security; children in armed conflict; and conflict prevention.<sup>58</sup>

Council members focused, *inter alia*, on the aide-memoire before them and expressed gratitude to Norway and Canada for their support to the issue on the agenda. They recalled that in the past the majority of the victims of conflict were soldiers, whereas today, over 90 per cent of the victims were civilians. Cognizant of the primary role of the Council in the maintenance of peace and security, they underlined the need for a better response by the Council to the protection of civilians in armed conflicts through fostering a culture of protection, and for the Council to look at ways to prevent conflicts.

Several members cited examples of recent and current conflicts, which to varying degrees had demonstrated complete disregard for the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as other international legal standards.<sup>59</sup>

With respect to the aide-memoire, speakers stressed that it was not a blueprint but rather a toolbox that would enable the Council to become more effective in addressing concerns related to the protection of civilians. They noted that, like any other tool, it would be useful only to the extent that it was utilized to solve particular tasks. In that respect, several representatives underlined the importance of applying the aide-memoire on a case-by-case basis.<sup>60</sup> The representative of Singapore suggested that a review should be conducted of all peacekeeping

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<sup>58</sup> S/PV.4492, pp. 2-5.

<sup>59</sup> *Ibid.*, p. 6 (France); p. 13 (Mauritius); pp. 15-16 (Syrian Arab Republic); and p. 18 (Russian Federation).

<sup>60</sup> *Ibid.*, p. 8 (Colombia); p. 14 (Bulgaria); and p. 17 (Mexico).

operations using the aide-memoire as a checklist for evaluation.<sup>61</sup> Several representatives stressed the need periodically to update and review the aide-memoire in the light of the Council's experience with peacekeeping mandates.<sup>62</sup>

Speakers held that the serious allegations of sexual exploitation of children in refugee camps in West Africa by United Nations personnel had indicated the possible value of the aide-memoire in highlighting relevant protection concerns and in ensuring a more systematic approach to the planning process for peacekeeping operations. Several representatives stressed the need to develop codes of conduct, so as to give substance to the Secretary-General's call for zero tolerance in cases of abuse of civilians by United Nations personnel.<sup>63</sup> In that regard, the Under-Secretary-General announced that he had requested the task force within the Inter-Agency Standing Committee to elaborate a code of conduct for all humanitarian professionals within the United Nations or outside, including non-governmental organizations. He stated that the Department of Peacekeeping Operations was already working on the issue with regard to peacekeeping operations.<sup>64</sup>

Referring to the road map for the recommendations arising from the Secretary-General's report of 30 March 2001,<sup>65</sup> the representatives of the United Kingdom and Ireland drew attention to the need to ensure consistency and synergy between the aide-memoire and the road map.<sup>66</sup> The representative of Singapore, echoed by the representative of Bulgaria, suggested that the forthcoming Secretary-General's report on the road map should highlight specific tools for the implementation of the recommendations.<sup>67</sup>

The representatives of the United Kingdom and Guinea particularly welcomed the establishment of the cross-cutting team composed of representatives of the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations.<sup>68</sup> The

representatives of the United Kingdom and the United States proposed that the two bodies could hold joint briefings in the context of deliberations concerning peacekeeping mandates.<sup>69</sup>

At the 4493rd meeting, on 15 March 2002, the President (Norway) made a statement on behalf of the Council,<sup>70</sup> by which the Council, *inter alia*:

Reaffirmed its concern at the hardships borne by civilians during armed conflict, and recognized the consequent impact that had on durable peace, reconciliation and development, bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution;

Adopted the aide-memoire contained in the annex to the statement as a means to facilitate the consideration by the Council of issues pertaining to protection of civilians; further emphasized the need, when considering ways to provide for the protection of civilians in armed conflict, to proceed on a case-by-case basis, taking into account the particular circumstances.

**Decision of 20 December 2002 (4679th meeting):  
statement by the President**

On 26 November 2002, the Secretary-General submitted to the Council the third report on the protection of civilians in armed conflict,<sup>71</sup> in which he drew attention to three global issues challenging the capacity of Member States to protect civilians. The first issue related to an increased focus on gender-based violence in humanitarian crisis and conflict situations. Acknowledging that the issue went beyond the United Nations system, the Inter-Agency Standing Committee set up the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, charged with assessing weaknesses or gaps in existing procedures and standards of behaviour and proposing specific measures for their remedy. He indicated that the United Nations was implementing a number of preventive and remedial measures aimed at enhancing the protection and care of vulnerable persons in situations of humanitarian crisis and conflict, and was working to ensure that the design of peacekeeping and relief operations incorporated protection measures for groups vulnerable to abuse and exploitation. In that

<sup>61</sup> *Ibid.*, p. 9.

<sup>62</sup> *Ibid.*, p. 8 (Colombia); p. 10 (Ireland); p. 12 (United States); and p. 17 (Mexico).

<sup>63</sup> *Ibid.*, p. 7 (United Kingdom); p. 9 (Colombia); and p. 17 (Mexico).

<sup>64</sup> *Ibid.*, pp. 20-21.

<sup>65</sup> S/2001/331.

<sup>66</sup> S/PV.4492, p. 8 (United Kingdom); and p. 10 (Ireland).

<sup>67</sup> *Ibid.*, p. 9 (Singapore); and p. 14 (Bulgaria).

<sup>68</sup> *Ibid.*, p. 8 (United Kingdom); and p. 14 (Guinea).

<sup>69</sup> *Ibid.*, p. 8 (United Kingdom); and p. 12 (United States).

<sup>70</sup> S/PRST/2002/6.

<sup>71</sup> S/2002/1300, submitted in accordance with the request of the Council, contained in the letter from the President dated 21 June 2001 (S/2001/614).

respect, he recommended that the Council consider the inclusion of a standard paragraph in relevant resolutions that required the reporting of follow-up actions and prosecutions undertaken in response to allegations of sexual abuse and exploitation.

The second issue with an increasing impact on the protection of civilians related to the commercial exploitation of conflict. Noting that the illegal exploitation of natural resources was a growing problem that served to fuel conflict and harmed the security of the civilian population, the Secretary-General recommended that the Council adopt coercive measures directed at companies and individuals involved in plundering of resources in conflict situations.

Finally, the rise of terrorism and the involvement of terrorist organizations in armed conflicts added a new and difficult set of challenges to the work on the protection of civilians. While past statements to the Council had already discussed terrorism and the role of the United Nations in the fight against terrorism, the Secretary-General believed that the Organization would need to formulate clear guidelines for its future work on the protection of civilians in armed conflicts where terrorist organizations were active.

In the report, the Secretary-General presented a number of practical initiatives that would serve to heighten awareness of the need for the protection of civilians in the daily work of the United Nations, such as the regional workshops organized by the Office for the Coordination of Humanitarian Affairs designed to allow Member States to identify threats to regional peace and security and ways to address them collectively; continued use of the aide-memoire<sup>72</sup> to develop frameworks and more structured approaches to the protection of civilians by United Nations country teams in areas of conflict; and further reviews of key mandates and resolutions where the protection of civilians remained an important concern.

At its 4660th meeting,<sup>73</sup> on 10 December 2002, the Council included in its agenda the above-

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<sup>72</sup> See S/PRST/2002/6, annex.

<sup>73</sup> For more information on the discussion at this meeting, see chap. X, part IV, with regard to the constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter; and chap. XI, part I, sect. B, with regard to the discussion relating to Article 39 of the Charter.

mentioned report of the Secretary-General. The Council was briefed by the Secretary-General, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, and the Director-General of the International Committee of the Red Cross. Statements were made by all Council members, the representatives of Argentina, Austria (on behalf of the Human Security Network), Bangladesh, Burkina Faso, Cambodia, Canada, Chile, Denmark (on behalf of the European Union<sup>74</sup>), Egypt, Indonesia, Israel, Japan, Norway, the Republic of Korea, Switzerland and Timor-Leste and the Permanent Observer of Palestine.<sup>75</sup>

The Secretary-General noted that the protection of civilians in armed conflict was among the most urgent items on the agenda of the Council, since millions of civilians were targeted, subjected to human rights abuses and denied assistance. Observing that the protection of civilians was critical to achieving a sustainable peace, he stressed the need for practical action and a clear transition from policy to implementation, including by developing a more systematic approach and a structure of best practices that would translate immediately into practical action.<sup>76</sup>

Outlining the progress achieved over the past three years, the Under-Secretary-General noted, *inter alia*, that the United Nations had raised awareness of the steps and measures needed to protect civilians more effectively. He reiterated the three significant new challenges identified in the report of the Secretary-General.<sup>77</sup> He welcomed the fact that the aide-memoire, adopted by the Council on 15 March 2002,<sup>78</sup> had led to practical applications, including the Council's recent review of the United Nations peacekeeping mandates in the Democratic Republic of the Congo and Sierra Leone. He looked forward to additional and regular reviews of other peace operations in areas of serious concern for the

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<sup>74</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>75</sup> The representative of Ukraine was invited to participate but did not make a statement; Norway was represented by the Deputy Minister for Foreign Affairs.

<sup>76</sup> S/PV.4660, p. 3.

<sup>77</sup> S/2002/1300.

<sup>78</sup> See S/PRST/2002/6, annex.

protection of civilians. He also focused on the road map contained in the annex to the Secretary-General's report, pointing out that the ultimate objective was to produce a plan of action for implementation, with specific responsibilities assigned and time frames, where appropriate. He was encouraged by the establishment of a support group of Member States, led by Norway, which would create a broader support base for the protection of civilians in armed conflict and promote and encourage the use of the aide-memoire by relevant actors and serve as a forum for information exchange. He referred to the decision of the Executive Committee on Humanitarian Affairs to create an implementation group for the protection of civilians, which would spearhead the production of the plan of action and liaise with the protection of civilians support group, donors and the Council. He expressed his intention to report back on progress achieved in 6 months, while the Secretary-General would report comprehensively to the Council every 18 months.<sup>79</sup>

The Director-General of the International Committee of the Red Cross stated that the persistent suffering of civilians in conflict situations could not be explained by a lack of norms. On the contrary, humanitarian law had evolved over time and remained an essential frame of reference to guarantee effective protection and assistance to civilian populations that had been trapped in conflicts. However, the major challenge was applying the law, which was primarily the responsibility of States. In that respect, ICRC could only encourage States to promote a culture of respect. He stressed the need to punish violations of international humanitarian law and adopt preventive measures, such as cultivating respect for the law before crises emerged.<sup>80</sup>

Speakers welcomed the Secretary-General's report and the road map. While stressing that the primary responsibility for the protection of civilians rested with Governments, speakers recalled that safeguarding civilians in armed conflict was at the heart of the Charter. They stressed the need for further concrete, systematic action to protect civilians in armed conflict, adding that effective protection was also critical for making peace processes succeed.

Furthermore, speakers, *inter alia*, called for the separation of civilians and armed elements and for the

United Nations and other international bodies to strengthen protection of and assistance to refugees and internally displaced persons; recalled the usefulness of the aide-memoire as a tool to promote the implementation of protection issues; praised the road map as another tool to facilitate further implementation of protection measures among the different actors involved; welcomed the introduction of new issues such as terrorism and sexual exploitation in the Secretary-General's report; and supported the design of further reviews of existing Council mandates and resolutions based on the aide-memoire, through further strengthening of joint cooperation between United Nations departments and entities, in order to integrate the protection of civilians into planning frameworks for peace missions and peace processes.

Calling for further action, speakers commended the progress already achieved by the United Nations, including the recent initiative by the Office for the Coordination of Humanitarian Affairs to hold six regional workshops on the protection of civilians in armed conflict. More specifically, they called for the proactive implementation of the aide-memoire and for closer cooperation and coordination within the Secretariat and between the programmes, funds and agencies of the United Nations system. Pointing out the interlinkages of the issues of women and peace and security; children and armed conflict; and the protection of civilians in armed conflict, several representatives expressed the view that the Council should address them in a coherent and integrated manner so as to avoid inconsistencies and duplications.<sup>81</sup>

Several speakers also called for the promotion of a culture of protection that benefited civilian populations,<sup>82</sup> while other speakers stressed the need to prevent conflicts from arising.<sup>83</sup> The representative of Bulgaria noted that the culture of prevention had not been fully mainstreamed and expressed the belief that the Council ought not to intervene only when violent

<sup>79</sup> S/PV.4660, pp. 3-6.

<sup>80</sup> *Ibid.*, pp. 6-8.

<sup>81</sup> *Ibid.*, p. 26 (United Kingdom); S/PV.4660 (Resumption 1), p. 6 (Japan); and p. 22 (Indonesia).

<sup>82</sup> S/PV.4660 (Resumption 1), p. 9 (Switzerland); p. 15 (Cambodia); and pp. 16-17 (Austria).

<sup>83</sup> S/PV.4660, p. 11 (Bulgaria); p. 14 (Ireland); p. 17 (Guinea); p. 19 (Cameroon); p. 22 (Singapore); p. 25 (China); p. 26 (United Kingdom); and p. 28 (Russian Federation); S/PV.4660 (Resumption 1), p. 3 (Colombia); and p. 12 (Chile).

incidents took place on a large scale, but should act proactively before those conflicts spread.<sup>84</sup> Emphasizing that the idea of humanitarian intervention was a complex issue, the representative of Singapore questioned how, when and by whom a right of intervention should be exercised.<sup>85</sup> Recalling Articles 1 and 2 of the Charter, the representative of Egypt maintained that the protection of civilians in armed conflict must not lead to the disregard of the concept of State sovereignty or of the responsibilities and powers States had in their territory.<sup>86</sup> In determining whether the protection of human rights took precedence over State sovereignty, the representative of Burkina Faso, arguing that the answer depended on the circumstances and gravity of the situation, held that the endorsement by the Council was a prerequisite for intervention.<sup>87</sup>

The representative of Canada drew attention to the inconsistency in the Council's responses aimed at protecting civilians, which called for effective steps not only to prevent assaults on civilians, but also, where prevention failed, to react.<sup>88</sup>

Many speakers underlined the need to address the question of access to vulnerable populations by international aid workers as an indispensable requirement in the protection of civilians. A number of speakers endorsed the need for coordinated efforts by the United Nations to include conditions for humanitarian access in all framework agreements signed between States and non-State actors.<sup>89</sup> The representative of Ireland agreed that the Council and other actors could play a critical role in securing access by putting significant pressure on warring parties. In that respect, he believed that the aide-memoire was a valuable instrument for structuring and shaping negotiations on access and related issues.<sup>90</sup> Several speakers drew attention to the imperative to ensure the security and protection of aid workers.<sup>91</sup>

Speakers also stressed the need to promote the rule of law and justice, in particular by protecting

human rights and implementing humanitarian law through the implementation of, inter alia, the Geneva Convention relative to the Protection of Civilian Persons in Time of War and other international legal standards. To that end, speakers welcomed the existing international tribunals and the International Criminal Court, as well as other initiatives to bring to justice perpetrators of grave violations of international humanitarian and human rights law. The representative of the United Kingdom stressed the need to develop an accountability structure that rewarded a proactive approach to protection issues.<sup>92</sup>

Several representatives highlighted the gravity of gender-based violence in humanitarian and conflict situations and called for strengthened efforts to ensure gender mainstreaming in peacekeeping operations.<sup>93</sup> The representative of Canada urged the Council to insert language in relevant texts requiring follow-up on allegations of sexual abuse and exploitation.<sup>94</sup>

At its 4679th meeting, on 20 December 2002, the Council again included in its agenda the report of the Secretary-General on the protection of civilians.<sup>95</sup> The President (Colombia) made a statement on behalf of the Council,<sup>96</sup> by which the Council, inter alia:

Strongly condemned all attacks and acts of violence directed against civilians or other protected persons under international law;

Called upon all parties to armed conflict to comply fully with the provisions of the Charter of the United Nations and with the rules and principles of international law, in particular international humanitarian, human rights and refugee law, and to implement fully the relevant decisions of the Council;

Underscored the importance of the aide-memoire adopted by the Council on 15 March 2002, as a practical tool that provided a basis for improved analysis and diagnosis of key protection issues during deliberations on peacekeeping mandates;

Was mindful of the particular vulnerability of refugees and internally displaced persons and reaffirmed the primary responsibility of States to ensure their protection;

<sup>84</sup> S/PV.4660, p. 11.

<sup>85</sup> *Ibid.*, p. 22.

<sup>86</sup> S/PV.4660 (Resumption 1), p. 18.

<sup>87</sup> *Ibid.*, p. 26.

<sup>88</sup> *Ibid.*, p. 9.

<sup>89</sup> S/PV.4660, p. 9 (Norway); p. 24 (Mauritius); and p. 26 (United Kingdom).

<sup>90</sup> *Ibid.*, p. 14.

<sup>91</sup> *Ibid.*, p. 19 (Cameroon); and p. 26 (United Kingdom); S/PV.4660 (Resumption 1), p. 8 (Switzerland).

<sup>92</sup> S/PV.4660, p. 26.

<sup>93</sup> *Ibid.*, p. 13 (Mexico); p. 15 (Ireland); and p. 16 (Guinea); S/PV.4660 (Resumption 1), p. 4 (Denmark on behalf of the European Union); p. 7 (Republic of Korea); and p. 11 (Canada).

<sup>94</sup> S/PV.4660 (Resumption 1), p. 11.

<sup>95</sup> S/2002/1300.

<sup>96</sup> S/PRST/2002/41.

Recognized the importance of a comprehensive, coherent and action-oriented approach to the protection of civilians in armed conflict.

**Decision of 15 December 2003 (4882nd meeting): statement by the President**

At its 4777th meeting, on 20 June 2003, the Council was briefed by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Statements were made by a majority of Council members.<sup>97</sup>

Presenting the progress made since the third report of the Secretary-General on the protection of civilians in armed conflict,<sup>98</sup> the Under-Secretary-General declared that, to make the road map a more practical and time-bound document, an implementation group on the protection of civilians, under the auspices of the Executive Committee on Humanitarian Affairs, and a Member States support group had been established and had begun to identify key areas of responsibility. Using the aide-memoire to highlight various protection concerns in the world, he cited the lack of or restricted humanitarian access; the widespread use of rape and other atrocities against women and girls as a weapon of war; the need to separate civilians and combatants; the breakdown in security, law and order; the fundamental importance of disarmament, demobilization, rehabilitation and reintegration with respect to the protection of civilians; the need to safeguard the security of humanitarian personnel; the Organization's priority to protect civilians from sexual exploitation and abuse by humanitarian workers and peacekeepers; and the status of internally displaced persons.

Reflecting on the progress made in the past few years in the area of protection, the Under-Secretary-General expressed satisfaction over the work done to promote greater sensitivity and responsibility of Member States towards the pleas of civilians caught in conflict. He stated that the framework for the protection of civilians, initiated by the Council on 12 February 1999,<sup>99</sup> was now well established within the United Nations system. The aide-memoire was becoming a regular point of reference for the Council in drafting mandates of peace operations. Furthermore,

the aide-memoire had contributed to a more effective and coherent humanitarian response vis-à-vis protection issues. He recommended that an update of the aide-memoire be presented to the Council at the next briefing in December 2003, together with the updated road map.<sup>100</sup>

Council members agreed that the protection of civilians was an issue of utmost importance, mindful that the overwhelming majority of victims in armed conflicts were civilians — mostly vulnerable women, children and the elderly. They welcomed the efforts undertaken by the Office for the Coordination of Humanitarian Affairs to keep the protection of civilians at the top of the Organization's agenda and stressed the responsibility of the Council to take action to prevent violence against civilians in armed conflict. Council members welcomed the Under-Secretary-General's proposal to update the aide-memoire and present a revised road map in December 2003.

Council members also pointed to the gap between continued appeals to warring parties to comply with the Charter and international humanitarian law, and the fact that, in practice, such appeals were largely ignored. Massive challenges on the ground, therefore, remained. The representative of the United Kingdom expressed the view that further mainstreaming of activities in the field of protection of civilians was necessary.<sup>101</sup>

Sharing the view that the dissemination of information on the rights of civilians and the obligations of parties in armed conflict was crucial, speakers welcomed the organization of regional workshops. The representative of Pakistan proposed to transform the individual, ad hoc workshops into a well-defined global programme of action in terms of capacity-building and awareness-raising, with concrete follow-up to enable countries to have their own national programmes of capacity-building.<sup>102</sup>

Council members stressed that the fight against impunity was a key priority in the protection agenda. A number of speakers held that bringing perpetrators to justice was an important element of reconciliation, facilitating the reintegration of post-conflict societies.<sup>103</sup> The representative of Mexico argued that

<sup>97</sup> The representatives of Angola and Bulgaria did not make statements.

<sup>98</sup> S/2002/1300.

<sup>99</sup> S/PRST/1999/6.

<sup>100</sup> S/PV.4777, pp. 3-8.

<sup>101</sup> *Ibid.*, p. 10.

<sup>102</sup> *Ibid.*, p. 14.

<sup>103</sup> *Ibid.*, p. 9 (Mexico); p. 12 (Syrian Arab Republic); p. 15 (Chile); and p. 17 (Spain).



unrestricted access of humanitarian organizations to zones of conflicts was vital and had to be enshrined in Council resolutions, whenever appropriate.<sup>104</sup>

At its 4877th meeting,<sup>105</sup> on 9 December 2003, the Council was briefed by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Statements were made by all Council members and the representatives of Azerbaijan, Canada, Colombia, Egypt, Italy (on behalf of the European Union<sup>106</sup>), Japan, Norway, the Republic of Korea, Sierra Leone, Switzerland and Ukraine.

In his briefing, the Under-Secretary-General presented the main challenges to the protection of civilians; the developments since the last Council briefing; and a 10-point platform for future collective action. Noting that the recent deliberate attacks against humanitarian personnel had dramatically reduced access to civilians in armed conflict, he highlighted the primary importance of addressing the issues of access and protection; the challenges to ensuring the security of humanitarian workers; the special protection needs of children; disarmament, demobilization, rehabilitation and reintegration; sexual violence; justice and reconciliation; the special protection of and assistance for internally displaced persons; and the sexual abuse of civilians by United Nations personnel.

The Under-Secretary-General presented for the Council's consideration two documents: an updated aide-memoire, reflecting evolving protection priorities which would assist the Council in ensuring that the protection needs and rights of civilians were included in its resolutions; and the road map, which Council members had called for as a tool to clarify responsibilities, enhance cooperation, facilitate implementation and further strengthen coordination within the United Nations system. He also presented 10 action points that built on areas of the road map that had enjoyed the consensus of the Council, dealing with

the issues of humanitarian access; security of humanitarian personnel; special protection of children; and that of women; impunity; forgotten emergencies; responses to the security needs of refugees and internally displaced persons; disarmament, demobilization, rehabilitation and reintegration; the impact of small arms and light weapons on the protection of civilians; and the promotion of the responsibility of armed groups and non-State actors to protect civilians and respect international humanitarian, human rights and refugee law.<sup>107</sup>

Speakers stressed the importance of building a culture of protection and the need to improve humanitarian access to civilians in need, as well as ensure the safety and protection of humanitarian personnel. They drew attention to the suffering of women and children in conflict situations, and to the situation of internally displaced persons. Furthermore, they underlined the need to ensure the implementation of the measures designed to protect civilians. They highlighted the importance of an effective United Nations system-wide response, as well as improved cooperation within the system and with regional organizations.

Speakers also welcomed the updated aide-memoire and road map and expressed the view that the two documents should guide the Council in devising peacekeeping mandates. A number of speakers maintained that protection issues should be included in peacekeeping mandates, such as the facilitation by the United Nations of unhindered access by humanitarian organizations to needy populations.<sup>108</sup> The representatives of Norway and Canada argued that peacekeeping operations must be provided with unambiguous mandates and adequate resources to protect civilians, when such responsibilities were given.<sup>109</sup>

The representative of Egypt remarked that, in most cases, Council intervention to protect civilians came too late or else was not commensurate with the security and emergency humanitarian needs of the population.<sup>110</sup> The representative of Azerbaijan

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<sup>104</sup> *Ibid.*, p. 9.

<sup>105</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to the discussion relating to Article 41 of the Charter.

<sup>106</sup> Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia and Turkey aligned themselves with the statement.

<sup>107</sup> S/PV.4877, pp. 2-7.

<sup>108</sup> *Ibid.*, p. 8 (Spain); p. 11 (United Kingdom); and p. 25 (Germany).

<sup>109</sup> S/PV.4877 (Resumption 1), pp. 10-11 (Norway); and p. 13 (Canada).

<sup>110</sup> *Ibid.*, p. 7.

expressed disappointment at the lack of will on the part of the Council to ensure the implementation of its resolutions on the settlement of armed conflicts, or deal on a case-by-case basis with the reality of those hostilities and their impact on civilian populations.<sup>111</sup>

A number of speakers underlined the need to prevent conflicts from occurring.<sup>112</sup> The representative of the Russian Federation stressed that the Council should take full account of the particular nature of specific conflict situations and, on that basis, take measures to protect civilians. He added that while the humanitarian component was crucial as an element of a comprehensive strategy for crisis prevention and during the stage of post-conflict settlement, the efficacy of humanitarian work depended to a large extent on how it was incorporated into the international efforts to find a political settlement to conflict.<sup>113</sup> Similarly, the representative of Azerbaijan pointed out that the settlement of an armed conflict was the best option for ensuring that those who had been targeted with systematic violence would not be physically abused again.<sup>114</sup> The representative of Egypt held that it was necessary to understand that the concept of providing protection to civilians in armed conflict should not stop with the end of military operations, but should extend into post-conflict peacebuilding.<sup>115</sup> The representative of Sierra Leone stated that emphasis should be placed not merely on the obligation and responsibility to protect, but also on the capacity to provide protection.<sup>116</sup>

The representative of Japan stressed that interventions to protect civilians should not be viewed as a challenge to national sovereignty, especially when national authorities had failed, or had a limited capacity, to protect civilians.<sup>117</sup> The representative of Egypt insisted on the need to balance the right of civilians to protection with the right of each State to sovereignty. In his view, the international community's treatment of and respect for one of those rights should

not be at the expense of the other. The issue of protection of civilians should be guided by the Charter and international law.<sup>118</sup>

Many speakers pointed out that justice and reconciliation efforts should form an integral part of the protection agenda and called for putting an end to the culture of impunity. The representative of Angola supported the inclusion in all country-related draft resolutions of a call upon States and non-State actors to adhere to international human rights, humanitarian and refugee law and to reinforce the principle of no impunity for genocide, war crimes or crimes against humanity.<sup>119</sup> Some representatives highlighted the role of the International Criminal Court in achieving that goal.<sup>120</sup> Speaking on behalf of the European Union, the representative of Italy opined that violators of international humanitarian and human rights law must be brought to justice at the national level or, where not possible, to international justice, while the primary responsibility to carry that out lay with each State.<sup>121</sup>

At the 4882nd meeting, on 15 December 2003, the President (Bulgaria) made a statement on behalf of the Council,<sup>122</sup> by which the Council, *inter alia*:

Reaffirmed the need to keep the protection of civilians in armed conflict as an important item on the Council's agenda;

Also reaffirmed its concern at the suffering inflicted upon and hardships borne by civilians during armed conflict; strongly condemned all attacks and acts of violence directed against civilians or other persons protected under international law; reaffirmed the need for parties to armed conflict to take all possible measures to ensure the safety, security and freedom of movement of United Nations and associated personnel as well as personnel of international humanitarian organizations in accordance with applicable international law; reiterated its call to all parties to armed conflict to comply fully with the provisions of the Charter of the United Nations and with the rules and principles of international law; recalled the obligations of States to respect and to ensure respect for international humanitarian law, including the four Geneva Conventions of 12 August 1949, and emphasized the responsibility of States to end impunity and to prosecute those responsible for genocide, war crimes, crimes against humanity and serious violations of humanitarian law.

<sup>111</sup> *Ibid.*, p. 12.

<sup>112</sup> S/PV.4877, p. 9 (Russian Federation); p. 16 (China); p. 16 (Angola); p. 22 (Cameroon); and p. 24 (Pakistan); S/PV.4877 (Resumption 1), p. 6 (Sierra Leone); and p. 14 (Canada).

<sup>113</sup> S/PV.4877, pp. 8-9.

<sup>114</sup> S/PV.4877 (Resumption 1), p. 12.

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

<sup>116</sup> *Ibid.*, p. 5.

<sup>117</sup> *Ibid.*, p. 2.

<sup>118</sup> *Ibid.*, p. 7.

<sup>119</sup> S/PV.4877, pp. 17-18.

<sup>120</sup> *Ibid.*, p. 8 (Spain); p. 19 (Mexico); and p. 29 (Ukraine); S/PV.4877 (Resumption 1), p. 4 (Switzerland); p. 10 (Republic of Korea); and p. 14 (Canada).

<sup>121</sup> S/PV.4877, p. 27.

<sup>122</sup> S/PRST/2003/27.

## 42. Items relating to small arms

### A. Small arms

#### **Decision of 31 August 2001 (4362nd meeting): statement by the President**

At its 4355th meeting, on 2 August 2001, the Security Council included in its agenda a letter dated 25 July 2001 from the representative of Colombia addressed to the President,<sup>1</sup> transmitting a document entitled "Issues for the open debate on the question of small arms". The document informed Member States that wished to participate in an open debate by the Council, scheduled to take place on 2 August 2001, that issues to be considered during the debate included, but were not limited to, the content of the relevant reports of the Secretary-General; follow-up mechanisms; special briefings on the question of small arms; strengthening of regional and subregional mechanisms; arms embargoes; and advisory missions.

During the meeting, statements were made by all Council members and the representatives of Argentina, Australia, Belarus, Belgium (on behalf of the European Union<sup>2</sup>), Brazil, Bulgaria, Canada, Chile, Costa Rica, Egypt, Ghana, India, Japan, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Peru, the Philippines, the Republic of Korea, Sierra Leone, South Africa, the Sudan (on behalf of the Group of Arab States), Thailand and Venezuela. The Council also heard a briefing by the Secretary-General.

In his briefing, the Secretary-General noted progress made at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects held the previous month, particularly the adoption of a comprehensive programme of action.<sup>3</sup> The Secretary-General highlighted the commitment of States to developing, strengthening and implementing norms and measures aimed at preventing, fighting and eradicating illicit manufacture of and trade in small arms and light weapons. He affirmed that States had

agreed to place special emphasis on post-conflict situations, particularly the disarmament, demobilization and reintegration of ex-combatants; agreed to act responsibly in the areas of export, import, transit and transfer of weapons; recognized the need to mark and keep accurate records to allow timely tracing and identification; pledged to improve the implementation of arms embargoes; and agreed to destroy illicit or surplus weapons as necessary. He informed the Council that the Programme of Action called for greater transparency and for public awareness programmes, and encouraged Governments to continue working on the issues on which they could not reach consensus at the Conference, such as the question of negotiating legally binding instruments. The Secretary-General also drew attention to the need to address the supply side of the problem, as well as elaborating on the complexity of the devastating impact of small arms violence in the areas of development, democracy, human rights and human security, to which children were especially vulnerable. Finally, the Secretary-General assured the Council that the Conference was not meant to infringe on national sovereignty, limit the rights of States to defend themselves or take away guns from legal owners.<sup>4</sup>

Most speakers welcomed the outcome of the Conference and expressed gratitude to the President for a timely debate at the Council. Speakers also acknowledged that small arms and light weapons posed a grave threat to humanity and called for a comprehensive approach that covered various areas affected by small arms proliferation, such as cooperation with international and regional bodies, civil society and other organizations of the United Nations system. They also emphasized the need to address the root causes of proliferation in small arms, including poverty, lack of development, ethnic strife and the culture of violence; take into account specific facts of each conflict situation; include in the mandates of peacekeeping operations provisions relating to disarmament, demobilization and reintegration; find measures to monitor the implementation of arms embargoes, including the provision of more information to sanctions committees; and ensure that

<sup>1</sup> S/2001/732.

<sup>2</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>3</sup> See *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001 (A/CONF.192/15)*, para. 24.

<sup>4</sup> S/PV.4355, pp. 3-4.

States adopted national legislation to comply with, and punished violations of, such embargoes.

The representative of Mauritius called for further measures to implement resolution 1209 (1998), which stressed the importance of restricting arms transfers which could prolong armed conflicts in Africa, and resolution 1196 (1998), which called upon States to adopt legislation making the violation of arms embargoes a criminal offense.<sup>5</sup>

Several speakers reiterated the Secretary-General's remark that measures against illicit small arms and light weapons should not encroach on the legitimate right of States to defend themselves and legally acquire weapons, under Article 51 of the Charter of the United Nations.<sup>6</sup> The representative of China asserted that the sovereignty of States, as well as their right to the legal production, possession and transfer of small arms should not be compromised.<sup>7</sup>

While most speakers welcomed the Programme of Action as the first international agreement that established a realistic and comprehensive framework and encouraged all Member States to fully implement it, a number of speakers remarked on its shortcomings. The representative of Ireland voiced his preference for stronger commitments, while the representative of Peru mentioned the incomprehensible deficiencies apparent in its adoption.<sup>8</sup> The representative of Mali, who made a joint statement with the representative of Norway, indicated that his Government would have preferred a more ambitious plan of action, and that both an international agreement on explicit export criteria that could be effectively implemented and international instruments on marking and tracing small arms and on brokering operations were necessary. He also expressed regret, echoed by a number of other representatives, that the Conference had failed to achieve agreement on the regulation of individual possession of small arms and light weapons.<sup>9</sup> The representative of Mauritius, echoed by other representatives, expressed

disappointment in the lack of agreement on the need to establish restrictions on the transfer of small arms to non-State actors.<sup>10</sup> The representative of India asserted that the international community must agree, as it had been unable to do so at the Conference, that the trade in arms must flow only through channels authorized by both exporting and importing Governments to stop any diversion to terrorists or non-State actors.<sup>11</sup> The representative of Costa Rica expressed concern that the Programme of Action failed to explicitly prohibit the transfer of arms to rebel groups; condemn the dispatch of arms to Governments that committed systematic violations of human rights; reflect the need for a legally binding code of conduct on the transfer of arms; or include any explicit reference to human rights.<sup>12</sup>

Although most speakers called for the Council's continued involvement in the resolution of illicit trade in small arms and light weapons, some speakers advocated a limited role for the Council. The representatives of the United States and Pakistan remarked that the focus of the Conference was on the obligation of the Member States as reflected in the Programme of Action, and warned that the Council should not seek a more elaborate role beyond its competence.<sup>13</sup> The representative of South Africa, echoed by the representative of the Sudan, stated that the issue of small arms should continue to be dealt with in the General Assembly and that the Council should confine its involvement to specific areas related to its agenda.<sup>14</sup>

However, the representative of Jamaica and the representative of the United Kingdom expressed the hope that the debate would result in practical proposals and recommendations for the mainstreaming of the small arms issue in the work of the Council, moving it from a tangential to a more central position in the Council's deliberations.<sup>15</sup> The representatives of the Republic of Korea and Costa Rica stated that the Council should strengthen its role in combating the

<sup>5</sup> Ibid., pp. 17-18.

<sup>6</sup> Ibid., p. 13 (Russian Federation); and p. 16 (Tunisia); S/PV.4355 (Resumption 1) and Corr.1, p. 15 (Venezuela); and p. 17 (Sudan on behalf of the Group of Arab States).

<sup>7</sup> S/PV.4355, p. 15.

<sup>8</sup> Ibid., p. 22 (Ireland); and p. 27 (Peru).

<sup>9</sup> Ibid., p. 19 (Mali, also on behalf of Norway); S/PV.4355 (Resumption 1) and Corr.1, p. 5 (Chile); p. 24 (Canada); and p. 28 (Costa Rica).

<sup>10</sup> S/PV.4355, p. 18 (Mauritius); S/PV.4355 (Resumption 1) and Corr.1, p. 5 (Chile); pp. 11-12 (South Africa); and p. 24 (Canada).

<sup>11</sup> S/PV.4355 (Resumption 1) and Corr.1, pp. 19-20.

<sup>12</sup> Ibid., p. 28.

<sup>13</sup> S/PV.4355, p. 5 (United States); S/PV.4355 (Resumption 1) and Corr.1, pp. 23-24 (Pakistan).

<sup>14</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 11 (South Africa); and p. 17 (Sudan).

<sup>15</sup> S/PV.4355, p. 6 (Jamaica); and p. 12 (United Kingdom).

illicit trade in small arms and preventing their excessive accumulation.<sup>16</sup> The representative of Sierra Leone asserted that because issuing presidential statements and resolutions had little meaningful effect, the Council should develop the capacity to have greater leverage over the parties directly responsible for the propagation of conflicts and adopt sterner, more resolute measures to attain its obligations under the Charter. He added that the Council should markedly and continuously exert its authority over the form and content of the provisions of the Programme of Action.<sup>17</sup>

Several speakers expressed their belief that the Council had its own distinctive role to play, particularly in strengthening the effectiveness of its arms embargoes and supporting disarmament, demobilization and reintegration measures.<sup>18</sup> The representative of Ukraine pointed out that the Council could offer added value in putting an end to economies of war and encouraging voluntary moratoriums on arms exports to regions in conflict.<sup>19</sup> The representative of Chile stated that the Council should have the relevant information about the illicit use of arms and military weapons in order to strengthen preventive measures, and that it must play a dynamic role in educating Member States about the negative effects of sustained flows of weapons to areas of conflict.<sup>20</sup> Some representatives suggested that closer consultation and coordination with the General Assembly and other United Nations organs could enhance the effectiveness of the work of the Council.<sup>21</sup> The representative of Peru added that the overlap in the functions and responsibilities of the Council and the General Assembly afforded a splendid opportunity for coordination between the two organs.<sup>22</sup>

At its 4362nd meeting, on 31 August 2001, the Council again included in its agenda the above-mentioned letter.<sup>23</sup>

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<sup>16</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 14 (Republic of Korea); and p. 27 (Costa Rica).

<sup>17</sup> *Ibid.*, pp. 30-31.

<sup>18</sup> S/PV.4355, p. 21 (Ukraine); S/PV.4355 (Resumption 1) and Corr.1, p. 9 (Philippines); p. 15 (Venezuela); and p. 29 (Belarus).

<sup>19</sup> S/PV.4355, p. 21.

<sup>20</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 6.

<sup>21</sup> S/PV.4355, p. 7 (Jamaica); and p. 23 (Singapore).

<sup>22</sup> *Ibid.*, p. 27.

<sup>23</sup> S/2001/732.

At the same meeting, the President (Colombia) made a statement on behalf of the Council,<sup>24</sup> by which the Council, *inter alia*:

Noted with grave concern that the destabilizing accumulation and uncontrolled spread of small arms increased the intensity and duration of armed conflicts; expressed grave concern at the harmful impact of small arms on civilians in situations of armed conflict;

Welcomed recent global and regional initiatives; also welcomed the Programme of Action and called on all Member States to take the required measures to implement promptly the recommendations contained therein;

Underlined the importance of practical disarmament measures in averting armed conflicts;

Emphasized the importance of the effective collection and control of small arms and of their storage and destruction in the context of disarmament, demobilization and reintegration programmes;

Reiterated its call for the effective implementation of arms embargoes imposed by the Council in relevant resolutions;

Requested the Secretary-General to submit a report by September 2002 containing specific recommendations on ways and means in which the Council might contribute to dealing with the question of illicit trade in small arms.

#### **Decision of 31 October 2002 (4639th meeting): statement by the President**

At its 4623rd meeting, on 11 October 2002, the Council included in its agenda the report of the Secretary-General on small arms of 20 September 2002.<sup>25</sup> The report, which reflected initiatives taken by the Council, identified areas where further action by the Council was required, and stressed that preventing, combating and eliminating the uncontrolled spread of small arms and light weapons constituted one of the key tasks of the Council in discharging its primary responsibility of maintaining peace and security. The report contained 12 recommendations of the Secretary-General, calling upon Member States to develop an international instrument to enable States to identify and trace illicit small arms and light weapons; use, and provide technical and financial support to the INTERPOL Weapons and Explosives Tracking System; assist the Secretariat in establishing the small arms advisory service; enforce all Council resolutions on sanctions and bring their own national legislation into

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<sup>24</sup> S/PRST/2001/21.

<sup>25</sup> S/2002/1053, submitted pursuant to the presidential statement of 31 August 2001 (S/PRST/2001/21).

compliance with the Council's measures on sanctions, as well as make available to the appropriate United Nations bodies all pertinent information on any alleged violations of arms embargoes and take appropriate measures to investigate such allegations. The recommendations of the Secretary-General further indicated that the Council should enhance its interaction with the General Assembly on issues relating to small arms; continue its efforts to identify the links between the illicit trade in small arms and light weapons and the illicit exploitation of natural and other resources, as well as the trade in illegal drugs; recognize the importance of disarmament, demobilization and reintegration and include such measures in the text of negotiated agreements and mandate of peacekeeping operations; strengthen the financing of disarmament, demobilization and reintegration through the expansion of measures covered under the budget for peacekeeping operations; establish the necessary legislative or other measures to ensure effective control over the export and transit of small arms and light weapons; pursue more vigorously and expeditiously the use of arms embargoes under Article 41 of the Charter and promote their effective implementation; consider coercive measures against Member States that deliberately violated arms embargoes and establish monitoring mechanisms; and enhance transparency in armaments.

During the meeting, the Council heard a briefing by the Under-Secretary-General for Disarmament Affairs, and statements were made by all members of the Council and the representatives of Argentina, Australia, Canada, Chile, the Congo (on behalf of the Economic Community of Central African States),<sup>26</sup> Costa Rica, Croatia, Denmark (on behalf of the European Union<sup>27</sup>), Egypt, India, Indonesia, Israel, Jamaica, Japan, Kenya, Malawi, Namibia, Nigeria, Pakistan, the Philippines, the Republic of Korea, Senegal, South Africa, Switzerland, Ukraine and Zambia.

<sup>26</sup> Angola, Burundi, Cameroon, the Central African Republic, Chad, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe aligned themselves with the statement.

<sup>27</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

The Under-Secretary-General for Disarmament Affairs, in his briefing, stated that Member States had engaged in the implementation of the Programme of Action with great enthusiasm, and that several initiatives on a national and regional level had yielded encouraging results. He called for the Council's political support for the Secretariat initiative to build a small arms advisory service within the Department of Disarmament Affairs to enhance the effectiveness of the Coordinating Action on Small Arms mechanism and the ability of the United Nations to assist Member States in the implementation of the Programme of Action.<sup>28</sup>

Most speakers welcomed the report of the Secretary-General and endorsed his recommendations. Speakers called for, inter alia, national legislative measures that complied with sanctions imposed by the Council, including end-user certificates; firmer implementation of arms embargoes and monitoring mechanisms to identify violators; enhanced coordination with the General Assembly, regional organizations, non-governmental organizations and civil society; a comprehensive approach to address the multifaceted consequences of proliferation in small arms and the limits to the effectiveness of arms embargoes; and attention to the root causes of armed conflicts, including economic and social dimensions. Most speakers maintained that although the Council should continue to pay special attention to the illicit traffic of small arms and light weapons including via arms embargoes and disarmament, demobilization and reintegration, the primary responsibility lay with Member States. The representative of Egypt stressed that the Council had an important role to play in the field of small arms and light weapons, in the light of its responsibility for the maintenance of international peace and security in accordance with Article 24 of the Charter.<sup>29</sup> However, the representative of the Russian Federation emphasized that the Council should focus its attention primarily on those instances in which illicit arms trade was directly linked to conflict situations on the Council's agenda.<sup>30</sup>

Many speakers acknowledged the challenges and difficulties faced by disarmament, demobilization and reintegration programmes and urged the Council to include such measures in the mandates of the

<sup>28</sup> S/PV.4623, pp. 2-3.

<sup>29</sup> S/PV.4623 (Resumption 1), p. 5.

<sup>30</sup> S/PV.4623, p. 17.

peacekeeping operations. However, China noted that because the causes and manifestations of the world's armed conflicts varied, the Council should bear that in mind when deciding whether to incorporate disarmament, demobilization and reintegration into peacekeeping mandates.<sup>31</sup>

The representative of Malawi emphasized the importance of developing closer, mutually reinforcing linkages between the Programme of Action and the Secretary-General's broad-ranging recommendations.<sup>32</sup>

While a number of speakers drew attention to the danger of small arms and light weapons reaching terrorist groups and non-State actors, several speakers reiterated the right of every State to self-defence according to Article 51 of the Charter.<sup>33</sup> The representative of Israel reminded the Council that while States had the right to acquire and produce small arms, the international community had the right and the obligation to insist that the use of such weapons be restricted to self-defence and national security, and to demand that States ensure that such weapons did not fall into unauthorized hands.<sup>34</sup> The representative of Japan drew attention to resolution 1373 (2001), which called for the elimination of the supply of weapons, including small arms, to terrorists as an essential element in the global fight against terrorism.<sup>35</sup>

Several speakers commended progress made in regional-level cooperation.<sup>36</sup> The representative of Denmark, speaking on behalf of the European Union, welcomed the emergence of new partnerships among States, civil society and non-governmental organizations in follow-up to the Conference, while the representative of Canada noted progress in developing legislation, promoting technology for marking and tracing, dealing with harmful brokering and collecting and destroying weapons.<sup>37</sup>

The representative of South Africa, in contrast, echoed by the representative of Namibia, expressed concern that the international community still faced the

proliferation and excessive accumulation of small arms and light weapons despite the adoption of the Programme of Action.<sup>38</sup> The representative of Mauritius stated that the circulation of illicit small arms and light weapons had increased, and asked the Council to look beyond the classical approach of simply coming out with another statement which will remain a dead letter. He pointed out the lack of coordination not only between the General Assembly and the Council but also at the regional, subregional and international levels. He noted the need to follow up to ensure the implementation of decisions and recommendations that were left to the will and discretion of individual countries and to find an effective way to deal with brokers and middlemen involved in the trade of small arms and light weapons.<sup>39</sup> The representative of Egypt stated that practical difficulties of accurately monitoring arms exports, and an absence in the Council of the will to enforce certain embargoes and verify their implementation, limited the success of new measures such as the establishment of independent panels of experts and monitoring mechanisms for implementing arms embargoes.<sup>40</sup> The representative of the Republic of Korea also hoped that the Council would pursue the use of monitoring mechanisms, in accordance with Article 41, with a view to ensuring successful enforcement.<sup>41</sup>

Several speakers expressed concern about the absence of an international treaty or other legal instrument to control the illicit use of small arms and light weapons and called for further pursuit of legally binding commitments on marking, tracing, and brokering.<sup>42</sup>

At its 4639th meeting, on 31 October 2002, the Council again included in its agenda the report of the Secretary-General of 20 September 2002.<sup>43</sup>

At the same meeting, the President (Cameroon) made a statement on behalf of the Council,<sup>44</sup> by which the Council, *inter alia*:

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<sup>31</sup> *Ibid.*, p. 8.

<sup>32</sup> S/PV. 4623 (Resumption 1), p. 36.

<sup>33</sup> S/PV.4623, p. 14 (Syrian Arab Republic); S/PV.4623 (Resumption 1), p. 37 (Pakistan).

<sup>34</sup> S/PV.4623 (Resumption 1), p. 15.

<sup>35</sup> *Ibid.*, p. 10.

<sup>36</sup> *Ibid.*, p. 10 (Australia); p. 14 (Israel); and p. 37 (Pakistan).

<sup>37</sup> *Ibid.*, p. 19 (Denmark); and p. 26 (Canada).

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<sup>38</sup> *Ibid.*, p. 22 (South Africa); and p. 29 (Namibia).

<sup>39</sup> S/PV.4623, pp. 5-6.

<sup>40</sup> S/PV.4623 (Resumption 1), pp. 4-5.

<sup>41</sup> *Ibid.*, p. 4.

<sup>42</sup> *Ibid.*, p. 17 (Nigeria); p. 19 (Denmark); p. 25 (Argentina); and p. 28 (Jamaica).

<sup>43</sup> S/2002/1053.

<sup>44</sup> S/PRST/2002/30.

Encouraged all Member States to continue to take all measures to implement fully the recommendations contained in the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

Reaffirmed the inherent right of individual and collective self-defence in accordance with Article 51 of the Charter;

Encouraged arms-exporting countries to exercise the highest degree of responsibility in small arms and light weapons transactions;

Stressed the need for cooperation and sharing of information among Member States;

Recognized the important role of arms embargoes;

Recognized that the primary responsibility for the implementation of sanctions measures rested with the States;

Reiterated its call for the effective implementation of arms embargoes imposed by the Council pursuant to its relevant resolutions.

## **B. Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa**

### **Initial proceedings**

#### **Decision of 18 March 2003 (4720th meeting): resolution 1467 (2003)**

At its 4720th meeting,<sup>45</sup> on 18 March 2003, the Security Council included in its agenda the item entitled “Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa” and held a workshop to discuss the matter in an interactive manner. The Council heard a statement by the Secretary-General and briefings by the Interim Commissioner for Peace, Security and Political Affairs of the African Union, the representative of the Chairman of the Economic Community of West African States (ECOWAS), the Executive Secretary of ECOWAS and the Regional Director of the Programme for Coordination and Assistance for Security and Development. Subsequently, all the members of the Council and the representatives of Benin, Burkina Faso, Côte d’Ivoire, the Gambia, Liberia, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo made statements.<sup>46</sup>

The Secretary-General noted that the uncontrolled proliferation of small arms and light weapons and the use of mercenaries in West Africa sustained conflict, exacerbated violence, fuelled crime and terrorism, promoted cultures of violence, violated international humanitarian law and impeded political, economic and social development. Unless adequately addressed, their spread would continue to pose a severe threat to the hopes of attaining durable peace and security in the region. Fortunately, the international community and the countries concerned had the necessary tools to combat the problems, including such legal instruments and international agreements as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the ECOWAS moratorium on the importation, exportation and manufacture of small arms and light weapons in West Africa.<sup>47</sup>

The Interim Commissioner for Peace, Security and Political Affairs of the African Union, outlining the efforts of the African States to combat the proliferation of small arms and mercenary activities, underlined that States must display sufficient political will to implement their collective decisions on small arms and endow themselves with the necessary means to implement the decisions, such as a truly independent follow-up and monitoring mechanism and appropriate

<sup>45</sup> For more information on the Council’s discussion concerning small arms and light weapons, see sect. 42.A of the present chapter.

<sup>46</sup> Angola, Guinea, Liberia, Senegal and Togo were represented by their respective Ministers for Foreign Affairs. Cameroon was represented by the Minister of State for External Relations, the Gambia by the Secretary of State for Foreign Affairs, Benin by the Minister of State for Defence, Burkina Faso by the Minister for Regional Cooperation, and Mali by the Minister of Labour and Vocational Training.

<sup>47</sup> S/PV.4720, pp. 2-4.



sanctions regimes against non-compliant parties. He stressed the need to tackle the underlying causes of tensions and conflicts, noting that the challenge of good governance was at the core of the quest for peace and security in Africa.<sup>48</sup>

The representative of the Chairman of ECOWAS highlighted that the international community should be duly cognizant of the implications of the activities of individual weapons retailers. While it was worth considering revising the ECOWAS moratorium and making it a permanent instrument, sanctions ought to be applied where there were violations of the moratorium and of the relevant international legal instruments. He also drew attention to the upsurge in the activities of mercenaries and private armies that were being recruited from one conflict situation to another in West Africa.<sup>49</sup>

The Executive Secretary of ECOWAS noted that ECOWAS remained engaged with the international community over the twin devils of small arms and mercenary activities. With regard to small arms, he appealed to the Council and the international community at large to support effective implementation of the ECOWAS moratorium and to facilitate the establishment of a well-resourced small arms unit in the ECOWAS secretariat. In regard to mercenary activities, while calling for global action to eliminate the practice, he was deeply concerned that a unique type of mercenary was emerging in West Africa, where the rebel factions had taken on the semblance of mercenaries and had shown no loyalty to any particular authority and were always available for hire.<sup>50</sup>

The Regional Director of the Programme for Coordination and Assistance for Security and Development opined that the most important aspect of the fight against the proliferation of small arms was not only political commitment and will but also the mobilization of resources. He highlighted that the Programme, which was established to support the ECOWAS moratorium, had taken various steps to curb the flow of small arms and mercenary activities in West Africa, including by establishing a network of national commissions, strengthening border controls and training security forces, but that it lacked the necessary means to do more. Meanwhile, he stressed the

importance of addressing both the demand and supply sides of the proliferation of small arms by reducing demand through the moratorium and through stricter monitoring regimes while urging suppliers to avoid the export of weapons to conflict-torn regions.<sup>51</sup>

With regard to the proliferation of small arms and light weapons, most speakers emphasized that the current international framework, particularly the ECOWAS moratorium and the Programme of Action, must be fully implemented and further strengthened. To that end, they held that a number of steps could be taken which included the effective functioning of national commissions and the development of national laws, including those addressing the brokering of illegal arms;<sup>52</sup> enhanced controls for arms exports;<sup>53</sup> end-user certificates;<sup>54</sup> and an international instrument for tracing illicit small arms.<sup>55</sup> The representative of Togo specifically called on certain members of the former Warsaw Pact to commit to a true ban on the illicit export of weapons to African countries in general and ECOWAS States in particular.<sup>56</sup> Speakers in general held that arms embargoes needed to be implemented more effectively. In that context, some supported the establishment of an independent monitoring mechanism on sanctions<sup>57</sup> and others expressed the view that those responsible for illegal small arms trade should be subject to sanctions.<sup>58</sup>

<sup>51</sup> *Ibid.*, pp. 9-12.

<sup>52</sup> *Ibid.*, p. 17 (Cameroon); and p. 25 (United States); S/PV.4720 (Resumption 1), p. 4 (Togo); p. 6 (Russian Federation); p. 13 (France); p. 17 (Mali); p. 20 (Niger); p. 21 (China); and p. 28 (Guinea).

<sup>53</sup> S/PV.4720, p. 15 (Angola); p. 20 (United Kingdom); p. 25 (United States); and p. 27 (Germany); S/PV.4720 (Resumption 1), p. 13 (France); and p. 25 (Nigeria).

<sup>54</sup> S/PV.4720, p. 21 (United Kingdom); and p. 27 (Germany); S/PV.4720 (Resumption 1), p. 7 (Mexico); p. 13 (France); p. 23 (Pakistan); p. 25 (Nigeria); and p. 28 (Guinea).

<sup>55</sup> S/PV.4720, p. 16 (Angola); p. 21 (United Kingdom); and p. 24 (Senegal); S/PV.4720 (Resumption 1), pp. 12-13 (France); p. 22 (Sierra Leone); and p. 24 (Nigeria).

<sup>56</sup> S/PV.4720 (Resumption 1), p. 5.

<sup>57</sup> S/PV.4720, p. 17 (Cameroon); and p. 21 (United Kingdom); S/PV.4720 (Resumption 1), pp. 18-19 (Bulgaria).

<sup>58</sup> S/PV.4720, p. 14 (Gambia); S/PV.4720 (Resumption 1), pp. 5-6 (Russian Federation); p. 15 (Syrian Arab Republic); p. 17 (Mali); p. 21 (China); and p. 23 (Pakistan).

<sup>48</sup> *Ibid.*, pp. 4-5.

<sup>49</sup> *Ibid.*, pp. 5-6.

<sup>50</sup> *Ibid.*, pp. 6-8.

In addition, a number of speakers held that disarmament, demobilization and reintegration programmes should be effectively implemented so that small arms were collected or destroyed and ex-combatants would not be recruited as mercenaries to fight in new conflicts.<sup>59</sup> Attributing the various conflicts in West Africa to the unfinished job of disarming and reintegrating combatants following the end of the first civil war in Liberia, the representative of France stressed that the only long-term solution to the proliferation of small arms and mercenary activities entailed a real disarmament, demobilization and reintegration programme.<sup>60</sup>

With regard to mercenary activities, a number of speakers stressed the importance of observing the spirit and the letter of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the Convention for the Elimination of Mercenarism in Africa adopted by the Organization of African Unity.<sup>61</sup> The representative of the Syrian Arab Republic drew attention to the private military security companies that used well-organized small armies of mercenaries in armed conflicts in Africa to calm the situation and stated that it was wrong to think that such companies could help in managing the affairs of the countries in which they operated.<sup>62</sup> Similarly, the representative of Burkina Faso was concerned that

some Governments were using mercenaries to deal with internal rebellions and crisis situations.<sup>63</sup> The representative of Benin called for a United Nations convention for dismantling the official mercenary companies and agencies specializing in the provision of military services.<sup>64</sup> The representative of Liberia alleged in that regard that mercenaries from a Liberian rebel group were fighting for the Government of Côte d'Ivoire to gain access to and open a second front along the Liberian-Ivorian border.<sup>65</sup> In protest, the representative of Côte d'Ivoire stressed that instead of fighting alongside the Ivorian national army, the Liberian mercenaries were indeed part of the aggressors against his country.<sup>66</sup>

Finally, several speakers underlined the need to address the root causes of armed conflicts that incited demand for weapons, including poverty and bad governance,<sup>67</sup> while others drew special attention to the urgent issue of child soldiers in West Africa.<sup>68</sup>

At the meeting, the President (Guinea) drew the attention of the Council to a draft resolution;<sup>69</sup> it was then put to the vote and adopted unanimously as resolution 1467 (2003), by which the Council decided to adopt a declaration, annexed to the resolution, on the item entitled "Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa".

<sup>59</sup> S/PV.4720, p. 14 (Gambia); p. 16 (Angola); p. 18 (Liberia); p. 20 (Spain); p. 24 (Senegal); and p. 25 (United States); S/PV.4720 (Resumption 1), p. 3 (Togo); p. 6 (Russian Federation); p. 7 (Mexico); p. 20 (Niger); p. 21 (China); p. 22 (Sierra Leone); p. 23 (Pakistan); and p. 24 (Nigeria).

<sup>60</sup> S/PV.4720 (Resumption 1), p. 12.

<sup>61</sup> S/PV.4720, p. 17 (Cameroon); and pp. 23-24 (Senegal); S/PV.4720 (Resumption 1), p. 4 (Togo); p. 5 (Russian Federation); and p. 10 (Burkina Faso).

<sup>62</sup> S/PV.4720 (Resumption 1), p. 16.

<sup>63</sup> *Ibid.*, p. 10.

<sup>64</sup> *Ibid.*, p. 8.

<sup>65</sup> S/PV.4720, p. 18.

<sup>66</sup> S/PV.4720 (Resumption 1), pp. 26-27.

<sup>67</sup> S/PV.4720, p. 26 (Germany); S/PV.4720 (Resumption 1), p. 9 (Benin); p. 19 (Niger); p. 21 (China); and p. 28 (Guinea).

<sup>68</sup> S/PV.4720, p. 13 (Gambia); p. 20 (Spain); and p. 27 (Germany); S/PV.4720 (Resumption 1), p. 14 (Chile).

<sup>69</sup> S/2003/328.

### 43. Role of the Security Council in the prevention of armed conflicts

#### **Decision of 20 July 2000 (4174th meeting): statement by the President**

At the 4174th meeting of the Security Council, on 20 July 2000,<sup>1</sup> statements were made by all members of the Council<sup>2</sup> and the Secretary-General, the representatives of Austria (in his capacity as Chair in Office of the Organization for Security and Cooperation in Europe), Brazil, Colombia, Indonesia, Japan, Kenya, Norway, Pakistan, the Republic of Korea, Rwanda, Senegal, Uganda and the United Republic of Tanzania and the Permanent Observer of the Organization of the Islamic Conference to the United Nations.<sup>3</sup>

Opening the discussion, the Secretary-General noted that there was a consensus that prevention strategies should address the root causes of conflicts and not simply their violent symptoms. Describing conflict prevention as multidimensional, he stated that, to be effective, prevention needed to address the structural faults that predisposed a society to conflict, and that the best form of long-term conflict prevention was represented by healthy and balanced economic development. Recalling that peace and development constituted two great responsibilities of the United Nations, the Secretary-General stated that the latter had a special role to play. Recalling the various initiatives that he had undertaken since taking office, the Secretary-General pointed out that any type of work in post-conflict peacebuilding constituted prevention,

since it was designed to prevent the resurgence of conflict. Noting recent indications that the Council itself was also taking prevention more seriously, he suggested that the Council undertake a number of steps, including making greater use of fact-finding missions; encouraging States to bring potential conflicts to the attention of the Council; setting up an informal working group or a subsidiary body to study early warning and prevention; holding periodic meetings at the ministerial level to discuss thematic or actual prevention issues, as provided for in Article 28 of the Charter of the United Nations; working more closely with the other principal organs of the United Nations, particularly the General Assembly, the Economic and Social Council in accordance with Article 65 of the Charter, and the International Court of Justice in accordance with Article 96 of the Charter; and examining ways of interacting more closely with non-State actors with expertise and experience in conflict prevention. The Secretary-General urged the Council to agree on the most practical ideas and act upon them. He observed that prevention was costly, but stressed that intervention, relief and rebuilding broken societies and lives cost far more. He hoped that Member States would acknowledge that the international community could also play a constructive role in internal situations, and that this could strengthen sovereignty rather than weaken it, and called upon Member States to give the existing institutions working on conflict prevention the backing they urgently needed. Finally, the Secretary-General called for prevention to be made the cornerstone of collective security in the twenty-first century, a direction that would be achieved not by grand gestures or short-term thinking, but by changing deeply ingrained attitudes.<sup>4</sup>

In the ensuing discussion, the majority of speakers, inter alia, acknowledged that the prevention of armed conflict was less costly than dealing with conflicts once they had erupted, from the human, political, economic and financial perspectives; agreed with the Secretary-General on the importance of shifting from a culture of reaction to a culture of prevention; indicated that it was important to focus on the resolution of the root causes, including through

<sup>1</sup> For more information on the discussion at the meeting, see chap. X, part III, sect. C, with regard to the role of the Secretary-General in the pacific settlement of disputes; chap. X, part IV, with regard to the relevance of the provisions of Chapter VI of the Charter to conflict prevention; and chap. XII, part III, sect. A, with regard to the provisions of Chapter VIII of the Charter.

<sup>2</sup> Namibia and Jamaica were represented by their Ministers for Foreign Affairs. The representative of France made a statement on behalf of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>3</sup> The President of the Council (Jamaica) also acknowledged the presence of the President of the General Assembly, who did not make a statement at the meeting.

<sup>4</sup> S/PV.4174, pp. 2-4.

social and economic development, if conflicts were to be prevented in the first place or prevented from re-emerging; and emphasized the importance of post-conflict peacebuilding efforts aimed at preventing the recurrence of conflicts. A number of speakers underscored the need to improve the tools and means to prevent conflict, including, for instance, by strengthening the early-warning capacities of the Secretariat and encouraging the Council to conduct early missions to conflict areas;<sup>5</sup> recalled the critical role that the Secretary-General could play in making conflict prevention a more effective strategy;<sup>6</sup> and explicitly invoking Article 99 of the Charter, emphasized the importance of the role of the Secretary-General in using that prerogative.<sup>7</sup>

A number of representatives stressed that conflict prevention should be pursued with due regard to the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States.<sup>8</sup> The representative of the Netherlands observed that while the Charter was geared towards inter-State conflict, the overwhelming majority of conflicts were of an internal nature. He therefore opined that the Council needed a more flexible interpretation of Article 2(7) of the Charter to be able to take the necessary action in the face of conflicts.<sup>9</sup>

Several speakers recognized the important role that regional organizations and arrangements played in the prevention of armed conflicts and expressed support for stronger cooperation with regional organizations.<sup>10</sup> While commenting on the increasingly important role played by regional organizations in the maintenance of

peace and security and conflict prevention, in line with their mandate under Chapter VIII of the Charter, the representatives of China and Namibia recalled that intervention by regional organizations needed to be undertaken with the authorization of the Council, as provided for by Article 53 of the Charter.<sup>11</sup>

The President then made a statement on behalf of the Council,<sup>12</sup> by which the Council, *inter alia*:

Reaffirmed its belief that early warning, preventive diplomacy, preventive deployment, preventive disarmament, and post-conflict peacebuilding were interdependent and complementary components of a comprehensive conflict-prevention strategy; emphasized its continuing commitment to addressing the prevention of armed conflicts in all regions of the world;

Reaffirmed the importance of its consideration of all situations that might deteriorate into armed conflicts, and of considering follow-up action, as appropriate; expressed continued willingness to consider the use of Council missions, with the consent of host countries, in order to determine whether any dispute, or any situation that might lead to international friction or give rise to a dispute, was likely to endanger the maintenance of international peace and security, and to make recommendations for action by the Council, as appropriate;

Invited the Secretary-General to submit to the Council, by May 2001, a report containing an analysis, and recommendations on initiatives within the United Nations.

#### **Decision of 30 August 2001 (4360th meeting): resolution 1366 (2001)**

At its 4334th meeting, on 21 June 2001,<sup>13</sup> the Council included in its agenda the report of the Secretary-General dated 7 June 2001 on the prevention of armed conflict.<sup>14</sup> In the report, the Secretary-General recalled that conflict prevention was one of the primary obligations of Member States set forth in the Charter. Adding that United Nations efforts in conflict prevention must be in conformity with the purposes and principles of the Charter, he emphasized that conflict prevention was an activity best undertaken

<sup>5</sup> *Ibid.*, p. 11 (Russian Federation); p. 16 (Malaysia); and pp. 27-28 (France); S/PV.4174 (Resumption 1), pp. 4-5 (Pakistan); and p. 10 (Senegal).

<sup>6</sup> S/PV.4174, p. 4 (United States); p. 6 (United Kingdom); p. 11 (the Netherlands); p. 14 (Tunisia); pp. 15-16 (Malaysia); and p. 27 (France); S/PV.4174 (Resumption 1), pp. 7-8 (Brazil); and p. 11 (Indonesia).

<sup>7</sup> S/PV.4174, p. 13 (China); p. 14 (Tunisia); p. 16 (Malaysia); p. 22 (Ukraine); and p. 27 (France); S/PV.4174 (Resumption 1), p. 5 (Pakistan); and p. 10 (Senegal).

<sup>8</sup> S/PV.4174, p. 10 (Russian Federation); p. 13 (China); p. 15 (Tunisia); and p. 16 (Malaysia); S/PV.4174 (Resumption 1), p. 4 (Pakistan).

<sup>9</sup> S/PV.4174, p. 11.

<sup>10</sup> S/PV.4174, p. 5 (United States); pp. 6-7 (United Kingdom); p. 11 (Russian Federation); p. 14 (Tunisia); p. 21 (Canada); p. 23 (Ukraine); and p. 27 (France); S/PV.4174 (Resumption 1), p. 16 (Kenya).

<sup>11</sup> S/PV.4174, p. 13 (China); and p. 18 (Namibia).

<sup>12</sup> S/PRST/2000/25.

<sup>13</sup> For more information on the discussion at the meeting, see chap. X, part III, sect. C, with regard to the role of the Secretary-General in the peaceful settlement of disputes; chap. X, part IV, with regard to the relevance of the provisions of Chapter VI of the Charter to conflict prevention; and chap. XII, part II, case 13, with regard to the provisions of Articles 24 and 25 of the Charter.

<sup>14</sup> S/2001/574 and Corr.1.

under Chapter VI of the Charter, while certain measures under Chapter VII of the Charter, such as sanctions, could have an important deterrent effect. However, the Secretary-General stressed that the primary responsibility for conflict prevention rested with national Governments, with the United Nations and the international community supporting national efforts for conflict prevention and assisting in building national capacity in that field. According to the Secretary-General, preventive action should be initiated at the earliest possible stage of a conflict cycle. As an effective preventive strategy it required a comprehensive approach encompassing both short- and long-term political, diplomatic, humanitarian, human rights, developmental, institutional and other measures taken by the international community, in cooperation with national and regional actors. In particular, he pointed out that one of the principal aims of preventive action should be to address the deep-rooted and structural causes that often underlay the immediate political symptoms of conflicts, and that conflict prevention and sustainable and equitable development were mutually reinforcing activities. Finally, the Secretary-General emphasized the clear need for introducing a coordinated and consistent conflict prevention element into the United Nations system's multifaceted development programmes and activities, recognizing at the same time that effective preventive action by the United Nations required sustained political will on the part of Member States.

At the meeting, statements were made by all members of the Council, the representatives of Argentina, Belarus, Brazil, Canada, Costa Rica, Egypt, India, Indonesia, Iraq, Japan, Malaysia, Mexico, Nepal, Nigeria, Pakistan, the Republic of Korea, South Africa and Sweden (on behalf of the European Union<sup>15</sup>), the Permanent Observer of Palestine to the United Nations and the Deputy Secretary-General.

In her introductory statement, the Deputy Secretary-General reiterated the need to intensify efforts in order to move from a culture of reaction to a culture of prevention, recalling the principles proposed by the Secretary-General in his report to guide future approaches to conflict prevention. Noting that effective conflict prevention required both national and

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<sup>15</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

international political will, she stressed the high cost of conflict and conflict intervention, maintaining that conflict prevention was the most desirable and cost-effective approach for maintaining peace. Regarding possible ways for the Secretary-General to enhance his traditional preventive role, she recalled four possible options: first, increasing the use of United Nations interdisciplinary fact-finding and confidence-building missions to volatile regions; second, developing regional prevention strategies with regional partners and appropriate United Nations organs and agencies; third, establishing an informal network of eminent persons for conflict prevention; and fourth, improving the capacity and resource base for preventive action in the Secretariat.<sup>16</sup>

During the discussion, speakers generally acknowledged that Chapter VI of the Charter provided important instruments for conflict prevention and expressed support for the recommendation of the Secretary-General encouraging Member States and the Council to make more active use of preventive deployments before the onset of conflict, as appropriate; endorsed the Secretary-General's pledge to move the United Nations from a culture of reaction to a culture of prevention; underlined the need for a multidimensional approach to conflict prevention, including the repatriation of refugees, restrictions on the proliferation of small arms and both short- and long-term development assistance to affected States; emphasized the need to address the root causes of conflicts; endorsed the Secretary-General's premise that the primary responsibility for conflict prevention rested with national Governments; stressed the need for a variety of actors, such as the Security Council, the General Assembly, the Secretary-General, the Economic and Social Council and other United Nations organs as well as regional organizations to take the lead in coordinating preventive responses to incipient conflicts, and underlined the importance of the role of regional organizations, non-governmental organizations, civil society and the private sector in the area of conflict prevention; expressed support for enhancing the role of the Secretary-General in conflict prevention, under Article 99 of the Charter; and supported the proposal of the Secretary-General to dispatch fact-finding missions to potential conflict areas, with the aim of working out comprehensive prevention strategies.

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<sup>16</sup> S/PV.4334, pp. 2-4.

At the 4360th meeting, on 30 August 2001, the President (Colombia) drew the attention of the Council to a draft resolution;<sup>17</sup> it was put to the vote and adopted unanimously as resolution 1366 (2001), by which the Council, *inter alia*:

Called upon all Member States to ensure timely and faithful implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted on 20 July 2001, and to take all necessary measures at national, regional and global levels to prevent and combat the illicit flow of small arms and light weapons in areas of conflict;

<sup>17</sup> S/2001/828.

Decided to consider inclusion as appropriate, of a disarmament, demobilization and reintegration component in the mandates of United Nations peacekeeping and peacebuilding operations, with particular attention to the rehabilitation of child soldiers;

Endorsed the call of the Secretary-General for support to the follow-up processes launched by the Third and Fourth High-level United Nations regional organizations meetings in the field of conflict prevention and peacebuilding, and to provide increased resources for the development of regional capacities in those fields;

Called for the enhancement of the capacity for conflict prevention of regional organizations, in particular in Africa, by extending international assistance to, *inter alia*, the Organization of African Unity and its successor organization, through its Mechanism for Conflict Prevention, Management and Resolution, as well as to the Economic Community of West African States and its Mechanism for Prevention, Management and Resolution of Conflicts, Peacekeeping and Security.

## **44. Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones**

### **Initial proceedings**

#### **Decision of 9 February 2000 (4100th meeting): statement by the President**

At its 4100th meeting, on 9 February 2000, the Security Council included in its agenda the item entitled "Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones". The Council heard briefings by the Deputy Secretary-General, the Executive Director of the World Food Programme, and the Permanent Observer of the International Committee of the Red Cross (ICRC) to the United Nations. All Council members and the representatives of Australia, Belarus, Brazil, Egypt, Japan, New Zealand, Norway, Portugal, the Republic of Korea, Singapore, Slovenia, South Africa and Uruguay made statements during the meeting.

The Deputy Secretary-General outlined a number of concrete steps to better safeguard the security of United Nations personnel, namely, to strengthen the capacity of the Office of the United Nations Security Coordinator; to ensure that missions were adequately staffed and equipped; and to promote security training. She also emphasized the need for better coordination

between United Nations actors and other humanitarian organizations in the same location. To achieve those objectives, she highlighted the need for proper and reliable funding and called for responses to the inter-agency consolidated appeals launched for 2000, as well as for contributions to the Trust Fund for Security of personnel of the United Nations. Calling on Member States to do more, she suggested that, first, those who had not done so should sign and ratify the Convention on the Safety of United Nations and Associated Personnel of 9 December 1994; second, they should consider extending the scope of the Convention to cover categories of personnel who fell outside its protective regime; third, they should take steps to speed up ratification of the Statute of the International Criminal Court; and fourth, they should assist in investigating and bringing to justice perpetrators of acts of violence against United Nations and associated personnel.<sup>1</sup>

The Executive Director of the World Food Programme drew attention to the growing numbers of

<sup>1</sup> S/PV.4100, pp. 2-5.

civilian staff of United Nations agencies who had been the victims of violence since 1992. The situation was exacerbated, she noted, by the increasing use of hunger as a weapon of war, resulting in attacks on humanitarian workers delivering food aid. She called for security training for all United Nations staff required to work in insecure environments, enhancement of the United Nations Security Coordinator's role and the establishment of a clearing house for security information. Stressing the importance of maintaining the humanitarian principles of impartiality in all crises, she urged, on behalf of all United Nations agencies, that the Council consider the safety of humanitarian aid workers when taking decisions.<sup>2</sup>

The Permanent Observer of the International Committee of the Red Cross emphasized that the protection of humanitarian personnel was linked to a number of legal and operational tools. In addition to the vast body of international law relevant to such protection and the implementation and respect for this law, she highlighted that the modalities of humanitarian action could have a decisive effect on the security of humanitarian personnel. In particular, humanitarian action must be conducted neutrally, impartially and independently, with a view to fostering relations of trust with parties to the conflict as a key factor for the security of humanitarian personnel, an approach that had led ICRC to be extremely prudent in taking measures of armed protection for its personnel. She reiterated that ICRC remained firmly convinced that humanitarian action must be clearly distinguished from the use of force.<sup>3</sup>

Citing statistics on fallen victims and attacks against United Nations and associated personnel, almost all speakers condemned those acts of violence. They echoed the four suggestions made by the Deputy Secretary-General to Member States and, in particular with regard to her third and fourth suggestions, they affirmed that an end must be put to the culture of impunity and underlined the need to strengthen international legal mechanisms. They also expressed keen interest in receiving the follow-up report of the Secretary-General envisaged for May containing analysis and proposals to address the scope of legal protection under the Convention.

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<sup>2</sup> Ibid., pp. 5-7.

<sup>3</sup> S/PV.4100 (Resumption 1), pp. 2-3.

Some speakers drew attention to important contributions to the body of international legal protection of the United Nations and relief personnel. Two primary developments highlighted in that respect were the entry into force of the Convention on the Safety of United Nations and Associated Personnel, and the inclusion of attacks on United Nations and associated personnel as a category of war crimes under the Rome Statute of the International Criminal Court.<sup>4</sup>

The representative of France stressed that the Council was increasingly attentive to the elements of mission mandates and rules of engagement that made it possible effectively to protect the security and freedom of movement of United Nations and associated personnel.<sup>5</sup>

While many speakers noted that the responsibility for the safety and security of United Nations and associated personnel lay with the host Government, the representative of China, echoed by the representative of Namibia, stressed that those personnel should abide by international law and the principles of the Charter of the United Nations, as well as the laws of the host country.<sup>6</sup> In a similar vein, the representative of Egypt emphasized that such personnel should also respect local traditions and culture when carrying out their duties.<sup>7</sup>

The President (Argentina) then made a statement<sup>8</sup> on behalf of the Council, by which the Council, *inter alia*:

Concerned at continued attacks against United Nations and associated personnel, and humanitarian personnel, which are in violation of international law, including international humanitarian law;

Expressed the view that improving the security of United Nations and associated personnel, and humanitarian personnel, may require, *inter alia*, the development and strengthening of all aspects of the current safety and security regime in place, as well as the

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<sup>4</sup> S/PV.4100 p. 9 (Canada); pp. 12-13 (Russian Federation); p. 14 (Jamaica); p. 16 (Mali); p. 17 (Malaysia); p. 19 (Namibia); p. 20 (Tunisia); p. 21 (Ukraine); p. 23 (Argentina); p. 24 (Belarus); p. 26 (Japan); p. 29 (Republic of Korea); p. 30 (Egypt); and p. 31 (Portugal on behalf of the European Union); S/PV.4100 (Resumption 1), p. 7 (Australia); p. 8 (Slovenia); p. 9 (New Zealand); and p. 10 (Norway).

<sup>5</sup> S/PV.4100, p. 10.

<sup>6</sup> Ibid., pp. 7-8 (China) and pp. 18-19 (Namibia).

<sup>7</sup> Ibid., p. 30.

<sup>8</sup> S/PRST/2000/4.

adoption of effective action to address the impunity of those who commit crimes against such personnel;

Underlined the importance of including in each status-of-forces agreement and status-of-missions agreement specific and practical measures based on the provisions of the Convention on the Safety of United Nations and Associated Personnel.

**Decision of 26 August 2003 (4814th meeting): resolution 1502 (2003)**

At the 4814th meeting, on 26 August 2003, the President (Syrian Arab Republic) drew the attention of the Council to a draft resolution.<sup>9</sup> The Secretary-General and the representatives of the United States and Mexico made statements during the meeting.<sup>10</sup>

While expressing strong support for the draft resolution, the Secretary-General recalled the vicious attack against United Nations Headquarters in Baghdad one week earlier that had brought the issue in question to the forefront of United Nations priorities. He urged Member States in whose territories attacks against United Nations personnel had been committed to take practical and effective steps to investigate and prosecute those responsible, and urged Member States that had not yet done so to accede to the Convention on the Safety of United Nations and Associated Personnel. He stated that the adoption of the resolution would send an unambiguous message to all those who mistakenly believed that, in today's turbulent world, they could advance their cause by targeting the servants of humanity.<sup>11</sup>

The draft resolution was then put to the vote, and

<sup>9</sup> S/2003/581.

<sup>10</sup> S/PV.4814, pp. 2-4.

<sup>11</sup> *Ibid.*, p. 2.

was unanimously adopted as resolution 1502 (2003), by which the Council, *inter alia*:

Expressed its strong condemnation of all forms of violence, including, *inter alia*, murder, rape and sexual assault, intimidation, armed robbery, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention, to which those participating in humanitarian operations are increasingly exposed, as well as attacks on humanitarian convoys and acts of destruction and looting of their property.

Following the vote, the representative of the United States made a statement highlighting the importance of humanitarian personnel and United Nations and associated personnel and the need to protect them. He noted that the resolution focused on the prevention of attacks against such personnel and on the accountability of those who committed such acts. The resolution, he further remarked, did not create any new international obligations, but rather reaffirmed the existing obligations of the parties to a conflict to comply fully with the relevant rules.<sup>12</sup>

The representative of Mexico stated that the resolution was intended to send a clear and unequivocal message that the Council and the United Nations as a whole were committed to carrying out concrete actions leading to the creation of a better framework of protection for humanitarian workers. He expressed regret that the text did not mention the International Criminal Court and the Rome Statute, noting, however, that given the purpose of the resolution and the vital importance of its unanimous adoption, the sponsors felt justified in reaching the difficult decisions made during the negotiation process.<sup>13</sup>

<sup>12</sup> *Ibid.*, p. 3.

<sup>13</sup> *Ibid.*, pp. 3-4.

## 45. General issues relating to sanctions

**Deliberations of 17 April 2000 to 25 February 2003 (4128th, 4394th and 4713th meetings)**

At its 4128th meeting, on 17 April 2000,<sup>1</sup> the Security Council included in its agenda the item

<sup>1</sup> For more information on the discussion of this meeting, see chap. XI, part III, sect. B, with regard to the use of measures not involving the use of armed forces in accordance with Article 41 of the Charter; and chap. XI, part VIII, sect. B, with regard to the special economic problems of the nature described in Article 50 of the Charter.

entitled "General issues relating to sanctions". At the meeting, statements were made by all members of the Council,<sup>2</sup> the representatives of Australia, Bulgaria, Cuba, Germany, Iraq, Italy, the Libyan Arab Jamahiriya, New Zealand, Pakistan, Portugal (on behalf of the European Union<sup>3</sup>), Sweden, the former

<sup>2</sup> Canada was represented by its Minister for Foreign Affairs.

<sup>3</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.



Yugoslav Republic of Macedonia and Turkey, the Permanent Observer of Switzerland to the United Nations and the Under-Secretary-General for Political Affairs.

The President (Canada) drew the attention of the Council to a note by the President dated 17 April 2000, by which the members of the Council decided to establish on a temporary basis an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions.<sup>4</sup>

In his opening remarks, the Under-Secretary-General for Political Affairs noted that while in recent years sanctions imposed by the Council had become a primary tool of peace enforcement, difficulties in their implementation, as well as the unintended consequences on civilian populations and on neighbouring or third States, had raised doubts about their effectiveness and made it imperative to consider improvements in their design. Properly targeted sanctions, he stressed, could play a major role in inducing compliance with resolutions of the Council and serve as a preventive measure while mitigating unintended consequences. Recalling that in order to make its contribution to the concept of “smart” sanctions the Secretariat had undertaken a review of lessons learned from recent sanctions regimes, he emphasized the need to protect vulnerable segments of the population of a State, while better targeting the sanctions to enhance their effectiveness. He added that sanctions regimes should be equipped with a credible monitoring mechanism, possibly in cooperation with regional or subregional organizations, and that the Secretariat should be provided with the resources and specialized expertise to administer the sanctions regimes effectively; in addition, the Council and its sanctions committees should be in a position to have available to them, when required, a comprehensive impact assessment of any given sanctions regime. With regard to the need to minimize the negative effects of sanctions, the Under-Secretary-General said that the Council should consider including provisions for humanitarian exemptions in its relevant resolutions, and the establishment of an appropriate mechanism providing the Council with periodic evaluations of the effectiveness of sanctions and their humanitarian, socio-economic and political impact. He also invited

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<sup>4</sup> S/2000/319.

the Council to consider including in its resolutions provisions to address the impact of sanctions on non-targeted States and mitigate the concerns deriving from Article 50 of the Charter of the United Nations. He added that greater clarity and uniformity of language and technical terminology in Council resolutions would be helpful, combined with the inclusion in resolutions of specific criteria for the lifting or suspension of sanctions. Although national authorities bore the responsibility for enforcing sanctions measures imposed by the Council, he noted that Member States often required advice and assistance in carrying out such a responsibility. He concluded by stating that sanctions could be effective only if the United Nations and its Member States were prepared to shoulder additional responsibilities and develop the necessary capacity to assure their monitoring and enforcement.<sup>5</sup>

During the debate, speakers generally acknowledged that the time had come to carry out an analytical review of the existing policy and practices in the field of sanctions, in order to address issues related to their design, management and effectiveness; welcomed the establishment of a working group of the Council for developing recommendations on how to improve the effectiveness of sanctions; recognized that sanctions remained a necessary and important instrument in the hands of the Council; expressed concern over the potential negative humanitarian impact of sanctions on the civilian population of a targeted country as well as the adverse economic effects on third States, and welcomed the trend towards the adoption of more targeted sanctions; and emphasized the need to improve the management and effectiveness of sanctions.

In connection with the general purpose of sanctions, many speakers emphasized that sanctions should be employed as an option for ensuring compliance only after all other peaceful options had been exhausted, while others noted that sanctions should not be an end in themselves but a means to an end. Concerning the concept of targeted sanctions, the vast majority of speakers shared the view that sanctions should be better targeted against those responsible for the sanctioned behaviour to ensure more effective compliance with Council decisions and prevent the harming of civilians. In addition, several delegations stated that the impact of sanctions on third

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<sup>5</sup> S/PV.4128, pp. 2-5.

States should be carefully considered, in line with the provisions of Article 50 of the Charter.<sup>6</sup>

In regard to the criteria for imposing and terminating sanctions, a number of speakers observed that sanctions should be imposed only when the Council had clearly established a threat to or a breach of the peace.<sup>7</sup> The representative of the United States noted the need for sanctions regimes to be carefully tailored to fit the particular situation in which they were to be applied, as well as targeted and enforceable in order to be effective in forcing behavioural change. He observed that once sanctions were imposed, the burden of proof for their suspension or termination resided in the demonstrated behaviour of the sanctioned entity and remarked that sanctions should not be terminated due to a lack of resolve, a lack of will or a lack of patience.<sup>8</sup> Several representatives insisted that sanctions should have a clearly defined purpose and should have objective criteria for their suspension or termination.<sup>9</sup> Further, some delegations underlined the importance of a fixed duration whenever sanctions were imposed,<sup>10</sup> while others advocated the use of more unified and precise terminology in resolutions relating to sanctions to enhance harmonized national implementation.<sup>11</sup>

With regard to the implementation of sanctions, the majority of speakers called for more effective implementation and monitoring of sanctions regimes and agreed on the need to enhance capacities to implement and monitor sanctions at the national, regional, and international levels. Some delegations expressed the view that the provision of adequate resources for administration and implementation was a vital prerequisite for effective sanctions regimes, and

in particular called for an enhancement of the capacity of the Secretariat in providing support to the sanctions committees.<sup>12</sup> Other delegations stressed that Member States should be assisted in the implementation and enforcement of sanctions, including in the areas of national legislation, monitoring and enforcement.<sup>13</sup>

At the 4394th meeting,<sup>14</sup> on 25 October 2001, statements were made by the majority of Council members,<sup>15</sup> the representatives of Germany and Sweden,<sup>16</sup> the Permanent Observer of Switzerland and the Assistant Secretary-General for Political Affairs.

At the outset, the Council heard briefings by the Permanent Observer of Switzerland and the representatives of Germany and Sweden, respectively.

The Permanent Observer of Switzerland, welcoming the concept of targeted sanctions, and particularly that of targeted financial sanctions, referred to the key results of the Interlaken process, which had focused on the question of the feasibility of such sanctions. Emphasizing that one of the essential preconditions to making targeted financial sanctions more effective was the ability to define the target clearly, including the effective identification of the actual economic beneficiary of assets, he noted that financial sanctions were likely to be most effective when considered as part of a broader coordinated political and diplomatic strategy.<sup>17</sup>

The representative of Germany focused his remarks on the results of the Bonn-Berlin process, designed to introduce targeted sanctions with respect to arms embargoes and travel bans. Observing that targeted sanctions required regular reviews to determine their effectiveness and consequences, he stated that even the most precise resolutions imposing

<sup>6</sup> Ibid., p. 11 (Namibia); p. 14 (Malaysia); p. 19 (Tunisia); p. 23 (Russian Federation); p. 25 (Canada); p. 29 (Pakistan); pp. 35-36 (Bulgaria); p. 42 (Iraq); p. 44 (the former Yugoslav Republic of Macedonia); and p. 45 (Turkey).

<sup>7</sup> Ibid., pp. 7-9 (France); pp. 13-15 (Malaysia); pp. 23-24 (Russian Federation); pp. 30-31 (Libyan Arab Jamahiriya); and pp. 38-39 (Cuba).

<sup>8</sup> Ibid., pp. 6-7.

<sup>9</sup> Ibid., p. 9 (France); p. 11 (Namibia); p. 12 (China); p. 16 (Argentina); p. 19 (Tunisia); p. 22 (Jamaica); p. 23 (Russian Federation); p. 30 (Pakistan); and p. 39 (Cuba).

<sup>10</sup> Ibid., p. 9 (France); p. 14 (Malaysia); p. 20 (Mali); and p. 23 (Russian Federation).

<sup>11</sup> Ibid., p. 16 (Argentina); p. 27 (Portugal); and p. 40 (Permanent Observer of Switzerland).

<sup>12</sup> Ibid., p. 8 (France); p. 11 (Namibia); p. 15 (Malaysia); p. 17 (Argentina); p. 17 (Netherlands); p. 19 (Ukraine); p. 20 (Tunisia); p. 22 (Jamaica); p. 25 (Canada); and p. 27 (Portugal).

<sup>13</sup> Ibid., p. 5 (Bangladesh); p. 18 (Netherlands); p. 19 (Tunisia); p. 22 (Jamaica); and p. 34 (Australia).

<sup>14</sup> For more information on the discussion at this meeting, see chap. XI, part III, sect. B, with regard to measures not involving the use of armed force in accordance with Article 41 of the Charter.

<sup>15</sup> The representatives of Bangladesh and Ireland did not make statements at the meeting.

<sup>16</sup> Sweden was represented by its State Secretary for Foreign Affairs.

<sup>17</sup> S/PV.4394, pp. 2-4.

sanctions might fail should some Member States lack the political will to implement them.<sup>18</sup>

Recognizing that the Interlaken and Bonn-Berlin processes had shown that more could be done to develop the concept and practice of targeted sanctions, the representative of Sweden announced that his Government intended to continue that work through the Stockholm Process in the Implementation of Targeted Sanctions, which would focus, *inter alia*, on how to achieve more coherent and effective incorporation of Security Council resolutions into national legislation and how to assist Member States in implementing sanctions, including through technical and financial support.<sup>19</sup>

Highlighting the importance of the Interlaken and Bonn-Berlin processes, the Assistant Secretary-General for Political Affairs welcomed the decision of the Government of Sweden to lead the process forward. Noting that, if sanctions were to be a useful tool at the disposal of the Council, a constructive dialogue on their implementation and monitoring was essential, he stated that pragmatic solutions should be found to the difficulties of monitoring sanctions regimes. Although the task of effective implementation and monitoring of sanctions fell primarily on Member States, he noted that the latter often lacked the necessary capacity and required assistance in that regard. He therefore proposed that assistance be provided to Member States by an augmented United Nations Secretariat as well as by the competent regional organizations. He also expressed the view that the establishment of a permanent sanctions monitoring mechanism might allow more systematic follow-up on violations of sanctions regimes and enable better cooperation in their implementation. Underscoring that targeted sanctions could also have important deterrent and preventive roles, he urged the Council to consider the use of sanctions in that context in the future. In conclusion, he expressed the view that enhanced substantive support to the sanctions committees, which would include more technical expertise and enhanced analytical capacity, required the commitment of adequate resources.<sup>20</sup>

In the ensuing discussion, expressing their continuing support for the concept of targeted and

closely monitored sanctions, speakers supported the results of the Interlaken and Bonn-Berlin processes, which would provide a valuable tool for the Council in formulating future sanctions regimes, aimed at avoiding the negative consequences for the general population and third countries; and welcomed the decision of the Government of Sweden to carry forward the results of the Interlaken and Bonn-Berlin processes through the Stockholm Process. With regard to ways to improve the monitoring and implementation of sanctions, the representative of France advocated the establishment of a permanent mechanism for monitoring sanctions, available to both the Council and the sanctions committees, which would allow for a greater synergy of approach between the different subjects and crises, particularly in Africa where several situations were interconnected.<sup>21</sup> On the same issue, other representatives welcomed further work on the proposal to establish a permanent unit charged with monitoring the effectiveness of sanctions regimes.<sup>22</sup> Finally, a number of speakers encouraged the Council to adopt, without further delay, the draft report produced by the Working Group on General Issues of Sanctions, maintaining that the recommendations contained in that report, together with those comprising the outcome of the Interlaken and Bonn-Berlin processes, provided the necessary tools for ensuring better implementation of the Council's current and future sanctions measures.<sup>23</sup>

At the 4713th meeting, on 25 February 2003,<sup>24</sup> statements were made by all Council members, the representative of Sweden<sup>25</sup> and the Assistant Secretary-General for Political Affairs.

Presenting to the Council the results of the Stockholm Process, the representative of Sweden noted that the main goal had been to increase the efficiency

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<sup>21</sup> S/PV.4394, pp. 8-9.

<sup>22</sup> S/PV.4394, p. 10 (Ukraine); S/PV.4395 (Resumption 1) and Corr.1, p. 4 (United Kingdom); p. 5 (Norway); p. 6 (Mauritius); and p. 7 (Colombia).

<sup>23</sup> S/PV.4394, p. 8 (France); and p. 10 (Ukraine); S/PV.4395 (Resumption 1) and Corr.1, p. 3 (Jamaica); p. 7 (Colombia); p. 8 (Mali); p. 10 (Tunisia); and p. 11 (China).

<sup>24</sup> For more information the discussion of this meeting, see chap. XI, part III, sect. B, with regard to use of measures not involving the use of armed force in accordance with Article 41 of the Charter.

<sup>25</sup> Sweden was represented by its State Secretary for Foreign Affairs.

<sup>18</sup> *Ibid.*, pp. 4-5.

<sup>19</sup> *Ibid.*, pp. 5-6.

<sup>20</sup> *Ibid.*, pp. 6-8.

of targeted sanctions by reforming and improving their implementation, both within the United Nations system and among Member States, while also minimizing unintentional negative consequences. In particular, he added that one specific priority had been to identify measures to enhance planning, monitoring, reporting and coordination among sanctions committees and monitoring bodies. Noting that the report had made numerous suggestions in that regard, he recalled a few recommendations which included, *inter alia*, the establishment of a sanctions coordinator to further improve and support greater cooperation among sanctions entities, and the development of legal frameworks for implementation of sanctions.<sup>26</sup>

The Assistant Secretary-General for Political Affairs noted that the Stockholm Process had drawn attention to some pitfalls related to the implementation of sanctions. He encouraged the Council to take into account the findings of the Stockholm Process when conducting sanctions reviews or when considering future application of the targeted sanctions instrument. He also expressed the hope that work would continue, particularly in the areas that remained to be addressed, such as improving coordination among all relevant actors; enhancing coordination among different expert groups; optimizing the design and use of sanctions lists; and studying ways by which to probe the deterrent value of targeted Council sanctions and their integration into an overall strategy for preventive diplomacy.<sup>27</sup>

In the ensuing discussion, members of the Council generally acknowledged and welcomed the contribution made by the Stockholm Process in the development of more refined approaches to the use of sanctions, building on the findings of the Interlaken and Bonn-Berlin processes. Reiterating that comprehensive sanctions had at times led to unintended negative consequences for the civilian population of the targeted country and third countries, Council members concurred that targeted sanctions were a good means of minimizing such occurrences. Members of the Council also agreed that care should be exercised in the decision to apply sanctions and in their actual design, with the majority of them noting that new sanctions regimes should have a built-in monitoring process to regularly assess the political and

humanitarian impact of sanctions. The representative of Bulgaria supported the introduction of a preliminary comprehensive assessment, which would help to focus targeted sanctions on responsible decision makers while minimizing unintended side effects, and the representatives of China, the Russian Federation, France and Pakistan urged the Council to undertake a humanitarian impact assessment of measures.<sup>28</sup> With regard to the termination of sanctions, some speakers called attention to the need for an exit strategy to be built into the design of sanctions regimes, endorsing the notion of time-bound sanctions.<sup>29</sup> The representative of the Syrian Arab Republic underlined the need for sanctions to be lifted immediately, once compliance was verified, while the representative of Pakistan held that provisions should be made to ease sanctions in response to partial compliance.<sup>30</sup> Expressing another view, the representative of the United States contended that sanctions measures should be tied directly to the change in policy and behaviour of targeted actors, rather than artificially linking the duration of sanctions to an arbitrary time limit.<sup>31</sup>

With regard to the monitoring of sanctions regimes, the majority of members of the Council agreed that monitoring mechanisms and expert groups were among the most important tools available to the Council to implement sanctions. The representatives of China and the Russian Federation drew particular attention to the monitoring mechanism applied to the sanctions regime against the União Nacional para a Independência Total de Angola (UNITA), arguing that it might serve as a model for other circumstances.<sup>32</sup> The representative of Germany held that the very existence of monitoring mechanisms, such as in the case of measures against UNITA, had served as a deterrent for those involved in sanctions breaking, and at the same time, an early-warning instrument against disproportionate collateral damage.<sup>33</sup> The representatives of France and the United Kingdom expressed satisfaction that the conclusions of the Stockholm Process accorded with the proposal for a

<sup>26</sup> S/PV.4713, pp. 2-3.

<sup>27</sup> *Ibid.*, pp. 3-5.

<sup>28</sup> *Ibid.*, p. 5 (Bulgaria); p. 7 (China); p. 8 (France); p. 14 (Russian Federation); and p. 16 (Pakistan).

<sup>29</sup> *Ibid.*, p. 7 (China); p. 8 (France); p. 13 (Syrian Arab Republic); and p. 15 (Pakistan).

<sup>30</sup> *Ibid.*, p. 13 (Syrian Arab Republic); and p. 15 (Pakistan).

<sup>31</sup> *Ibid.*, p. 11.

<sup>32</sup> *Ibid.*, p. 7 (China); and p. 14 (Russian Federation).

<sup>33</sup> *Ibid.*, p. 20.

semi-permanent monitoring mechanism for the implementation of targeted sanctions.<sup>34</sup> Along similar lines, other members called for the establishment of an autonomous uniform mechanism for the monitoring of sanctions within the Secretariat. For instance, the representative of the United States recommended that the Secretariat establish an informal system that would document and categorize the relevant findings and recommendations of the various expert groups in order to generate commonalities, as well as reduce overlap and increase efficiency.<sup>35</sup> The representatives of France and Chile maintained that the idea of setting up a United Nations special coordinator for sanctions merited close attention.<sup>36</sup>

Several speakers drew attention to the importance of coordination in the implementation of sanctions. The representative of Bulgaria, echoed by the representatives of Guinea and Mexico, advocated regular coordination between the sanctions committees, including through the holding of joint meetings, aimed at ensuring consistency and continuity among them and

avoiding duplication.<sup>37</sup> The representative of China called for greater communication and coordination among sanctions committees, monitoring mechanisms and expert bodies, while the representative of Guinea encouraged regular consultation and cooperation between the Secretariat and the sanctions committees on the one hand, and interested international, regional and subregional organization, on the other.<sup>38</sup> The representative of Mexico also stressed the importance of improving coordination between sanctions committees and other actors, including humanitarian agencies, international and local non-governmental organizations.<sup>39</sup>

Finally, a number of speakers called for an enhancement of the capacity of the Secretariat in supporting the implementation of sanctions,<sup>40</sup> while others called for the provision of adequate financial resources to Member States lacking in resources.<sup>41</sup>

<sup>34</sup> Ibid., p. 8 (France); and p. 12 (United Kingdom).

<sup>35</sup> Ibid., p. 10.

<sup>36</sup> Ibid., p. 8 (France); and p. 12 (Chile).

<sup>37</sup> Ibid., p. 6 (Bulgaria); p. 9 (Guinea); and p. 18 (Mexico).

<sup>38</sup> Ibid., p. 7 (China); and p. 9 (Guinea).

<sup>39</sup> Ibid., p. 18.

<sup>40</sup> Ibid., p. 8 (France); and p. 19 (Mexico).

<sup>41</sup> Ibid., p. 9 (Guinea); pp. 13-14 (Syrian Arab Republic); and p. 19 (Mexico).

## 46. Women and peace and security

### Initial proceedings

#### **Decision of 31 October 2000 (4213th meeting): resolution 1325 (2000)**

At its 4208th meeting, on 24 October 2000, the Security Council included in its agenda the item entitled “Women and peace and security”. At the meeting, the Council heard briefings by the Secretary-General, the Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women, and the Executive Director of the United Nations Development Fund for Women (UNIFEM), following which statements were made by all members of the Council<sup>1</sup> and the representatives of Australia, Belarus, Botswana, Croatia, Cyprus, the Democratic

Republic of the Congo, Egypt, Ethiopia, Guatemala, India, Indonesia, Japan, Liechtenstein, Malawi, Mozambique, Nepal, New Zealand (on behalf of the Pacific Islands Forum), Norway, Pakistan, the Republic of Korea, Rwanda, Singapore, South Africa, the United Arab Emirates, the United Republic of Tanzania and Zimbabwe.

The Secretary-General observed that the United Nations was making special efforts to recruit more women for its peacekeeping and peacemaking missions, and to make all its operations more aware of gender issues. He recognized that women were still grossly underrepresented at the decision-making level, from conflict prevention to conflict resolution to post-conflict reconciliation. He asked the Council to help ensure that women and girls in conflict situations were protected, that perpetrators of violence against women in conflict were brought to justice and that women

<sup>1</sup> The representative of France made a statement on behalf of the European Union: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

were able to take their rightful and equal place at the decision-making table on questions of peace and security.<sup>2</sup>

The Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women suggested that women needed to be part of all stages of the peace negotiations, in planning for the future, in rebuilding and in crafting preventive strategies to avoid conflict. Reporting on the results of a three-year study on mainstreaming a gender perspective in multidimensional peace operations, she explained that, having at least 30 per cent women in a mission, empowered local women and fostered confidence and trust among the local population, among other benefits. Noting that women at the local level were also a rich resource, she recognized that capacity-building for leadership and governance led by the United Nations Development Programme and UNIFEM had greatly facilitated women's ability to play constructive roles. She called for, *inter alia*, the integration of gender considerations into the mandate of missions and the guidelines for special representatives; the establishment of gender units on mission sites and in the Department of Peacekeeping Operations; and greater efforts to ensure the appointment of women as special representatives. Finally, she emphasized that without the equal and fair participation of women in decision-making positions in the United Nations and also in Member States as well as in the Council, the international community would never achieve the vision outlined in the Charter of the United Nations.<sup>3</sup>

The Executive Director of the United Nations Development Fund for Women informed Council members about the efforts of UNIFEM to leverage political, financial and technical support for women to participate in peacebuilding. She maintained that during the transition to peace, a unique opportunity existed to put in place a gender-responsive framework for a country's development. She expressed concern about, *inter alia*, the inadequate protection of and humanitarian assistance for women; and the failure of political settlements to protect women's rights. She pointed out the need to examine every aspect of the consequences of conflict for women to guide future action. Therefore, she recommended that the Council, *inter alia*, ensure that human rights observation and

verification and peacekeeping operations focus on gender-based violations and women's human rights; call for the training of all peacekeeping personnel in their responsibilities to women and children; elaborate a code of conduct for peacekeeping personnel and establish clear reporting requirements on sexual violence in a peacekeeping environment; ensure that field operations take special measures to protect women and girls from rape and other forms of sexual violence; and ensure that peacebuilding elements of an operation were gender-sensitive.<sup>4</sup>

In their statements, representatives expressed appreciation for the leading role played by UNIFEM and the other United Nations bodies and agencies to protect and secure peace and security for women and girls, and supported the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations. Delegations welcomed the International Criminal Court definition of such crimes as rape, sexual torture, forced impregnation and sexual slavery as war crimes. A few representatives also expressed the view that gender issues were not sufficiently covered in the report of the Panel on United Nations Peace Operations (Brahimi report).<sup>5</sup>

Many representatives expressed concern about the exploitation and targeting of women and girls as a strategic weapon of war; nevertheless, they warned against seeing women and girls only as victims of conflicts and not as participants. Most speakers stressed the need to ensure women's representation at all levels of the decision-making process, including preventive diplomacy, peacekeeping and peacebuilding. Therefore, they called upon Member States to present for consideration qualified women for appointment at high levels.

In addition, many delegations advocated, *inter alia*, ending impunity for sexual and gender-based violence in situations of conflict; respect for international humanitarian and human rights law; mainstreaming of a gender perspective in all multidimensional operations; appropriate training and sensitization of personnel on gender issues; including a gender unit in all peacekeeping missions; greater representation of women as Special Representatives of the Secretary-General, Special Envoys and

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<sup>2</sup> S/PV.4208, pp. 2-3.

<sup>3</sup> *Ibid.*, pp. 3-6.

<sup>4</sup> *Ibid.*, pp. 6-9.

<sup>5</sup> S/2000/809.

ambassadors to the United Nations; a roster of qualified women; and recognition of women as peace educators.

The representative of the United States highlighted that as the international community moved forward, it needed to take care that its efforts to further empower women in no way disadvantaged men. The international community needed to strive for equality, not special treatment and develop concrete initiatives in support of the promises already made.<sup>6</sup> The representative of Bangladesh insisted on avoiding tokenism and suggested that the international community needed to aim not only for visibility in the representation of women, but for representation that was wider and more effective.<sup>7</sup> The representative of Indonesia recalled that an important step taken at the Fourth World Conference on Women in Beijing in 1995 was to stress that women's involvement in decision-making was not only a question of quotas for women, but a process that also entailed increased gender sensitivity in general.<sup>8</sup> In the same vein, the representative of Nepal remarked that a gender-based quota as a quick fix made sense, but in the long run it was the quality that sustained the gains of women, not the quota.<sup>9</sup>

At the 4213th meeting, on 31 October 2000, the President (Namibia) drew the attention of the Council to a draft resolution;<sup>10</sup> it was put to the vote and adopted unanimously as resolution 1325 (2000), by which the Council, *inter alia*:

Urged Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions for the prevention, management, and resolution of conflict;

Encouraged the Secretary-General to implement his strategic plan of action for the improvement of the status of women in the Secretariat;<sup>11</sup>

Urged the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf;

Also urged the Secretary-General to seek to expand the role of women in United Nations field-based operations;

Requested the Secretary-General to provide to Member States training guidelines on the protection, rights and the particular needs of women;

Urged Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts;

Called upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians;

Also called upon all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse;

Invited the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peacebuilding and the gender dimensions of peace processes and conflict resolution.

**Decision of 31 October 2001 (4402nd meeting):  
statement by the President**

At the 4402nd meeting, on 31 October 2001, the President (Ireland) made a statement on behalf of the Council,<sup>12</sup> by which the Council, *inter alia*:

Reaffirmed its strong support for increasing the role of women in decision-making with regard to conflict prevention and resolution and renewed its call on States to include women in the negotiations and implementation of peace accords, constitutions and strategies for resettlement and rebuilding, and to take measures to support local women's groups and indigenous processes for conflict resolution;

Underscored the importance of promoting an active and visible policy of mainstreaming a gender perspective in all policies and programmes while addressing armed conflicts, in particular peacekeeping operations;

Renewed its support for gender-sensitive training guidelines and material on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures; called upon all troop-contributing countries to include those elements in their national training programmes for peacekeepers;

Welcomed the specific proposals made by the Secretary-General aimed at strengthening the Best Practices Unit of the Department of Peacekeeping Operations through the appointment of gender advisers at sufficiently senior levels;

Urged the Secretary-General to appoint women as Special Representatives and Special Envoys to pursue good offices on his behalf, in accordance with his strategic plan of action.

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<sup>6</sup> S/PV.4208, p. 14.

<sup>7</sup> *Ibid.*, p. 20.

<sup>8</sup> S/PV.4208 (Resumption 1), p. 24.

<sup>9</sup> S/PV.4208 (Resumption 2), p. 11.

<sup>10</sup> S/2000/1044.

<sup>11</sup> See A/49/587 and Corr.1.

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<sup>12</sup> S/PRST/2001/31.

**Decision of 31 October 2002 (4641st meeting):  
statement by the President**

At its 4589th meeting, on 25 July 2002, the Council heard briefings by the Under-Secretary-General for Peacekeeping Operations, the Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women, and the Executive Director of UNIFEM, following which statements were made by all members of the Council and the representatives of Australia, Canada, Chile, Denmark (on behalf of the European Union<sup>13</sup>), Grenada, Jamaica, Japan, Liechtenstein, New Zealand, Nigeria and the Republic of Korea.

The Under-Secretary-General for Peacekeeping Operations observed that gender mainstreaming in peacekeeping was about recognizing that all segments of society were affected by conflict, sometimes in different ways, and that all segments of society also had a role to play in helping to end the violence and lay the foundation for sustainable peace. He recognized that the international community had wrongly assumed that conflict and peace were gender-blind, which they were not. He detailed the progress made by the Department in implementing resolution 1325 (2000), particularly in the areas of addressing gender-based violence; responding to trafficking in women and children; incorporating gender perspectives into the process of disarmament, demobilization and reintegration of refugees and displaced persons; facilitating the participation of women in constitutional and electoral reform and civil administration; and combating the spread of HIV/AIDS. Finally, he reiterated that the Council maintained a zero-tolerance policy on the engagement of peacekeepers in acts of sexual exploitation, harassment, and trafficking of women and girls.<sup>14</sup>

The Assistant Secretary-General and Special Adviser on Gender Issues and Advancement of Women pointed out that the main conclusion of the Secretary-General's study on women, peace and security mandated by resolution 1325 (2000), which was still under preparation, was that sustainable peace and lasting security could not be achieved without women's

empowerment and full involvement. She also highlighted that the challenges shown by the study were the lack of political will to recognize women as equal partners and insufficient understanding of how to translate gender equality into policies or adapt best practices. She also mentioned some of the study's recommendations, inter alia, the need for the full support of the Council for the incorporation of a gender perspective in peace and humanitarian operations; the establishment of gender advisers in all missions; the inclusion in the missions' budgets of the necessary financial resources for gender-related programmes; and the maintenance of a database of civil society organizations.<sup>15</sup>

The Executive Director of UNIFEM informed Council members that she had appointed two independent experts to carry out a global, field-based assessment of the impact of armed conflict on women and of women's role in peacebuilding. In advance of the release of the report, she shared with the Council the principal findings and recommendations, inter alia, the inclusion of women in disarmament, demobilization and reintegration programmes; the establishment of quotas for women in peace processes; and stronger investigative and disciplinary mechanisms to support the Secretary-General's call for zero tolerance for violations by United Nations personnel.<sup>16</sup>

Most of the delegations acknowledged resolution 1325 (2000) as a determining factor for strengthening the place of women in actions by the Council, and encouraged the Council to ensure its full implementation. They commended, inter alia, the Department's progress in implementing resolution 1325 (2000); the work of UNIFEM; and the positive developments in international humanitarian law, including the International Criminal Court definition of rape and other forms of sexual violence as war crimes and crimes against humanity.

Several representatives spoke in favour of the United Nations zero-tolerance policy towards sexual exploitation by United Nations personnel and called for a code of conduct and the implementation of a disciplinary mechanism for sexual violence. Some delegations supported, inter alia, the need to ensure the integration of gender perspective throughout the United Nations; more involvement of women at all

<sup>13</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>14</sup> S/PV.4589, and Corr.1, pp. 3-5.

<sup>15</sup> *Ibid.*, pp. 5-6.

<sup>16</sup> *Ibid.*, pp. 6-8 and 13.



stages and all levels in peace operations, including more women appointed as Special Representative and Special Envoy of the Secretary-General; the establishment of a senior gender adviser in the Department of Peacekeeping Operations; closer collaboration with non-governmental organizations and the elimination of the root causes of conflicts. A number of speakers underlined that during conflict women were often both victims and perpetrators of violence, and that approaches needed to take that into account.

At its 4635th meeting, on 28 October 2002, the Council included in its agenda the report of the Secretary-General on women and peace and security.<sup>17</sup> In the report, the Secretary-General observed that despite positive efforts undertaken, gender perspectives were still not systematically incorporated into all activities related to peace and security. He recognized that much remained to be done to ensure that the existing frameworks and the recommendations in Council resolution 1325 (2000) were fully implemented. He recalled that sustainable peace would not be achieved without the full and equal participation of women and men. Finally, he recommended, *inter alia*, recognizing the extent of the violations of the human rights of women and girls during armed conflict; ensuring that amnesty provisions excluded impunity from all war crimes, crimes against humanity and genocide, including gender-based crimes; ensuring consultation with women's groups and networks; integrating gender perspectives into Council missions and the mandates of all peacekeeping missions; disaggregating data collected in research, assessments and appraisals by sex and age; ensuring necessary financial and human resources for gender mainstreaming; and developing clear strategies and action plans on the incorporation of gender perspectives in disarmament, demobilization and reintegration programmes.

At the same meeting, the Council heard a briefing by the Secretary-General, following which statements were made by the President of the Economic and Social Council, all members of the Council, and the representatives of Australia, Austria (on behalf of the Human Security Network<sup>18</sup>), Bangladesh, Canada,

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<sup>17</sup> S/2002/1154.

<sup>18</sup> Members of the Network include Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Slovenia, Switzerland and Thailand; South Africa

Chile, Denmark (on behalf of the European Union<sup>19</sup>), Egypt, Fiji (on behalf of the Pacific Islands Forum group), India, Indonesia, Jamaica, Japan, Liechtenstein, Morocco, Namibia, New Zealand, Pakistan, the Philippines, the Republic of Korea, South Africa and Venezuela.<sup>20</sup>

The Secretary-General stressed that if women suffered the impact of conflict disproportionately, they were also the key to the solution of conflict. He underlined the importance of, *inter alia*, greater representation of women in formal peace negotiations; more women's appointments at the highest levels of decision-making; a stronger response to the sexual exploitation of women and girls; and extensive capacity-building so that more women could play their full part in the many activities that support peace.<sup>21</sup>

In their statements, representatives endorsed the Secretary-General's recommendations and conclusions and asked for, *inter alia*, full implementation and regular and frequent follow-up of the provisions contained in resolution 1325 (2000); regular contacts between United Nations organs and women's organizations; a plan that prioritized the recommendations in the report for future action; adequate resources in support of gender issues; and a gender-based approach in the administration of international justice as well as a fair representation of female judges in the International Criminal Court. Many representatives commended the efforts of the Department of Peacekeeping Operations in implementing resolution 1325 (2000) and noted the successful experience of including a gender adviser in several peacekeeping missions, as well as the Secretary-General's intention of setting concrete targets to appoint women as his special representatives and special envoys, with a view to gender parity by 2015.

The representative of the United Kingdom pointed out that one element that was in the report was the need to place United Nations work on women, peace and security within the broader humanitarian framework. He also argued that the United Nations

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participates as an observer.

<sup>19</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>20</sup> The Officer-in-Charge of the Office of the Special Adviser on Gender Issues and Advancement of Women was invited to participate in the discussion but did not make a statement.

<sup>21</sup> S/PV.4635, pp. 2-4.

system should operate in cross-cutting ways that integrated that work into programmes on the ground.<sup>22</sup> The representative of Denmark, speaking on behalf of the European Union, pointed out the lack of reference in the report to the Secretary-General's bulletin on the observance by United Nations forces of international humanitarian law,<sup>23</sup> which included some valid gender paragraphs, and expressed the view that all United Nations-mandated military operations should operate in accordance with the bulletin.<sup>24</sup>

The representative of Venezuela regretted that the International Research and Training Institute for the Advancement of Women, despite its being the only United Nations organ that had a specific mandate to address gender issues and the training of women, had not been consulted in the elaboration of the report of the Secretary-General.<sup>25</sup>

The representative of India affirmed that while there had been calls for gender balance in the composition of peacekeeping forces, his delegation had some doubts about the overall desirability of such a move.<sup>26</sup>

At its 4641st meeting, on 31 October 2002, the Council again included in its agenda the report of the Secretary-General on women and peace and security.<sup>27</sup>

At the same meeting, the President (Cameroon) made a statement on behalf of the Council,<sup>28</sup> by which the Council, *inter alia*:

Remained concerned about the slow progress in the appointment of women as special representatives and envoys of the Secretary-General and urged him to increase the number of women serving as high-level representatives to achieve the overall goal of gender balance; also urged Member States to continue to provide candidates for inclusion in a database;

Reaffirmed the importance of gender mainstreaming in peacekeeping operations and post-conflict reconstruction;

Requested the Secretary-General to establish a database of gender specialists;

Encouraged, *inter alia*, Member States, the entities of the United Nations system and civil society to develop clear strategies and action plans on the integration of gender perspectives in

humanitarian operations, rehabilitation and reconstruction programmes;

Deplored the continuing occurrence of sexual exploitation, including trafficking, of women and girls;

Condemned all violations of the human rights of women and girls in situations of armed conflict.

### **Deliberations of 29 October 2003 (4852nd meeting)**

At its 4852nd meeting, on 29 October 2003, the Council heard briefings by the Under-Secretary-General for Peacekeeping Operations and the Senior Gender Adviser of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), following which statements were made by all members of the Council and the representatives of Australia, Azerbaijan, Bangladesh, Canada, Colombia, Croatia, the Democratic Republic of the Congo, Fiji (on behalf of the Pacific Islands Forum), Iceland, India, Indonesia, Italy (on behalf of the European Union<sup>29</sup>), Japan, Liechtenstein, the Netherlands, Norway, the Philippines, the Republic of Korea, South Africa, Timor-Leste, Ukraine and the United Republic of Tanzania.<sup>30</sup>

The Under-Secretary-General for Peacekeeping Operations informed Council members of the efforts of the Department of Peacekeeping Operations in five main areas that were highlighted in resolution 1325 (2000): increasing the number of women in peacekeeping operations; integrating a gender perspective into peacekeeping operations; training in gender awareness and HIV/AIDS issues; strengthening discipline for peacekeeping personnel; and combating trafficking in human beings. He thanked Member States for having approved the post of Gender Adviser, based at Headquarters, which had been filled temporarily. He pointed out that the Department had provided all missions with an updated set of disciplinary directives, which covered the issue of sexual abuse and exploitation as well as other types of

<sup>29</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>30</sup> The representative of Egypt was invited to participate in the discussion, but did not make a statement. At the meeting, Fiji and Germany were represented by their respective Ministers for Foreign Affairs, and the Netherlands by its Minister for Development and Cooperation.

<sup>22</sup> *Ibid.*, pp. 18-19.

<sup>23</sup> ST/SGB/1999/13.

<sup>24</sup> S/PV.4635, p. 24.

<sup>25</sup> S/PV.4635 (Resumption 1), p. 20.

<sup>26</sup> *Ibid.*, p. 23.

<sup>27</sup> S/2002/1154.

<sup>28</sup> S/PRST/2002/32.

serious misconduct. Finally, noting the grave allegations of sexual abuse by humanitarian workers and peacekeepers and the efforts made by the Department in improving its procedures, he recalled that personnel contributed for service in a peacekeeping operation were required to abide by the highest standards of integrity while in service for the United Nations.<sup>31</sup>

The Senior Gender Adviser of MONUC briefed Council members in detail about the Gender Unit of MONUC. She highlighted the ways in which the Gender Unit had facilitated the implementation of the Mission's mandate through such activities as training and research, communication and dissemination of gender-sensitive information, outreach to the Congolese population, capacity-building for women leaders and advocacy, monitoring and evaluation of women's participation in the peace and transition processes. Finally, she presented several priority action points, including the appropriate staffing of gender units, and the need for troop- and police-contributing countries to ensure a substantial proportion of women among personnel recruited for peacekeeping operations.<sup>32</sup>

Most speakers observed progress towards implementing resolution 1325 (2000), including the new post of Gender Adviser within the Department of

Peacekeeping Operations, but agreed that much remained to be done. Therefore, they advocated, *inter alia*, the integration of gender perspectives into the analysis, decisions and new mandates of the Council, and the inclusion of information on the situation of women in the reports of the Secretary-General; the development of effective monitoring mechanisms to enable more systematic control of implementation; and the proposal, by Member States, of more women as candidates for posts and the appointment of more women as Special Representatives and Special Envoys of the Secretary-General. Many speakers recognized the important role of non-governmental organizations in women's participation and empowerment in conflicts, including the dissemination of resolution 1325 (2000). Several speakers welcomed the bulletin on special measures for protection from sexual exploitation and abuse developed by the United Nations system.

The representative of Mexico opined that a new resolution would serve to update and supplement resolution 1325 (2000) and keep the attention of the Council and the attention of the membership of the United Nations at large focused on the issue.<sup>33</sup>

The representative of South Africa recommended that the international community consider establishing centres of excellence to train women for leadership positions in peacekeeping operations.<sup>34</sup>

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<sup>31</sup> S/PV.4852, pp. 3-6.

<sup>32</sup> *Ibid.*, pp. 6-9.

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<sup>33</sup> *Ibid.*, p. 19.

<sup>34</sup> S/PV.4852 (Resumption 1), p. 5.

## 47. Items relating to peacekeeping

### A. No exit without strategy

#### Initial proceedings

##### **Deliberations of 15 November 2000 (4223rd meeting)**

In a letter dated 6 November 2000 addressed to the Secretary-General,<sup>1</sup> the representative of the Netherlands referred to the report of the Panel on United Nations Peace Operations (the Brahimi report)<sup>2</sup> and related discussions, which showed the importance

that Member States placed on improving peace operations. He noted that the Security Council was often faced with the decision on whether to extend, modify or terminate a peace operation. However, there had been cases in which the Council had decided to end a mission or reduce its military component only to have the situations remain unstable or deteriorate, which would seem to contradict the Council's mandate as contained in the Charter of the United Nations that it should work towards a self-sustaining peace, or at least

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<sup>1</sup> S/2000/1072.

<sup>2</sup> S/2000/809.

a durable absence of violence. By his letter, he also transmitted a paper, in preparation for an open debate of the Council on peacekeeping operations to be organized by the Netherlands, which elaborated on the issues of mission closure and transition, and included three short case studies, on Mozambique, Liberia and Haiti.

At its 4223rd meeting, held on 15 November 2000, the Council included in its agenda the item entitled “No exit without strategy”, as well as the above-mentioned letter. At the same meeting, the Council heard statements by all members of the Council, and the representatives of Australia, Austria, Belarus, Croatia, Denmark, Egypt, Finland, Germany, India, Indonesia, Ireland, Italy, Norway, Pakistan, the Philippines, Portugal, Rwanda, Singapore, Slovakia, South Africa and Thailand.

In his introduction, the President (Netherlands) stated that he expected to hear suggestions for improvements in a variety of fields such as analysis and planning, political will, commitment and leadership, and resources and funding. However, he acknowledged that a realistic discussion needed to take into account that there could never be a guarantee that a peace operation would reach conditions that allowed for an orderly transition to post-conflict peacebuilding. He stressed that it was therefore important to look at how the United Nations could limit the damage caused by early termination of a peace operation.

In their statements, representatives touched on a wide variety of issues, including the definition of “exit strategy”, which should not mean a hasty departure from a strategically stated goal; the need to base any exit strategy on objectives to be attained, rather than pre-established timetables; the need to adequately consult troop-contributing countries and ensure adequate resources; the need to pay more attention to underlying causes when the Council was seized with a conflict; the need for clear and appropriate mandates; the importance of demobilization, disarmament and reintegration efforts; and the importance of a transitional mechanism to the peacebuilding phase followed by a long-term commitment.

During the course of the debate, speakers referred to a number of peacekeeping missions, including the United Nations Mission in the Central African Republic; the United Nations Transitional Administration for Eastern Slavonia, Baranja and

Western Sirmium; the United Nations Transitional Authority in Cambodia; the United Nations Operation in Mozambique; the United Nations Organization Mission in the Democratic Republic of the Congo; the United Nations Assistance Mission for Rwanda; and the United Nations Transitional Administration in East Timor.

Many representatives stressed the importance of coordination with other organs of the United Nations, and with the International Monetary Fund and World Bank. The representatives of Bangladesh and Canada also stressed the role of responsible non-governmental organizations.<sup>3</sup> In addition, the representative of Bangladesh proposed the establishment of an institutional mechanism of cooperation and coordination among all relevant actors.<sup>4</sup>

Most of the representatives agreed that the Council needed to improve its performance in terminating peacekeeping operations. However, the representative of the United Kingdom pointed out that none of the Council members had answered the question of how to improve the Council’s performance. He stressed three essential things to improve the Council’s performance: the necessity of a specific, strategic analysis capability to be present in the Secretariat; the need for consultation among the wider membership, particularly with troop contributors or potential troop contributors, to assure a broader understanding of the mandate; and, in regard to implementation, the necessity of better planning, higher speed, better coordination and all the things that were outlined in the Brahimi report.<sup>5</sup>

The representative of Namibia, Egypt and Pakistan questioned whether the Council was too selective in the termination of peacekeeping operations and pointed out that the Council needed to look at each situation objectively, not in terms of individual Council members’ national interests.<sup>6</sup> However, the representative of the United Kingdom replied that the question of whether the Council was too selective had to be looked at politically; that in talking about exit strategies, the Council was talking about strategy.<sup>7</sup>

<sup>3</sup> S/PV.4223, p. 9 (Bangladesh); and p. 10 (Canada).

<sup>4</sup> *Ibid.*, p. 9.

<sup>5</sup> *Ibid.*, pp. 23-24.

<sup>6</sup> *Ibid.* p. 18 (Namibia); S/PV.4223 (Resumption 1), p. 13 (Egypt); and p. 21 (Pakistan).

<sup>7</sup> S/PV.4223. p. 23.

The representatives of France, Canada, Germany and the United Kingdom stressed that the Council needed to build into its thinking, particularly in connection with mandates, an awareness of the possible need for change, with the representatives of France and the United Kingdom highlighting the fact that clear objectives for a peacekeeping operation were not always possible.<sup>8</sup> Similarly, the representative of Denmark suggested that a mandate should not inappropriately limit the Secretary-General's ability to shape and adjust the operation or mission to take account of evolving circumstances.<sup>9</sup>

The representative of Egypt stated that the Council should not resort to exerting political pressure on any side by hinting at terminating an operation, reducing an operation or resorting to any method of political pressure that would serve the political interests of one or more States in the Council without paying attention to the interests of the host State or region in which the operation was conducted, not to mention the interests of the members of the society

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<sup>8</sup> *Ibid.*, p. 6-7 (France); p. 11 (Canada); and pp. 23-24 (United Kingdom); S/PV.4223 (Resumption 1), p. 3 (Germany).

<sup>9</sup> S/PV.4223 (Resumption 1), p. 18.

hosting the operation.<sup>10</sup>

The representative of India emphasized that successful peacekeeping could be carried out only by countries that were neutral and had no interests of their own to pursue. He continued that there was also renewed confusion over what peacekeeping was. While the Council's humanitarian impulse was natural, conducting humanitarian relief through peacekeeping undermined both. Moreover, the delegate recalled that there was a gap between emergency relief and long-term development and reconstruction programmes, and, during that gap, societies could unravel again and conflicts resume.<sup>11</sup>

The representative of Argentina noted that even in conventional armed conflicts, the conflict might remain latent, and the mission might be given a stabilization function that could lead to a syndrome in which the parties became dependent on the peacekeeping operation, thereby making it more difficult for the Council to take the decision to put an end to it.<sup>12</sup>

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<sup>10</sup> *Ibid.*, p. 13.

<sup>11</sup> *Ibid.*, pp. 23-25.

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

## **B. Strengthening cooperation with troop-contributing countries**

### **Decision of 31 January 2001 (4270th meeting): statement by the President**

At its 4257th meeting,<sup>13</sup> on 16 January 2001, the Security Council included in its agenda a letter dated 8 January 2001 from the representative of Singapore addressed to the Secretary-General, announcing the organization of an open debate on strengthening cooperation with troop-contributing countries, and

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<sup>13</sup> For more information on the discussion at this meeting, see chap. I, part V, case 9, with regard to special cases concerning the application of rules 27-36; chap. VI, part IV, sect. A, case 20, with regard to practice in relation to the election of members of the International Court of Justice; and chap. XI, part V: sect. B, with regard to the discussion relating to Article 43 of the Charter; sect. D, with regard to the discussion relating to Article 44; and sect. F, with regard to the discussion relating to Articles 46-47.

enclosing background papers and suggesting some specific questions for discussion.<sup>14</sup>

At the meeting, the Council was briefed by the Deputy Secretary-General. Statements were made by all Council members<sup>15</sup> and the representatives of Argentina, Australia, Bulgaria, Canada, Egypt, Fiji, India, Japan, Jordan, Malaysia, Nepal, New Zealand, Nigeria, Pakistan, Poland, the Republic of Korea, Romania, Senegal, South Africa, Sweden (on behalf of the European Union<sup>16</sup>) and Zambia.

In his introductory statement, the President (Singapore) stressed that the success of peacekeeping operations depended on a healthy triangular

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<sup>14</sup> S/2001/21.

<sup>15</sup> Singapore was represented by its Minister for Foreign Affairs.

<sup>16</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

relationship between the Council, the Secretariat and troop-contributing countries. He suggested a number of issues to be addressed, such as identifying the key problems in the relations between the three partners, mechanisms to strengthen the link between the Council and the troop-contributing countries, and ways to improve cooperation between the three partners in addressing peacekeeping problems.<sup>17</sup>

The Deputy Secretary-General stated that closer cooperation between the three partners could help to address commitment gaps in the contribution of troops, failures or shortcomings in operations and problems concerning safety and security. Recognizing the importance of communication between the Secretariat and the troop-contributing countries, she highlighted measures taken by the Secretariat and pledged to explore how that relationship could be strengthened. She pointed out that the need for partnership and close communication was stressed in the report of the Panel on United Nations Peace Operations.<sup>18</sup> She also cited various suggestions made by the Panel, such as improved planning and better articulation of the mandates of peacekeeping missions, the establishment of an on-call list of military and civilian police specialists and the strengthening of standby arrangements. In conclusion, the Deputy Secretary-General emphasized that the strength and promise of peacekeeping lay in its collaborative nature.<sup>19</sup>

Speakers focused on the need to improve the existing consultation mechanism for troop-contributing countries by making it more timely and interactive and providing for a real exchange of views. The representative of Pakistan, echoed by the representative of Nepal, stated that the guidelines laid down in previous Council decisions on consultations with troop-contributing countries<sup>20</sup> had been largely ignored and that the consultations had become ritualistic, convening more out of form than purpose.<sup>21</sup> Similarly, the representative of India observed that, notwithstanding the presidential statements of 1994 and 1996, the meetings with troop-contributing countries had become pro forma and ritualistic and not

an occasion for fruitful deliberations and enabling forming of shared perspectives, as they should be.<sup>22</sup>

A number of representatives argued for broadening participation in consultations to include not only troop-contributing countries but also the countries making contributions of civilians, logistics and equipment, as well as major financial contributors.<sup>23</sup> The representative of Argentina held that other concerned parties, such as the operation's host country and the countries affected in the region, should be included in the discussions.<sup>24</sup> With respect to the timing of consultations, many speakers stressed that the Council should meet with troop-contributing countries prior to establishing a mission's mandate, and also when the Council considered substantive changes to an operation's mandate.<sup>25</sup>

Many speakers noted the existence of a commitment gap with regard to troop contributions, developing countries contributing the majority of the troops deployed in United Nations peacekeeping operations. Some speakers representing troop-contributing countries lamented that the risk burden was uneven, as developing countries were providing the majority of the troops but troop-contributing countries had little voice in decision-making by the Council, and called on Council members and developed States to share the risks of deploying troops in the field.<sup>26</sup> The representative of Mali drew attention to the need to build up trust, which was essential if Member States were to provide the necessary resources and shoulder the risks involved in deploying peacekeepers. That confidence, he stressed, must be based on true partnerships between those who made the decisions and those who implemented them.<sup>27</sup> The representative of the United States emphasized that it would not be wise to blur the responsibilities of the participants in the partnership formed by troop-

<sup>17</sup> S/PV.4257, pp. 2-3.

<sup>18</sup> S/2000/809.

<sup>19</sup> S/PV.4257, pp. 3-4.

<sup>20</sup> See S/PRST/1994/62, S/PRST/1996/13 and resolution 1327 (2000).

<sup>21</sup> S/PV.4257, p. 5 (Pakistan); S/PV.4257 (Resumption 1), p. 28 (Nepal).

<sup>22</sup> S/PV.4257, p. 9.

<sup>23</sup> *Ibid.*, pp. 14-15 (Japan); S/PV.4257 (Resumption 1), p. 8 (Jamaica); and p. 24 (Senegal).

<sup>24</sup> S/PV.4257, pp. 19-20.

<sup>25</sup> *Ibid.*, pp. 9-11 (India); pp. 13-14 (Republic of Korea); p. 16 (Australia); p. 20 (Argentina); p. 24 (Egypt); and p. 31 (Nigeria); S/PV.4257 (Resumption 1), p. 13 (Ireland); p. 19 (Colombia); p. 20 (Mauritius); p. 25 (Poland); and p. 27 (Bulgaria).

<sup>26</sup> S/PV.4257, p. 7 (Jordan); and pp. 24-25 (Egypt); S/PV.4257 (Resumption 1), p. 10 (Bangladesh); and p. 28 (Nepal).

<sup>27</sup> S/PV.4257 (Resumption 1), p. 21.

contributing countries, the Council and the Secretariat, nor hinder Council decision-making.<sup>28</sup>

In responding to the statements made by troop-contributing countries, the representative of China noted that while positive steps had been taken towards improving consultations and cooperation with those countries, there was much room for improvement.<sup>29</sup>

Several representatives called for an institutionalized mechanism to allow for genuine participation by troop-contributing countries.<sup>30</sup> Many speakers pointed out that the best way to achieve a more formalized process of consultations was through the establishment of ad hoc subsidiary organs of the Council, as provided in Article 29 of the Charter.<sup>31</sup> The representative of Pakistan held that such bodies could be mission-specific and based around a core group of troop-contributing countries for each mission.<sup>32</sup> Similarly, the representative of Canada suggested that the Council and troop contributors establish a joint committee for each peace operation.<sup>33</sup> The representative of New Zealand advocated creating a formal committee composed of all Council members and every Member State contributing troops to the peacekeeping operation on the committee's agenda.<sup>34</sup> Stressing the need for a new approach, not simply new procedures, the representative of the United Kingdom reiterated his suggestion to form a working group of the Council to examine overall peacekeeping trends and working methods and play a role in establishing a more direct and proactive relationship between the Council and troop-contributing countries.<sup>35</sup> Several speakers endorsed the creation of such a working group.<sup>36</sup> The representative of the United States noted

that a real partnership between the Council, troop-contributing countries and the Secretariat required a change of mentality, not necessarily new mechanisms, and suggested using existing mechanisms to have more interactive exchanges.<sup>37</sup> Similarly, the representative of France emphasized that what mattered was not so much the formal machinery as the use to which it was put.<sup>38</sup>

Summing up the discussion, the representative of Singapore noted the widespread agreement among speakers that new mechanisms needed to be established, although there were differing views on what form such mechanisms should take. He expressed the hope that the concrete recommendations that had emerged from the discussion could be incorporated into a Council resolution or presidential statement.<sup>39</sup>

At its 4270th meeting, on 31 January 2001, the Council again included in its agenda the letter dated 8 January 2001 from the representative of Singapore addressed to the Secretary-General.<sup>40</sup>

The President (Singapore) made a statement on behalf of the Council,<sup>41</sup> by which the Council, *inter alia*:

Stressed the importance of full implementation of the provisions of resolution 1327 (2000) and in the statements by its President of 3 May 1994 and 28 March 1996;<sup>42</sup>

Stressed the importance of full participation by all those involved and encouraged troop-contributing countries to take the initiative to call for meaningful exchanges of information;

Encouraged the Secretary-General to continue his efforts to improve coordination and cooperation on peacekeeping issues within the United Nations system and the Secretariat;

Encouraged the Secretary-General to raise globally public awareness of the positive contribution of peacekeeping operations;

Acknowledged that the Secretariat must be able to rely on sufficient human and financial resources to respond to the demands placed upon it;

Reiterated that the problem of the commitment gap with regard to personnel and equipment for peacekeeping operations required that all Member States assume the shared responsibility to support United Nations peacekeeping;

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<sup>28</sup> *Ibid.*, p. 2.

<sup>29</sup> *Ibid.*, p. 15.

<sup>30</sup> S/PV.4257, p. 13 (India); p. 14 (Republic of Korea); p. 24 (Egypt); p. 25 (Zambia); p. 28 (Malaysia); and p. 32 (Nigeria); S/PV.4257 (Resumption 1), p. 5 (Tunisia); p. 11 (Ukraine); p. 16 (Norway); and p. 22 (Romania).

<sup>31</sup> S/PV.4257, p. 5 (Pakistan); p. 14 (Republic of Korea); p. 22 (Sweden on behalf of the European Union); p. 27 (New Zealand); p. 28 (Malaysia); and p. 31 (Nigeria); S/PV.4257 (Resumption 1), pp. 9-10 (Bangladesh); p. 16 (Norway); p. 20 (Mauritius); and p. 30 (Nepal).

<sup>32</sup> S/PV.4257, p. 5.

<sup>33</sup> *Ibid.*, p. 23.

<sup>34</sup> *Ibid.*, p. 27.

<sup>35</sup> S/PV.4257 (Resumption 1), p. 4.

<sup>36</sup> *Ibid.*, p. 11 (Ukraine); p. 15 (China); and p. 24 (Senegal).

<sup>37</sup> *Ibid.*, p. 2.

<sup>38</sup> *Ibid.*, p. 18.

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

<sup>40</sup> S/2001/21.

<sup>41</sup> S/PRST/2001/3.

<sup>42</sup> S/PRST/1994/22 and S/PRST/1996/13, respectively.

Acknowledged that the delay in reimbursement placed severe budgetary constraints upon troop-contributing countries; urged all Member States to pay their assessed contributions in full and on time;

Decided to establish a Working Group of the Whole on United Nations peacekeeping operations, which would address both generic peacekeeping issues relevant to the responsibilities of the Council, and technical aspects of individual peacekeeping operations.

**Decision of 13 June 2001 (4326th meeting): resolution 1353 (2001)**

At its 4326th meeting,<sup>43</sup> on 13 June 2001, the Council included in its agenda a letter dated 31 May 2001 from the Chairman of the Security Council Working Group on Peacekeeping Operations addressed to the President of the Council,<sup>44</sup> transmitting the first report of the Working Group, which examined the relationship between the Council, troop-contributing countries and the Secretariat.

At the meeting, at which no statements were made, the President (Bangladesh) drew the attention of the Council to a letter from the representatives of Argentina, Canada, Ghana, India, Jordan, the

<sup>43</sup> For more information on the discussion at this meeting, see chap. VI, part VI, case 20, with regard to relations with the Military Staff Committee.

<sup>44</sup> S/2001/546, submitted pursuant to the presidential statement of 31 January 2001 (S/PRST/2011/3).

Netherlands and New Zealand addressed to the President, providing thoughts on implementing the concept of a mission-specific cooperative management committee as a way of improving cooperation between the Council and troop-contributing countries.<sup>45</sup>

The President also drew the attention of the Council to a draft resolution;<sup>46</sup> it was put to the vote and adopted unanimously and without debate as resolution 1353 (2001), by which the Council, inter alia:

Agreed to adopt the decisions and recommendations contained in the annexes to the resolution;

Requested its Working Group on Peacekeeping Operations to continue its work on strengthening the capacity of the United Nations to establish and support efficient and effective peacekeeping operations;

Undertook to follow closely the implementation of the agreed measures for cooperation with troop-contributing countries, and requested its Working Group to assess within six months of the adoption of the resolution the efficiency and effectiveness of the agreed measures, to consider their further improvement taking into account the proposals of the troop-contributing countries and to report to the Council on those matters.

<sup>45</sup> S/2001/535.

<sup>46</sup> S/2001/573.

## **C. Security Council Working Group on Peacekeeping Operations**

### **Initial proceedings**

**Decision of 14 January 2002 (4447th meeting): note by the President of the Council**

By a letter dated 31 December 2001 addressed to the President of the Security Council, the Chairman of the Security Council Working Group on Peacekeeping Operations transmitted the third report of the Working Group and, annexed to the report, a draft note by the President of the Council on an agreement to convene joint meetings of the Working Group and troop-contributing countries as an additional mechanism for strengthening cooperation with those countries on specific peacekeeping operations.<sup>47</sup>

At its 4447th meeting, held in private on 14 January 2002, the Council considered the above-mentioned report. At the meeting, the Council heard a briefing by Mr. Curtis Ward, the former Chairman of the Working Group. Members of the Council also made comments and asked questions in connection with the briefing. The members of the Council approved a note by the President of the Council.<sup>48</sup>

<sup>47</sup> S/2001/1335.

<sup>48</sup> S/2002/56.



## D. United Nations peacekeeping

### Initial proceedings

#### **Decision of 12 July 2002 (4572nd meeting): resolution 1422 (2002)**

At its 4572nd meeting, on 12 July 2002,<sup>49</sup> the Council included in its agenda the item entitled “United Nations peacekeeping”. The President (United Kingdom) then drew the attention of the Council to a draft resolution;<sup>50</sup> it was put to the vote and adopted unanimously as resolution 1422 (2002), by which the Council, *inter alia*:

Requested that the International Criminal Court, if a case arose involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, should for a 12-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Council decided otherwise;

Expressed the intention to renew the request under the same conditions each 1 July for further 12-month periods for as long as might be necessary;

Decided that Member States should take no action inconsistent with the above-mentioned request and with their international obligations.

#### **Decision of 12 June 2003 (4772nd meeting): resolution 1487 (2003)**

By a letter dated 6 June 2003 addressed to the President of the Council,<sup>51</sup> the representatives of Canada, Jordan, Liechtenstein, New Zealand and Switzerland requested the Council to convene a public meeting and invite interested States to speak in the Council’s discussions on the proposed renewal of the provisions of resolution 1422 (2003). They noted that the proposed renewal of that resolution had implications of direct import to Member States, including those that were parties to the Rome Statute of the International Criminal Court, relating to international peacekeeping, fundamental questions of international law and the role of the Council in promoting law and accountability.

At its 4772nd meeting,<sup>52</sup> held on 12 June 2003, the Council included the above-mentioned letter in its agenda. In addition, the President (Russian Federation) drew the attention of the Council to a letter dated 10 June 2003 from the representative of Greece addressed to the President of the Council,<sup>53</sup> and to a draft resolution.<sup>54</sup> During the meeting, statements were made by most of members of the Council,<sup>55</sup> and the representatives of Argentina, Brazil, Canada, the Democratic Republic of the Congo, Greece (on behalf of the European Union<sup>56</sup>), the Islamic Republic of Iran, Jordan, Liechtenstein, Malawi, the Netherlands, New Zealand, Nigeria, Pakistan, Peru,<sup>57</sup> South Africa, Switzerland, Trinidad and Tobago and Uruguay.<sup>58</sup>

The Secretary-General noted that the Council was meeting to renew its request that the International Criminal Court not commence or proceed if a case arose involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation. Noting that the Council was relying on article 16 of the Rome

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<sup>52</sup> For more information on the discussion at this meeting, see chap. XII, part II, sect. A, case 17, with regard to Article 24 of the Charter; and chap. XI, part I, sect. B, with regard to the discussion relating to Article 39.

<sup>53</sup> S/2003/639, stating that Greece, in its capacity as President of the European Union, strongly supported the request made by the Governments of Canada, Jordan, Liechtenstein, New Zealand and Switzerland to convene a meeting.

<sup>54</sup> S/2003/630.

<sup>55</sup> The representatives of Chile and Mexico did not make statements.

<sup>56</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

<sup>57</sup> The representative of Peru spoke on behalf of the States members of the Rio Group (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Venezuela and Peru).

<sup>58</sup> The representative of Cuba was invited to participate but did not make a statement.

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<sup>49</sup> See also chap. XII, part IV, case 21, with regard to consideration of the miscellaneous provisions of the Charter.

<sup>50</sup> S/2002/747.

<sup>51</sup> S/2003/620.

Statute,<sup>59</sup> he emphasized that the article was not intended to cover such a sweeping request, but only a more specific request relating to a particular situation. In addition, he did not believe the request was necessary for the following reasons: first, in the history of the United Nations, no peacekeeper or any other mission personnel had been anywhere near committing the kinds of crimes that fell under the jurisdiction of the International Criminal Court; second, people serving in United Nations peacekeeping missions remained under the jurisdiction of their home States; and third, under article 17 of the Rome Statute, no case was admissible in the Court if it had already been or was being investigated or prosecuted by a State that had jurisdiction over it. The Secretary-General underlined his belief that, in the case of a person serving in a United Nations authorized mission being accused of the kind of crime under the jurisdiction of the Court, the home State would be most anxious to investigate that accusation, which would make the case inadmissible to the Court. While he could accept that the Council felt that it was necessary to renew the request for a further 12 months, as the Court was still in its infancy and no case had yet been brought before it, he expressed the hope that this would not become an annual routine. He expressed the fear that the world would interpret it as meaning that the Council wished to claim absolute and permanent immunity for people serving in its operations. If that were to happen, it would undermine not only the authority of the Court but also the authority of the Council and the legitimacy of United Nations peacekeeping.<sup>60</sup>

Many speakers expressed the belief that resolution 1422 (2002) and the draft resolution were unnecessary, that they diminished the importance of accountability and justice for victims and that they undermined fundamental principles of international law. Several speakers stressed that Council action was not needed to address the risk of frivolous prosecutions because safeguards to address that risk were already included within the Statute of the International

Criminal Court. They also expressed doubt about the compatibility of the resolutions with the Council's mandate and were troubled that action would be taken in the absence of any apparent threat to international peace and security, which was the fundamental precondition for action under Chapter VII of the Charter. They also stressed that it was a misapplication of article 16 of the Rome Statute, which was never intended as a tool to grant a priori immunity to a whole category of persons.<sup>61</sup>

The representative of the Islamic Republic of Iran also expressed concern that, given the existing safeguards in the Statute of the International Criminal Court, as well as the very responsible statement that had been made by various officers of the Court, the insistence on extending the provision of the resolution indefinitely would amount to seeking impunity for more serious crimes, including genocide, crimes against humanity and war crimes. He also recalled that resolution 1422 (2002) was adopted only after the extension of the mandate of the United Nations mission in Bosnia and Herzegovina, along with those of other missions, had been threatened with a veto.<sup>62</sup>

The representative of Uruguay stated that resolution 1422 (2002) introduced a curious kind of discrimination among perpetrators of the most hateful crimes: on the one hand there were criminals who might be judged or sentenced for their crimes, and on the other hand those who might act under the protection of immunity.<sup>63</sup>

Several speakers noted that the maintenance of international peace and security and the repression of serious crimes could not be viewed as conflicting objectives and that the rules of the International Criminal Court also reflected the determination to establish a framework that made the Court's role compatible with the needs of the collective security.<sup>64</sup>

<sup>59</sup> Article 16 of the Rome Statute reads as follows: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

<sup>60</sup> S/PV.4272, pp. 2-3.

<sup>61</sup> Ibid., pp. 3-5 (Canada); pp. 5-6 (New Zealand); pp. 6-7 (Jordan); p. 7 (Switzerland); pp. 7-8 (Liechtenstein); pp. 8-9 (Greece); p. 10 (Islamic Republic of Iran); pp. 10-11 (Peru); pp. 11-12 (Malawi); p. 13 (Brazil); pp. 14-15 (Trinidad and Tobago); pp. 15-16 (Argentina); pp. 16-17 (South Africa); pp. 17-18 (Nigeria); p. 20 (Netherlands); pp. 24-25 (Germany); and pp. 25-26 (Syrian Arab Republic).

<sup>62</sup> Ibid., p. 10.

<sup>63</sup> Ibid., p. 11.

<sup>64</sup> Ibid., p. 7 (Switzerland); p. 13 (Brazil); p. 14 (Peru); p. 16 (Argentina); p. 19 (Democratic Republic of the

The representative of Pakistan regretted that the Rome Statute did not provide for reservations by countries, which might have ensured wider adherence to the Statute. He noted that the Government of Pakistan had concerns with respect to several provisions of the Statute of the International Criminal Court, including the mechanism for initiation of proceedings, provisional arrest, provisions dealing with armed conflicts not of an international character and the question of immunity of Heads of State or Government. As the largest contributor to United Nations peacekeeping, he underlined that peacekeepers should not be exposed to any arbitrary or unilateral action by any national or international body. As that was the primary concern that had inspired the present draft resolution, no matter how unlikely the circumstances, he expressed his support for the draft resolution. He believed that annual renewal might be avoided in the future through separate arrangements.<sup>65</sup>

The draft resolution was put to the vote; it received 12 votes in favour, none against, with 3 abstentions (France, Germany, Syrian Arab Republic), and was adopted as resolution 1487 (2003), by which the Council, *inter alia*:

Requested that the International Criminal Court, if a case arose involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, should for a 12-month period starting 1 July 2003 not commence or proceed with investigation or prosecution of any such case, unless the Council decided otherwise;

Decided that Member States should take no action inconsistent with that request and with their international obligations; and decided to remain seized of the matter.

Speaking after the vote, the representative of France expressed hope that the new one-year extension would allow States that still had a bias against the International Criminal Court to overcome that bias.<sup>66</sup>

The representatives of Bulgaria, China, Guinea and the Russian Federation expressed strong support for the International Criminal Court, but also

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Congo); and p. 22 (Cameroon).

<sup>65</sup> *Ibid.*, p. 21.

<sup>66</sup> S/PV.4772, p. 24.

acknowledged the legitimate concerns of the various countries involved in peacekeeping operations. They stressed that Council members must act in the spirit of compromise and understanding and actively work to find a solution that was acceptable to all.<sup>67</sup>

The representatives of Angola, Bulgaria, Spain and the United Kingdom were of the view that resolutions 1422 (2002) and 1487 (2003) were consistent with article 16 of the Statute of the International Criminal Court; that the renewal of the provision in paragraph 1 of resolution 1422 (2002) did not affect the integrity of the Statute and did not undermine the Court; and that the resolution did not create a precedent for interference by the Council in the sovereign right and capacity of Member States to prosecute repugnant crimes against humanity that were included in the Rome Statute.<sup>68</sup>

The representative of the United States underlined that the primary concern was for American personnel that might find themselves subject to the jurisdiction of the International Criminal Court. He emphasized that the resolution was consistent with a fundamental principle of international law: the need for a State to consent if it is to be bound. He stated that that principle was respected by exempting from Court jurisdiction personnel and forces of States that were not parties to the Rome Statute. He stressed that the resolution did not in any way affect parties to the Court, or the Rome Statute itself, nor did it elevate an entire category of people above the law, as the Court was not the law. He suggested that even one instance of the Court attempting to exercise jurisdiction over those involved in a United Nations operation would have a seriously damaging impact upon future United Nations operations. He argued that the Court was vulnerable at every stage of any proceeding to politicization; that the Rome Statute provided no adequate check; and that having every confidence in the Court's correct behaviour was not a safeguard.<sup>69</sup>

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<sup>67</sup> *Ibid.*, p. 26 (Bulgaria); p. 27 (Guinea); p. 27 (China); and p. 28 (Russian Federation).

<sup>68</sup> *Ibid.*, p. 23 (United Kingdom); p. 25 (Spain); p. 26 (Bulgaria); and p. 27 (Angola).

<sup>69</sup> *Ibid.*, p. 23.

## E. The importance of mine action for peacekeeping operations

### Initial proceedings

#### **Deliberations of 13 November 2003 (4858th meeting)**

At its 4858th meeting, on 13 November 2003, the Council included in its agenda the item entitled “The importance of mine action for peacekeeping operations”. The Council heard briefings by the Under-Secretary-General for Peacekeeping Operations, and the Director of the Geneva International Centre for Humanitarian Demining. All Council members made statements after the briefings.

In his briefing, the Under-Secretary-General elaborated on the remarkable progress that had been made with regard to mine action since the Council last took up the issue in 1996. In that regard, he drew attention to the work of the United Nations Mine Action Service within the Department of Peacekeeping Operations, the United Nations Development Programme and the United Nations Children’s Fund, which were the lead United Nations actors undertaking and coordinating mine action initiatives. Noting that United Nations mine action was helping to build peace and security in almost 20 situations of concern to the Council, the Under-Secretary-General highlighted, *inter alia*, United Nations efforts in supporting national mine action authorities, promoting mine risk education and facilitating mine survey and clearance operations. He observed that mine action had become a dynamic component of multidimensional peacekeeping operations, often involving early planning with mine action specialists and the inclusion of mine action coordination centres.

He also noted that the briefing that day provided an opportunity for the Council to call upon a range of actors to undertake specific actions to enhance mine action in the peacekeeping context. He suggested that the Council might wish to consider the following issues in their discussion: the possibility of a new legal instrument to address unexploded ordnance and other explosive remnants of war as well as the rights of mine survivors; encouraging the parties to conflicts to incorporate mine action, where appropriate, into their discussions; the role of peacekeeping operations in information gathering on the scope and importance of the landmine and unexploded ordnance problem; calling upon troop-contributing countries to train their

peacekeeping troops to demine; the use of demobilized soldiers to conduct mine action; and the need for adequate and sustained financial assistance for mine action from Member States.<sup>70</sup>

The Director of the Geneva International Centre for Humanitarian Demining highlighted the areas of the work of the Centre that were particularly important to peacekeeping. To facilitate the standardized collection and exchange of information on the threat of mines, working together with the United Nations Mine Action Service, the Geneva Centre had developed the Information Management System for Mine Action, and was at that time providing both predeployment and post-deployment support for the System, which had been installed in 36 countries or programmes. He stated that the International Mine Action Standards had improved the quality of mine action, enhanced interoperability and mutual understanding among the various mine action actors, and improved prospects for smoother transitions by peacekeeping operations to the post-conflict phase. With respect to the appropriate role of the military in mine action, which had been the subject of debate in both civilian and military circles for some time, the Director presented findings from a study conducted by the Geneva Centre, at the request of the United Nations Mine Action Service. The study had found that military expertise in breaching minefields was not easily transposed to humanitarian demining, where nothing less than 100 per cent clearance was acceptable. While the military were able to provide warnings to civilians about the dangers of mines and unexploded ordnance, they were not well prepared to undertake ongoing community-based awareness education programmes. In general, military peacekeeping troops had not carried out large-scale survey, marking or mine clearance operations.<sup>71</sup>

All members of the Council expressed deep concern regarding the devastating humanitarian consequences arising from the use of landmines on affected populations, and stressed that mine action was a priority for the maintenance of international peace and security. In that regard they welcomed the efforts

<sup>70</sup> S/PV.4858, pp. 2-4.

<sup>71</sup> *Ibid.*, pp. 4-6.

by the United Nations to take stock of the problem and the mainstreaming of mine action into the Organization's culture. They welcomed in particular the work of the United Nations Mine Action Service of the Department of Peacekeeping Operations and the Information Management System for Mine Action in ensuring the coordination of mine action throughout the United Nations system and the provision of support to multidimensional peace operations, as well as the role of other United Nations agencies, and non-governmental organizations. Members agreed that further progress was needed in mine action. They shared the view that there was a need to strengthen internal coordination among United Nations bodies, and between those bodies and other actors, including non-governmental organizations. They concurred that mine action was a new concept that went beyond the mere military and disarmament aspects, and consisted of a broad-based approach that included humanitarian aspects.

Members agreed that it was imperative that the Council include mine action in the mandates of its peacekeeping operations, and that it consider mine action requirements at the very beginning of the planning of those operations. The representative of Guinea held that mine action training should be included in the training of peacekeeping troops, and that a gender perspective should be included in mine-clearance programmes. Several members welcomed the existing mainstreaming of mine action into the mandates of peacekeeping operations, citing specific examples, which included the United Nations Interim Force in Lebanon, the United Nations Mission in Ethiopia and Eritrea, and the United Nations Organization Mission in the Democratic Republic of the Congo.<sup>72</sup> The representative of Bulgaria expressed the view that mine action in Kosovo could be used as a model for other operations.<sup>73</sup> The representative of the United Kingdom noted that mine action in the context of peacekeeping operations improved the safety of peacekeepers, the environment for the safe return of refugees, employment possibilities and income opportunities, along with many other benefits, such as a psychological gain for the population.<sup>74</sup>

<sup>72</sup> Ibid., pp. 8-9 (Syrian Arab Republic); pp. 11-13 (Cameroon); pp. 12-13 (United Kingdom); and pp. 18-19 (China).

<sup>73</sup> Ibid., pp. 13-14.

<sup>74</sup> Ibid., pp. 12-13.

With respect to demining and its relevance to the respective mandates of the General Assembly and the Council, the representative of Germany emphasized that the Council's role was to ensure that such activities were considered and, as the case might require, included in peacekeeping mandates. The Assembly, on the other hand, dealt with mine action in all its aspects, thus responding to the report of the Secretary-General<sup>75</sup> on that matter.<sup>76</sup> Similarly, the representative of the Russian Federation highlighted that the Council's discussion of the question should focus on the specific tasks that arose when carrying out the mandates of peacekeeping operations. At the same time, he warned against the duplication of work by the various agencies and organs of the United Nations system. Since the Assembly considered the matter of assistance for mine-clearance activities on a regular basis, he believed that it would be a good idea for the subject of providing assistance to mine-affected countries to be discussed in that body.<sup>77</sup>

The representative of Guinea, echoed by the representatives of the Syrian Arab Republic and France, emphasized the political role of the General Assembly in mine action.<sup>78</sup> The representative of Guinea highlighted that the Security Council, in contrast, had an operational role through its peacekeeping operations.<sup>79</sup> The representative of the Syrian Arab Republic maintained that a focus on mine action in peacekeeping operations in no way entailed a transfer of responsibilities from the Assembly to the Council.<sup>80</sup>

The representative of Pakistan stated that unless there was universal acceptance and implementation of the principle of the responsibility of States that placed landmines or left unexploded ordnance in conflict situations, action to clear up landmines would continue to be slow and inadequate at the global level. In the context of the situations of which the Council was seized, mine prevention and mine clearance had to be included in its considerations.<sup>81</sup>

<sup>75</sup> A/58/260 and Add.1.

<sup>76</sup> S/PV.4858, pp. 15-16.

<sup>77</sup> Ibid., pp. 17-18.

<sup>78</sup> Ibid., p. 6 (Guinea); p. 8 (Syrian Arab Republic); and pp. 8-9 (France).

<sup>79</sup> Ibid., p. 6.

<sup>80</sup> Ibid., p. 8.

<sup>81</sup> Ibid., pp. 19-20.

Speakers emphasized that the adoption in 1997 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction indicated significant progress and reaffirmed the international community's commitment to the elimination of all mines. The representative of France maintained that the Convention could be used as a mobilization tool for mine action at all levels, including financing.<sup>82</sup> The representatives of France and Mexico urged those States that had not yet signed or ratified the instrument to do so.<sup>83</sup> The representative of Mexico welcomed the fact that Kenya would host in 2004 the first review conference of the Convention, as African countries had been severely affected by the scourge of landmines.<sup>84</sup>

**Decision of 19 November 2003  
(4864th meeting): statement by the President**

At the 4864th meeting, on 19 November 2003,

<sup>82</sup> Ibid., pp. 8-9.

<sup>83</sup> Ibid., pp. 14-15.

<sup>84</sup> Ibid.

the President (Angola) made a statement on behalf of the Council,<sup>85</sup> by which the Council, inter alia:

Expressed its grave concern at the harmful and widespread impact of landmines and unexploded ordnance on civilian populations, especially children, and on humanitarian workers and United Nations staff;

Urged all Member States to respect relevant international law that addressed landmines and unexploded ordnance;

Urged all parties to armed conflicts to abide by their mine-related commitments and to cooperate with mine-risk education and mine-clearing activities;

Called upon the Secretary-General to provide information on the scope and humanitarian impact of the mine and unexploded ordnance problem;

Urged Member States to provide adequate and sustained financial assistance to support mine action, and to increase their contributions to the Voluntary Trust Fund for Assistance in Mine Action.

<sup>85</sup> S/PRST/2003/22.

## **48. Peacebuilding: towards a comprehensive approach**

### **Initial proceedings**

**Decision of 20 February 2001 (4278th meeting):  
statement by the President**

By a letter dated 25 January 2001 addressed to the Secretary-General,<sup>1</sup> the representative of Tunisia informed the Secretary-General that, during its presidency of the Security Council in February 2001, Tunisia intended to organize on 5 February 2001 a debate, open to States which were not members of the Council, on the topic "Peace-building: towards a comprehensive approach". Annexed to the letter was a note with suggestions on specific subjects for the debate, including disarmament, demobilization and reintegration of former combatants; refugees and displaced persons; poverty eradication and promotion of sustainable development; strengthening the rule of law and democratic institutions; a comprehensive peacebuilding strategy; and the role of the Council.

<sup>1</sup> S/2001/82.

At its 4272nd meeting, on 5 February 2001, the Council included in its agenda the item entitled "Peacebuilding: towards a comprehensive approach", and included also the above-mentioned letter. At the meeting, the Council heard a statement by the Secretary-General, following which statements were made by all members of the Council, and the representatives of Algeria, Argentina, Croatia, Egypt, Guatemala, India, the Islamic Republic of Iran, Japan, Malaysia, Mongolia, Nepal, New Zealand, Nigeria, Romania, the Republic of Korea, Senegal and Sweden (on behalf of the European Union<sup>2</sup>).

The Secretary-General stated that the overarching challenge of peacebuilding was to move societies towards sustainable peace, and was the sum of many initiatives, projects, activities and sensitivities.

<sup>2</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

Peacebuilding was the process of building the pillars of peace from the ground up. He stated that, to ensure the coherence of those efforts, the United Nations was also trying to improve its internal arrangements, so that peacebuilding was not only comprehensive, but also done in an integrated way. He noted that the goals were to consolidate peace, reinforce an often hard-won and fragile stability and to prevent a slide back into conflict. However, he also saw peacebuilding as a preventive instrument, which could address the underlying root causes of conflict, and which could also be used before the actual outbreak of war. He emphasized that the problem was that the international community did not practise prevention as often as it could or should. He also emphasized that peacebuilding needed to be seen as a long-term exercise, while there was also a need to achieve tangible progress on a number of fronts in a short period of time. He mentioned that both the General Assembly and the Security Council had recognized the importance of peacebuilding and the need to work with a range of partners, including non-governmental organizations and the private sector. He noted that the Council had recognized that peacebuilding could be a vital component of peacekeeping missions, and that it needed to include such preventive tools as early warning, diplomacy, preventive deployment and disarmament. He stressed that the Council had a prime role to play, and that among the major challenges of peacebuilding was the mobilization of political will and resources on the part of the international community. He called on the members to do more politically to give peacebuilding a higher priority and a higher profile by bringing it closer to the forefront of their awareness.<sup>3</sup>

In their statements, representatives touched on a wide variety of issues and concurred, *inter alia*, on the need to develop a common approach between the United Nations and all participating actors in order to develop a practical, comprehensive and integrated strategy to promote peace, taking into account the primary responsibility of the State concerned; to support the capabilities of the Secretary-General; to take into account the necessity of focusing efficiently on the deep roots of conflicts, especially the economic and social roots, owing to the close links between security, stability and development; to eliminate poverty as a collective international responsibility and

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<sup>3</sup> S/PV.4272, pp. 2-4.

develop an innovative approach and mechanism to address poverty and economic backwardness; and to focus on governance, democracy and the building of State institutions as essential ingredients for promoting peace. They also stressed the importance of the disarmament, demobilization and reintegration of former combatants, while paying special attention to children, refugees, internally displaced persons and the promotion of the role of women in peacebuilding; coordination among all active parties and apportionment of responsibilities in the area of peacebuilding, especially in respect of the General Assembly and the Economic and Social Council;<sup>4</sup> in particular the importance of the Security Council in mobilizing international political will, given its special responsibility in the area of international peace and security and the close relationship between the maintenance of peace and security, conflict prevention and peacebuilding; the initiation of consultations among all active parties at an early stage, before establishing any peacekeeping mission, for better preparation and coordination towards that goal; and the promotion of sustainable and continuous international partnership in all phases of conflict prevention and peacebuilding.

Most of the representatives highlighted the need to develop a comprehensive and integrated strategy within the United Nations system to address the root causes of conflict. They also expressed appreciation for a number of recommendations and reports on the issue of the development of a comprehensive and integrated peacebuilding strategy by the United Nations, *inter alia*, the report of the Secretary-General entitled “An Agenda for Peace”<sup>5</sup> and the report of the Panel on United Nations Peace Operations (the Brahimi report).<sup>6</sup>

In discussing the role of the Council in peacebuilding, the representative of France noted that though peacekeeping operations were authorized by the Council and included elements of peacebuilding, the Council was not competent to be the “project manager”. In relation to the Council’s role in the coordination of the many different actors involved in peacebuilding, he suggested that the division of roles and financing could be clearly defined at the time the

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<sup>4</sup> For more information on the discussion relating to the Economic and Social Council, see chap. VI, part II, case 11.

<sup>5</sup> S/24111.

<sup>6</sup> S/2000/809.

Council established an operation, and could even appear in an annex to the resolution. From the outset the Council would establish a double partnership with the troop-contributing countries and financial institutions entrusted with carrying out the Council's decisions.<sup>7</sup> The representative of Ukraine noted that once peace efforts in a zone of conflict reached the stage of long-term preventive peacebuilding, the Council needed to pass the responsibility on to other entities of the United Nations system, such as the United Nations Development Programme, to coordinate further international efforts.<sup>8</sup> The representative of Egypt expressed the belief that sustainable development and poverty eradication needed to be dealt with through other bodies of the United Nations, although the Council should take those dimensions into consideration when intervening in conflicts. He stressed that his delegation did not want the Council to be transformed into the Economic and Social Council or a private, miniature General Assembly, particularly since there was a high degree of politicization in the work of the Security Council.<sup>9</sup> Similarly, the representative of India stated that, while the Council had a role to play in setting up the peacekeeping operations that were part of the process of building peace, it did not follow that those operations must take on the work of economic and social reconstruction, or that the Council should ask them to do so. He argued that the majority of peacekeeping missions were still groups of observers or formed contingents observing a truce, and that in recent years the United Nations Mission in Sierra Leone, the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET) were the three exceptions to that rule. Trying to draw general conclusions from those very exceptional cases was dangerous and one of the more serious shortcomings of the Brahimi report. In the cases of UNMIK and UNTAET, the United Nations had stepped into a political vacuum and set up transitional administrations. However, where a Government was in place, no matter how weak, the United Nations should do nothing to give the impression that the Government was not in control and that authority resided in the

peacekeeping operation, which would undermine peace.<sup>10</sup>

The representative of the United States stressed that, while conflicts had underlying structural causes, the international community must not forget that their immediate causes were often individual ambition and greed. He also stated that his country did not believe that a Security Council mandate should focus on reconstruction and development as that was not the responsibility of the Council. However, he mentioned that all elements of the United Nations system needed to work together, and regional organizations, international financial institutions, donor Governments and non-governmental organizations all had roles, although better coordination was needed. He noted that the Council should be clear and should encourage clarity on this issue.<sup>11</sup>

At its 4278th meeting, on 20 February 2001, the Council again included the letter dated 25 January 2001 from the representative of Tunisia in its agenda.<sup>12</sup>

At the same meeting, the President (Tunisia) made a statement on behalf of the Council,<sup>13</sup> by which the Council, *inter alia*:

Recognized that peacemaking, peacekeeping and peacebuilding were often closely interrelated;

Stressed that, to be successful, such a peacebuilding strategy should meet, *inter alia*, the following basic criteria: relevance, coherence and consistency of programmes and actions; the consent and cooperation of the authorities of the State concerned, where they existed; continuity in and conclusion of the process; cooperation and coordination among organizations and other actors involved; and cost-effectiveness of the overall peacebuilding operation;

Strongly encouraged the United Nations system and regional and subregional organizations, donor countries and the international financial institutions to consider undertaking initiatives such as: utilizing of the mechanism of consolidated appeals and holding joint pledging conferences to mobilize expeditiously international political support and essential resource requirements; ensuring prompt financing of quick start-up peacebuilding projects; and strengthening mechanisms that promoted development and self-reliance by improving capacity-building activities.

<sup>7</sup> S/PV.4272, pp. 4-7.

<sup>8</sup> *Ibid.*, p. 24.

<sup>9</sup> S/PV.4272 (Resumption 1), p. 11.

<sup>10</sup> *Ibid.*, p. 22.

<sup>11</sup> S/PV.4272, pp. 9-10.

<sup>12</sup> S/2001/82.

<sup>13</sup> S/PRST/2001/5.



## 49. Nobel Peace Prize

### Initial proceedings

#### **Decision of 12 October 2001 (4390th meeting): statement by the President**

At its 4390th meeting, on 12 October 2001, the Security Council included in its agenda the item entitled “Nobel Peace Prize”. At the meeting, the Council heard a statement by the Secretary-General.

The Secretary-General stated that the Norwegian Nobel Committee had honoured the Security Council, which had, under the Charter, the primary responsibility for maintaining international peace and security and that it had honoured all parts of the Organization, and the men and women who worked for the United Nations in the service of peace, wherever they might be. He stressed that in a world that was growing ever closer and more interconnected, and yet was still torn by brutal conflicts and cruel injustice, it was more important than ever that humanity travel that route, the route described by the Nobel Committee. He also stated that all who worked at the United Nations should feel proud, but also humble, because even more would be expected of them in the near future. He concluded by stating that the award was a tribute, above all, to those United Nations staff members who had made the supreme sacrifice in the service of humanity.

At the same meeting, the President (Ireland) made a statement on behalf of the Council,<sup>1</sup> by which the Council, inter alia:

Celebrated, together with the rest of the United Nations family, the award of the 2001 Nobel Peace Prize to the United Nations and to its Secretary-General, Mr. Kofi Annan;

Paid special tribute to all the men and women who worked for the United Nations, whatever their tasks of duty, wherever they might be in the service of peace;

In warmly congratulating the Secretary-General, Mr. Annan, the Council reiterated its own strong support for his efforts in upholding the purposes and principles of the Charter of the United Nations and for his role in assuring to the Organization its full and rightful place in the world and in leading its search for new ways forward for all men and women in all countries to live their lives with dignity and peace.

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<sup>1</sup> S/PRST/2001/28.

## 50. Items relating to food and security

### A. Food aid in the context of conflict settlement: Afghanistan and other crisis areas

#### Initial proceedings

##### Deliberations of 4 April 2002 (4507th meeting)

At its 4507th meeting, on 4 April 2002, the Security Council included in its agenda the item entitled "Food aid in the context of conflict settlement: Afghanistan and other crisis areas". The Council heard a briefing by the Executive Director of the World Food Programme (WFP).

In her briefing, the Executive Director provided a broad overview of the subject of food aid in the context of crises. Using examples from around the world, she outlined a number of ways in which food aid could assist in conflict settlement by saving lives; acting as a stabilizing factor; and contributing to long-term recovery. While there would still be hunger, malnutrition and localized and sometimes severe shortages of food in the future, she noted that the international community had achieved one part of the goal set out at the World Summit for Children: ending major famines. She also raised the issue of the security of humanitarian staff, expressing disappointment over the small number of cases in which perpetrators of violence against United Nations staff had been brought to justice.<sup>1</sup>

In their statements, Council members paid tribute to the outgoing Executive Director of the World Food Programme, the first woman to hold that position, for her 10 years of service, and welcomed her successor. Most speakers agreed that the issue of food aid was relevant to the work of the Council, acknowledging that WFP delivered food to many States whose names appeared on the Council's agenda.

Several members also touched on WFP efforts to define food security strategies in the context of conflict prevention.<sup>2</sup> In that respect, the representative of France, echoed by the representative of the Syrian Arab

Republic, saluted the development of a WFP "hunger map" as a way to better prevent crises.<sup>3</sup>

A number of speakers focused on the need for United Nations humanitarian agencies to improve coordination and hire local resources and personnel.<sup>4</sup> In that respect, the representative of the Russian Federation was convinced that a leading role in ensuring such coordination in Afghanistan should be played by the United Nations Assistance Mission in Afghanistan.<sup>5</sup>

Several speakers concurred with the Executive Director on the need to ensure the security of United Nations humanitarian workers.<sup>6</sup> The representative of the United Kingdom maintained that 188 unsolved cases involving the deaths of United Nations staff was a scandal.<sup>7</sup>

The representative of Mexico stated that humanitarian assistance should be granted within the context of respect for the sovereignty, territorial integrity and unity of States, in conformity with the Charter of the United Nations.<sup>8</sup> The representative of the Russian Federation similarly held that food aid should in no instance be used as a tool for interference or for influencing the course of conflicts.<sup>9</sup>

<sup>3</sup> S/PV.4507, p. 6 (France); and p. 7 (Syrian Arab Republic).

<sup>4</sup> Ibid., p. 8 (Mexico); S/PV.4507 (Resumption 1), p. 2 (Bulgaria); p. 3 (Guinea); p. 4 (Mauritius); and p. 7 (Cameroon).

<sup>5</sup> S/PV.4507 (Resumption 1), p. 7.

<sup>6</sup> S/PV.4507, p. 10 (United Kingdom); S/PV.4507 (Resumption 1), p. 3 (Guinea); and pp. 4-5 (Mauritius).

<sup>7</sup> S/PV.4507, p. 10.

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

<sup>9</sup> S/PV.4507 (Resumption 1), p. 8.

<sup>1</sup> S/PV.4507, pp. 2-5.

<sup>2</sup> Ibid., p. 6 (France); p. 7 (Syrian Arab Republic); and p. 9 (Norway); S/PV.4507 (Resumption 1), p. 2 (Bulgaria); and pp. 2-3 (Guinea).

The representative of the United Kingdom cautioned that one had to be careful in using food aid outside acute emergency situations, because food aid in conflict situations was highly sensitive and, if misused, could have a direct and immediate effect on the dynamics of violence. He held that systems had to be put in place to minimize food aid diversion, and the use of food aid should have a clear exit strategy. He expressed the view, echoed by the representative of the Russian Federation, that the Security Council and the Economic and Social Council should work towards a

closer and more comprehensive understanding of conflict issues and how the system could deal with them more effectively.<sup>10</sup>

The representative of Bulgaria stressed the need for the international community to intervene at the right time to mobilize awareness about a crisis and believed that the Council should take appropriate measures, including targeted sanctions, when access to those who needed humanitarian aid was denied.<sup>11</sup>

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<sup>10</sup> S/PV.4507, pp. 10-11 (United Kingdom); S/PV.4507 (Resumption 1), pp. 7-8 (Russian Federation).

<sup>11</sup> S/PV.4507 (Resumption 1), p. 2.

## **B. Africa's food crisis as a threat to peace and security**

### **Initial proceedings**

#### **Deliberations of 3 December 2002 and 7 April 2003 (4652nd and 4736th meetings)**

At its 4652nd meeting, on 3 December 2002, the Security Council included in its agenda the item entitled "Africa's food crisis as a threat to peace and security" and heard a briefing by Mr. James Morris, Executive Director of the World Food Programme. Statements were made by the representatives of Bulgaria, Cameroon, Guinea, Ireland, Mauritius, the Russian Federation, Singapore, the Syrian Arab Republic, the United Kingdom and the United States.

The Executive Director declared that the challenge for the World Food Programme was to respond to emergencies in a way that strengthened individual educational opportunities, health, nutrition, livelihoods, food security and the creation of assets. Referring to the causes of severe hunger in Africa, he pointed to bad weather in the greater Horn of Africa region that threatened to put as many as 15 million people at risk, and HIV/AIDS in sub-Saharan Africa that had resulted in 11 million orphans. Civil strife, a large number of refugees and internally displaced persons, landmines, the issue of genetically modified organisms, and issues related to governance and macroeconomic policy further complicated the state of affairs. He held that stronger and more consistent funding for humanitarian aid was required in the short term, while a major opening up of economies, a strengthening of the free market and substantial investment in basic agricultural infrastructure and

nutrition were necessary in the long haul. The Executive Director stated that the focus of WFP was to feed hungry poor people, while abiding by the principles of accessibility, accountability, transparency and a zero-tolerance policy for foolishness or the inability to work throughout a country. As an example of the Programme's ability to stay away from political issues, he pointed to the fact that WFP was the only international agency that had offices outside the capital of the Democratic People's Republic of Korea. In conclusion, the Executive Director observed that 40 to 50 million children of school age in Africa were not in school but could be drawn there by a school feeding programme. He stressed that education was crucial in addressing the HIV/AIDS issue and providing children with an opportunity to think about alternative lifestyles.<sup>12</sup>

Following the briefing, most speakers expressed concern at the gravity of the situation in Southern Africa and the Horn of Africa. The representative of the United Kingdom emphasized the importance of addressing the link between conflict and food insecurity, as in his view each could cause or reinforce the other.<sup>13</sup> Similarly, the representative of the Russian Federation observed that overcoming the food crisis in African countries was a comprehensive, multifaceted challenge, requiring both the resolution of armed

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<sup>12</sup> S/PV.4652, pp. 2-5.

<sup>13</sup> *Ibid.*, p. 5.

conflicts and the achievement of sustainable development.<sup>14</sup>

The representative of the United Kingdom, echoed by the representatives of Mauritius and Singapore, expressed interest in discussing the role played by government policies in worsening food crises.<sup>15</sup> Observing that famine was neither a natural occurrence nor an inevitable condition, the representative of the United States called for the international community to look at failures of governance, development and assistance in explaining the existence of famine. In his view, productive investment in agricultural and rural development was essential for overcoming famine, but in the short term the immediate adequate assistance of the international community was critical for averting widespread famine in Africa.<sup>16</sup> The representative of Bulgaria emphasized the responsibility of recipient States to coordinate and use the assistance provided by the international community.<sup>17</sup>

In agreement with the Executive Director, the representative of Ireland affirmed that the humanitarian situation in Africa not only constituted a threat to international peace and security, but was also intolerable from a moral and humanitarian perspective. He also drew attention to the reduction in the level of long-term development funding by the international community, and enquired about the possible role of WFP in encouraging donors to return to long-term agriculture support programmes. In connection with the debate surrounding globalization and protectionism, he noted existing criticism in some African countries that the liberalization of their economies had not been met with a reciprocal response by developed countries in terms of reduced tariffs and an easing of protectionism in agriculture.<sup>18</sup>

The representative of Mauritius raised concerns about the safety of genetically modified food products sent by WFP to members of the Southern Africa Development Community, noting that several countries had expressed reservations with regard to receiving such products.<sup>19</sup> Arguing that government policies over

genetically modified food aid had hindered the food aid distribution process, the representative of the United States expressed concern that efforts to provide desperately needed assistance could be delayed, if not derailed, by the confusion over biotechnology food issues.<sup>20</sup>

Responding to comments and questions from the representatives, the Executive Director insisted that African countries needed the ability to produce and export their own food, and advocated consideration of the issues of tariffs, use of surpluses and trade, with that goal in mind. On the issue of support levels and long-term development, he acknowledged that the trend had been against long-term development, but suggested that an investment in short-term emergency work could become a very powerful long-term investment. The Executive Director further informed the Council that WFP was focusing on long-term health issues by working with the United Nations Children's Fund, the World Health Organization (WHO), the United Nations Development Programme and the Food and Agriculture Organization of the United Nations (FAO). On the topic of genetically modified organisms, he explained that the policy of WFP was to ask the donor Government to certify that genetically modified food met the health and safety standards for consumption by its own citizens. In response to enquiries about the use of modern information technologies and early warning systems to prevent further famine, the Executive Director stated that WFP was making large investments in information technology to provide a vulnerability assessment map of every country in the world. In conclusion, the Executive Director asked Council members to support WFP financially, to make the case to their Governments as to the importance of its work in terms of the peace and security agenda, and to take the longer view regarding investment in development.<sup>21</sup>

At its 4736th meeting, on 7 April 2003, at which statements were made by a majority of Council members,<sup>22</sup> the Council again heard a briefing by Mr. James Morris, Executive Director of the World Food Programme.

<sup>14</sup> Ibid., p. 13.

<sup>15</sup> Ibid., p. 6 (United Kingdom); p. 6 (Mauritius); and p. 7 (Singapore).

<sup>16</sup> Ibid., p. 7.

<sup>17</sup> Ibid., p. 11.

<sup>18</sup> Ibid., pp. 10-11.

<sup>19</sup> Ibid., pp. 6-7.

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

<sup>21</sup> Ibid., pp. 14-16.

<sup>22</sup> The representative of the Russian Federation did not make a statement.

The Executive Director stated that the causes of Africa's food crises — recurring droughts, failed economic policies, hostility and conflict, and the extraordinary impact of HIV/AIDS — had not changed. He informed the Council that FAO had reported an increase in chronic hunger in the developing world outside China, and WHO deemed hunger to be the greatest factor in poor health in the world. On the positive side, he welcomed the placement of hunger at the top of the Secretary-General's agenda, and the announcement made by France and the United States that they were working together, within the framework of the Group of Eight, to focus the world on the African food crises. He also told the Council that the issue of genetically modified food was no longer delaying or disrupting deliveries. Referring to the situation in Zimbabwe, he underlined that the WFP goal was to depoliticize food aid in that country, on the rationale that food should be available to all, on the basis of humanitarian principles. He further drew attention to the situation created by drought in the Horn of Africa and the deterioration of food security in the western Sahel. He announced that the Programme's early response, assessment and surveillance systems enabled it to respond more effectively.

With respect to the Council's role in addressing food crises, the Executive Director stated that the Council could help to put humanitarian issues at the centre of the world's agenda, as humanitarian issues were also security issues. In response to questions asked by representatives, he emphasized that leadership and governance were pivotal and basic to everything, as demonstrated by the AIDS crisis in southern Africa, and reported that WFP was focusing on the importance of agricultural investment and broadening the donor base.

He expressed regret that even though WFP sought to invest as many of its resources as possible in long-term development, over the years an increase in its emergency work meant that only 20 per cent of its resources were aimed at the prevention of food shortages. On the issue of food as a means to prevent conflict, he said that although such efforts had been successful in Angola and Sierra Leone, WFP tried to stay focused on the humanitarian agenda and absent itself from all other political debates in progress. He also called for a stronger donor commitment to emergency food aid based on better targeting and more sophisticated early-warning systems, and for a substantial increase in support for investment in basic agricultural infrastructure.<sup>23</sup>

The representative of the United Kingdom expressed the view that while the United Nations system should address the structural causes of food crises, the proposals put forth by the Executive Director did not fall within the Council's responsibility, but to the United Nations family, the donor countries and the Governments on the ground.<sup>24</sup> While acknowledging the limits to the Council's mandate, in the light of the food crisis, the representative of the Syrian Arab Republic insisted the Council should clarify the role it could play in resolving that important problem.<sup>25</sup> Stressing that the Council should have the knowledge and the capacity necessary for integrating food security into its approach to conflicts in Africa, the representative of Bulgaria believed that the Council should not be timid, nor worry about going beyond its area of competence.<sup>26</sup>

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<sup>23</sup> S/PV.4736, pp. 2-6, 8-9, and 13-16.

<sup>24</sup> *Ibid.*, p. 10.

<sup>25</sup> *Ibid.*, p. 12.

<sup>26</sup> *Ibid.*, pp. 9-10.

## 51. Kimberley Process Certification Scheme

### Initial proceedings

#### Decision of 28 January 2003 (4694th meeting): resolution 1459 (2003)

At its 4694th meeting, on 28 January 2003, the Security Council included in its agenda the item entitled “Kimberley Process Certification Scheme”. The President (France) drew the attention of the Council to a draft resolution;<sup>1</sup> it was put to the vote and adopted unanimously as resolution 1459 (2003), by which the Council, *inter alia*:

Strongly supported the Kimberley Process Certification Scheme, as well as the ongoing process to refine and implement the regime, adopted at the Interlaken conference as a valuable contribution against trafficking in conflict diamonds, looked forward to its implementation, and strongly encouraged the participants to further resolve outstanding issues;

Welcomed the voluntary system of industry self-regulation, as described in the Interlaken Declaration;

Stressed that the widest possible participation in the Kimberley Process Certification Scheme was essential and should be encouraged and facilitated, and urged all Member States to participate actively in the Scheme.

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<sup>1</sup> S/2003/54.

## 52. The Security Council and regional organizations: facing the new challenges to international peace and security

### Initial proceedings

#### Deliberations of 11 April 2003 (4739th meeting)

At its 4739th meeting, on 11 April 2003, the Security Council included in its agenda the item entitled “The Security Council and regional organizations: facing the new challenges to international peace and security”.<sup>1</sup>

During the meeting, there was an interactive discussion, and statements were made by most members of the Council,<sup>2</sup> the Secretary-General, the representative of Greece (on behalf of the European Union<sup>3</sup>), and the representatives of the Organization of

American States, the African Union, the League of Arab States, the Organization for Security and Cooperation in Europe (OSCE) and the Economic Community of West African States (ECOWAS).<sup>4</sup>

In his statement, the Secretary-General stressed the joint interest of regional organizations and the United Nations in addressing current challenges to peace and security. He stated that, in its endeavours to deal with a range of crises, the United Nations had relied on regional partners in Africa, Asia, Europe and Latin America, and that from those experiences, a great

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<sup>1</sup> For more information on the discussion at this meeting, see chap. XII, part III, sect. A, with regard to general considerations of the provisions of Chapter VIII of the Charter.

<sup>2</sup> The representative of Mexico did not make a statement.

<sup>3</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and

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Slovenia aligned themselves with the statement.

<sup>4</sup> Mexico was represented by its Minister for Foreign Affairs; the European Union by the Deputy Minister for Foreign Relations of Greece; and the African Union by the Minister for Provincial and Local Government of South Africa. Also present were a group of parliamentarians from Mexico and the President of the General Assembly.

deal had been learned about the need to transform a sense of collective insecurity into a system of collective security. He added that this was precisely the purpose of Chapter VIII of the Charter of the United Nations.<sup>5</sup>

The Secretary-General of the Organization of American States pointed out that the principal challenges to security in the Americas lay in non-military threats such as terrorism, drug trafficking, illicit trade in arms or natural disasters. He detailed the different regional instruments that had been created to tackle those threats and that dealt with prevention of conflicts primarily through peaceful means.<sup>6</sup>

Referring to the questions of Iraq and the Middle East as cases in point, the Secretary-General of the League of Arab States detailed the engagement by his organization and discussed the role of the Council vis-à-vis such efforts. He regretted that the Council had remained silent after the war in Iraq had started since that had affected its credibility and role. He also regretted that the Council did not act on the League's peace initiative to bring an end to the Arab-Israeli dispute. While agreeing with the importance of peacekeeping, peacemaking and peacebuilding operations, he pressed for different and quicker mechanisms to deal with the current reality. In view of the deteriorating situation in the Middle East, as accentuated by the invasion of Iraq, and the failure by the Council and the General Assembly to address the conflict, he proposed the convening of an international conference under the auspices of the United Nations on international peace, its maintenance and the challenges facing it.<sup>7</sup>

The Secretary-General of the Organization for Security and Cooperation in Europe stated that to increase the organization's responsiveness to modern security challenges, OSCE had decided to develop a strategy to address threats in the twenty-first century and to identify options for potential OSCE involvement in peacekeeping in the OSCE region. He highlighted a number of examples of cooperation and operational flexibility with multiple partners, including United Nations missions in the region such as those in Kosovo and Georgia, where OSCE had paid special attention to the complementarity of its efforts with those of the

United Nations which was indeed the vital cornerstone of multilateral responsibility and action.<sup>8</sup>

The representative of the African Union pointed out that initiatives taken in the spirit of Africans taking responsibility for the stability of their own region, including the establishment of the Peace and Security Council, must be encouraged as an important development. In the light of those developments, he stated that the African Union would work with the Council to assume collective responsibility for the identification of problems and the formulation of appropriate strategies to solve them.<sup>9</sup>

The representative of Greece, speaking on behalf of the European Union, stated that the European Union aimed to support the primary responsibility of the Council for the maintenance of international peace and security by developing a crisis management capacity. He further added that the European Union had made a concerted effort to develop its organizational capacity to respond effectively to the challenges posed by internal disputes. He elaborated on the ways in which the European Union was intensifying practical cooperation in crisis management operations with the United Nations system, which included the European Union Police Mission in Bosnia and Herzegovina.<sup>10</sup>

The Executive Secretary of the Economic Community of West African States stated that the major challenge facing the West African region was the spate of conflicts to which ECOWAS was responding within the context of its Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. He referred to the situations in Côte d'Ivoire and Liberia to illustrate the pressing need for collaboration between ECOWAS and the Council in the area of conflict resolution. In the case of Côte d'Ivoire, the Executive Secretary called for the Council to provide the necessary support to sustain the operations of the ECOWAS mission. Regarding Liberia, whose instability posed a threat to neighbouring countries, he urged the Council to consider an appropriate monitoring mechanism for the ceasefire.<sup>11</sup>

In their statements, all representatives agreed that in addressing new challenges and threats, regional organizations had an essential role to play and that

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<sup>5</sup> S/PV.4739 and Corr.1, pp. 3-4.

<sup>6</sup> Ibid., pp. 7-8.

<sup>7</sup> Ibid., pp. 13-17.

<sup>8</sup> Ibid., pp. 19-21.

<sup>9</sup> Ibid., pp. 25-26.

<sup>10</sup> Ibid., pp. 29-31.

<sup>11</sup> Ibid., pp. 33-34.

cooperation between them and the United Nations, particularly the Council, had to be strengthened. The main challenges that the United Nations and regional organizations must face together had been identified as terrorism<sup>12</sup> and conflict prevention and management, in particular in Africa.<sup>13</sup>

Many speakers touched on the primary responsibility of the Council for the maintenance of international peace and security. Some considered it indisputable that regional security operations remained mandated by the Council.<sup>14</sup> The representative of Pakistan was of the view that regional organizations could be helpful and viable only so long as they acted on the basis of the principles of the Charter and in response to the legality established by Council resolutions.<sup>15</sup> In a similar vein, the representative of Chile opined that the work of regional organizations should be done through a dynamic and energetic relationship with the Council in the framework of Chapter VIII of the Charter of the United Nations.<sup>16</sup> At

the same time, several speakers pointed out the importance of complementarity between the United Nations and regional organizations.<sup>17</sup> In that context, the representative of France stressed that each organization should intervene first and foremost in the area where it could provide real added value.<sup>18</sup> The representative of China stated that before taking any decision on African issues, the Security Council should strive to coordinate and cooperate with the respective regional organizations so that its decisions better reflected the positions of those organizations and the countries involved, given they had the first say in the settlement.<sup>19</sup>

Some representatives outlined concrete proposals on how to strengthen the relationship between regional organizations and the United Nations system, including information exchange through a structured dialogue on a regular and substantive basis<sup>20</sup> and capacity development for local and regional dispute settlement.<sup>21</sup>

In closing, the President (Mexico) indicated his intention to circulate the conclusions of the meeting.<sup>22</sup>

<sup>12</sup> Ibid., p. 9 (Chile); p. 11 (United States); p. 18 (United Kingdom); p. 22 (Russian Federation); p. 23 (Bulgaria); and p. 27 (Cameroon).

<sup>13</sup> Ibid., p. 5 (Germany); p. 9 (Chile); pp. 10-11 (United States); p. 27 (Cameroon); p. 28 (China); p. 31 (Spain); and p. 35 (France).

<sup>14</sup> Ibid., p. 5 (Germany); p. 22 (Russian Federation); and p. 23 (Bulgaria).

<sup>15</sup> Ibid., p. 17.

<sup>16</sup> Ibid., p. 9.

<sup>17</sup> Ibid., p. 5 (Germany); p. 22 (Russian Federation); p. 28 (China); and p. 35 (France).

<sup>18</sup> Ibid., p. 35.

<sup>19</sup> Ibid., p. 28.

<sup>20</sup> Ibid., p. 5 (Germany); p. 18 (United Kingdom); and p. 35 (France).

<sup>21</sup> Ibid., p. 18 (United Kingdom).

<sup>22</sup> Ibid., p. 37; see S/2003/506, annex.

## 53. The role of the Security Council in the pacific settlement of disputes

### Initial proceedings

#### **Decision of 13 May 2003 (4753rd meeting): statement by the President**

At its 4753rd meeting,<sup>1</sup> on 13 May 2003, the Security Council included the item entitled “The role

of the Security Council in the pacific settlement of disputes” in its agenda. At the meeting, statements were made by the Secretary-General, Sir Brian Urquhart (former Under-Secretary-General for Political Affairs), Mr. Jamsheed Marker (former Personal Representative of the Secretary-General for East Timor), Mr. Nabil Elaraby (judge of the International Court of Justice) and by all Council members and the representatives of Armenia, Azerbaijan, Colombia, Ethiopia, Greece (on behalf of the European Union<sup>2</sup>), Honduras, India and Indonesia.

<sup>1</sup> For more information on the discussion at this meeting, see chap. X, part III, sect. A, with regard to the decisions of the Security Council concerning the pacific settlement of disputes; and part IV, with regard to the constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter, sections relating to the relevance of the provisions of Chapter VI in relation to the prevention of conflicts and the relevance of the provisions of Chapter VI in comparison to the provisions of Chapter VII.

<sup>2</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania,



In his opening remarks, the Secretary-General noted that Chapter VI of the Charter of the United Nations stood at the heart of the Organization's system of collective security, and stressed that the Council could play a key role in conflict prevention, as the Council itself recognized in resolution 1366 (2001). He added that the Council could help to identify and address root causes early, when opportunities for constructive dialogue and other peaceful means were greatest, and ensure an integrated approach that brought together all factors and all actors, including civil society. Furthermore, he added, the Council could support the other United Nations organs in their efforts to resolve disputes or address volatile situations before they erupted into full-fledged threats to international peace and security.<sup>3</sup>

The former Under-Secretary-General for Political Affairs, noted, *inter alia*, that pacific settlement could be a long and untidy process, with different problems calling for different approaches, and stressed that it was seldom newsworthy, especially when successful. When, as had happened not long before, disagreements of the Council members were blamed on the institution of the Council itself, the Council's standing in pacific settlement and in other matters was inevitably diminished. At the same time, he underlined that an essential prerequisite for moving forward in an infinitely complex world was the growing effectiveness of the pacific settlement of disputes.<sup>4</sup>

The former Personal Representative of the Secretary-General for East Timor noted that while Chapter VII constituted the iron fist of the Council, its latent efficacy could be considerably enhanced through a timely and judicious application of the velvet glove of Chapter VI. Among several suggestions on ways to promote the pacific settlement of disputes, he encouraged the Council to utilize its mandatory enforcement authority under Chapter VII to persuade parties to engage in the processes for pacific settlement envisaged under Chapter VI.<sup>5</sup>

Mr. Elaraby highlighted that it was important for the Council and the International Court of Justice to act in tandem, emphasizing, *inter alia*, that the Council

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Slovakia, Slovenia and Turkey aligned themselves with the statement.

<sup>3</sup> S/PV.4753, pp. 2-3.

<sup>4</sup> *Ibid.*, pp. 3-5.

<sup>5</sup> *Ibid.*, pp. 5-7.

should consider strict application of the provisions of Articles 27 (3) and 36 (3) of the Charter. He underlined the importance of increasing the acceptance by States of the compulsory jurisdiction of the Court, recalling that that recommendation was contained in the report of the Secretary-General entitled "An Agenda for Peace".<sup>6</sup>

In their reactions to the briefings, the majority of speakers recognized the primary role of the Council in the pacific settlement of disputes and voiced the need for the Council to increasingly explore and revert to the provisions of Chapter VI. They acknowledged that, unlike Chapter VII, Chapter VI provided more flexibility in the use of instruments to resolve disputes, such as investigative and recommendatory powers. Although emphasizing that the responsibility to prevent and resolve conflicts and disputes rested first and foremost with the parties, several speakers stressed the importance of the Council playing a more active role in conflict prevention and preventive diplomacy efforts, and making the shift from a culture of reaction to a culture of prevention. Many speakers, *inter alia*, recognized the mandated role of other United Nations organs in the pacific settlement of disputes, notably the General Assembly, the Secretariat and the International Court of Justice; expressed support for the efforts of the Secretary-General and his envoys to conduct "good offices" and mediation; underlined the importance of the Council's coordination with regional organizations in the pacific settlement of disputes; cited the role of peacekeeping operations and observer missions in preventing the outbreak of further conflict and stabilizing a military situation; and highlighted the importance of addressing the root causes of conflicts.

The President then made a statement on behalf of the Council,<sup>7</sup> by which the Council, *inter alia*:

Reaffirmed its commitment to maintain international peace and security through effective collective measures for the prevention and removal of threats to the peace or other breaches of the peace and to bring about, by peaceful means and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Recognized that the United Nations and its organs could play an important role in preventing disputes arising between parties, in preventing existing disputes escalating into conflicts and in containing and resolving the conflicts when they occur;

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<sup>6</sup> *Ibid.*, pp. 7-9. For the report, see S/24111

<sup>7</sup> S/PRST/2003/5.

Reiterated its commitment to make a wider and more effective use of the procedures and means enshrined in the provisions of the Charter regarding the pacific settlement of disputes, as one of the essential components of its work to promote and maintain international peace and security.

## 54. Security Council mission

### Overview

During the period under review the Security Council completed 13 missions. Destinations included several African countries as well as Yugoslavia, East Timor, Indonesia and Afghanistan<sup>1</sup>. Prior to 2003, missions were discussed at Council meetings under the items pertaining to the specific country or situation.<sup>2</sup> From 2003 onward, all missions were discussed under the item entitled “Security Council mission”. The table provides an overview of the missions completed during the review period. For missions discussed in 2003 under the item “Security Council mission”, summaries of the corresponding reports and meetings are presented by region.

### Security Council missions 2000-2003

<i>Mission</i>	<i>Duration</i>	<i>Composition</i>	<i>Reports and terms of reference</i>	<i>Meeting No.</i>	<i>Item</i>
Implementation of Security Council resolution 1244 (1999)	27-29 April 2000	Bangladesh (head of mission), Argentina, Canada, China, Jamaica, Malaysia, Russian Federation and Ukraine	S/2000/363	4138	Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)
Special Mission visit to Eritrea and Ethiopia	9-10 May 2000	United States (head of mission), France, Mali, Namibia, Netherlands, Tunisia and United Kingdom	S/2000/413	4142	The situation between Eritrea and Ethiopia
Democratic Republic of the Congo	4-8 May 2000	United States (head of mission), France, Mali, Namibia, Netherlands, Tunisia and United Kingdom	S/2000/416	4143	The situation concerning the Democratic Republic of the Congo
Sierra Leone	7-14 October 2000	United Kingdom (head of mission), Bangladesh, China, France, Jamaica, Mali, Netherlands, Russian Federation, Ukraine and United States	S/2000/992	4216	The situation in Sierra Leone
East Timor and Indonesia	9-17 November 2000	Namibia (head of mission), Argentina, Malaysia, Tunisia, Ukraine, United Kingdom and United States	S/2000/1105	4244	The situation in East Timor
Great Lakes region	15-26 May 2001	France (head of mission), China, Colombia, Ireland, Jamaica, Mali, Mauritius, Singapore,	S/2001/521 and Add.1	4323	The situation in the Great Lakes region

1 Angola, Burundi, Côte d’Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Guinea, Guinea-Bissau, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda, United Republic of Tanzania and Zimbabwe.

2 For Security Council missions from 2000 to 2002, see the section of chap. VIII that relates to the specific country or situation. .

## Repertoire of the Practice of the Security Council

<i>Mission</i>	<i>Duration</i>	<i>Composition</i>	<i>Reports and terms of reference</i>	<i>Meeting No.</i>	<i>Item</i>
Kosovo	16-18 June 2001	Tunisia, Ukraine, United Kingdom and United States Bangladesh (head of mission), China, Colombia, France, Ireland, Jamaica, Mali, Mauritius, Norway, Russian Federation, Singapore, Tunisia, Ukraine, United Kingdom and United States	S/2001/600	4331	Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)
Ethiopia and Eritrea	21-25 February 2002	Norway (head of mission), Bulgaria, Cameroon, China, Colombia, France, Guinea, Ireland, Mauritius, Mexico, Russian Federation, Singapore, Syrian Arab Republic, United Kingdom and United States	S/2002/205	4485	The situation between Eritrea and Ethiopia
Great Lakes region	27 April-7 May 2002	France (head of mission), Bulgaria, Cameroon, China, Colombia, Guinea, Ireland, Mauritius, Mexico, Norway, Russian Federation, Singapore, Syrian Arab Republic, United Kingdom and United States	S/2002/537 and Add.1	4532	The situation in the Great Lakes region
Kosovo and Belgrade	14-17 December 2002	Norway (head of mission), Bulgaria, Cameroon, China, Colombia, France, Guinea, Ireland, Mauritius, Mexico, Russian Federation, Singapore, Syrian Arab Republic, United Kingdom and United States	S/2002/1376	4676	Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)
Central Africa	7-16 June 2003	France (head of mission), Angola, Bulgaria, Cameroon, Chile, China, Germany, Guinea, Mexico, Pakistan, Russian Federation, Spain, Syrian Arab Republic, United Kingdom and United States	S/2003/653	4775, 4794	Security Council mission
West Africa	26 June-5 July 2003	United Kingdom (head of mission), Angola, Bulgaria, Cameroon, Chile, China, France, Germany, Guinea, Mexico, Pakistan, Russian Federation, Spain, Syrian Arab Republic and United States	S/2003/688	4785, 4794	Security Council mission
Afghanistan	31 October - 7 November 2003	Germany (head of mission), Angola, Bulgaria, Cameroon, Chile, China, France, Guinea, Mexico, Pakistan, Russian Federation, Spain, Syrian Arab Republic, United Kingdom and United States	S/2003/1074	4855	Security Council mission

## Africa

### Missions to Central Africa (7-16 June 2003) and West Africa (26 June-5 July 2003)

#### Deliberations of 18 June 2003 (4775th meeting)

The Security Council mission to Central Africa from 7 to 16 June 2003 was led by the representative of France and visited Pretoria, Luanda, Kinshasa, Bunia (Democratic Republic of the Congo), Bujumbura, Kigali, Dar-es-Salaam and Entebbe (Uganda). The mission met with the President of South Africa; the President of Angola; the President of the Democratic Republic of the Congo; the President of Burundi; the President of Rwanda; the President of the United Republic of Tanzania; and the President of Uganda. The mission also met with a number of other Government officials and was briefed in Kinshasa, Bujumbura and Kigali by the United Nations Observer Mission in the Democratic Republic of the Congo (MONUC), the United Nations Office in Burundi and the Special Representative of the Secretary-General for the Great Lakes Region, respectively. In addition, some members of the mission met with representatives of international non-governmental organizations and representatives of women's organizations in Burundi. In its report to the Council dated 20 June 2003,<sup>3</sup> found that urgent attention should be given to finishing the establishment of a transitional Government and the creation of a unified national army in the Democratic Republic of the Congo. It was also stressed that the situation in Bunia and North Kivu required regional efforts to stabilize security and end impunity for crimes committed in the region. Regarding Burundi, the mission strongly encouraged the international community to provide logistic and financial assistance to the peace process to ensure its successful outcome. In addition, the mission advocated immediate budgetary support to the transitional Government so as to not compromise the progress made, and stressed the importance of examining the Government's request to establish an international judicial commission of inquiry, as stipulated in the Arusha Peace and Reconciliation Agreement for Burundi.

At its 4775th meeting held on 18 June 2003, the Council included in its agenda the report of the

Security Council mission to Central Africa from 7 to 16 June 2003.<sup>3</sup> During the meeting, the Council heard a briefing by the head of mission (France), followed by statements by the representatives of Rwanda, the Democratic Republic of the Congo and the United Republic of Tanzania.

In his briefing, the representative of France noted that the main goal of the mission had been to bring support to the peace processes in the Democratic Republic of the Congo and Burundi, in a context of persistent hostilities in both countries. With regard to the Democratic Republic of the Congo, the mission had requested the President to facilitate the establishment of a transitional Government, with a focus on national reconciliation. While the mission took place only shortly after a humanitarian crisis in the Ituri region, and in the context of intensified attacks in North and South Kivu, the head of mission underlined that the mission had called for a cessation of all hostilities and emphasized the need for regional cooperation to halt transborder support to armed groups. He commended the cooperation between MONUC and the Interim Emergency Multinational Force in stabilizing the security situation in Bunia. However, he emphasized that resolving the conflict required a political solution. In that respect, he raised the question of the role MONUC could play in the peace process and mentioned the possibility of providing the mission with a stronger mandate, particularly in the context of the Multinational Force's departure from Bunia. Regarding Burundi, the representative of France reported that the mission had welcomed the Presidential transition while also showing concern over the absence of a complete ceasefire. He underlined that, consequently, peace remained fragile and that for the transition to be a success, the rebels had to end hostilities and join the peace talks. As for the reconciliation process, he added that it was necessary for the Government to implement fully a number of reforms, particularly in the areas of justice and security. He concluded his briefing by declaring that although the mission had raised high expectations among the visited countries, it was ultimately the responsibility of each government to achieve peace by implementing the provisions of the Peace agreement. He stressed that both parties had acknowledged the need to restore confidence on both sides of the border and that the mission would welcome a declaration of good neighbourliness, in

<sup>3</sup> S/2003/653.

addition to an international conference on peace in the Great Lakes region.<sup>4</sup>

In his statement, the representative of Rwanda expressed his hope that the recommendations made by the mission would help to resolve such pending issues as the complete disarmament of the former Rwandese Armed Forces and Interahamwe militias. He denied all allegations of support by the Rwandan Defence Forces to the Union des patriotes congolais and the Rassemblement congolais pour la démocratie (RCD) in the Ituri region. He argued that Rwanda had not sent troops to the Democratic Republic of the Congo since October 2002 and that the withdrawal of the Rwandan troops had been acknowledged by the Third Party Verification Mechanism following the signing of the Pretoria Agreement on 30 July 2002. He further argued that the Rwandan presence prior to the withdrawal had been beneficial to the population in stopping the former Rwandese Armed Forces and Interahamwe from crossing the borders, protecting Rwandan territory and averting the risk of renewed genocide. He also criticized the lack of cooperation from the Congolese leadership in re-establishing a climate of trust between the two Governments, in spite of Rwandan efforts and good will. Consequently, he requested that the Council pressure the government of the Democratic Republic of the Congo to, inter alia, honour its commitment under the various agreements and Council resolutions, stop the supply of weapons to the former Rwandese Armed Forces and Interahamwe militias and commit to establishing an inclusive, power-sharing government.<sup>5</sup>

In her statement, the representative of the Democratic Republic of the Congo argued that her government was actively engaged in the establishment of transitional institutions but that the attacks of the RCD-Goma forces and their control over the Eastern region was putting a break on the State-building efforts. She held the view that RCD-Goma received support from the government of Rwanda and asked the Council to maintain its pressure on them and their supporters. In addition, she stated that the emergency situation in Bunia required a long-term solution and that the temporary action of the Interim Emergency Multinational Force, as mandated, was insufficient. Rather, she argued, the mandate of MONUC should be amended and Chapter VII invoked in order to allow the

mission to restore the peace and then maintain the peace.<sup>6</sup>

Finally, the representative of the United Republic of Tanzania expressed the hope that the Council would make every effort to maintain the momentum created through its mission to Central Africa. She argued that the efforts accomplished by Burundi and the Democratic Republic of the Congo would not suffice without decisive actions and the support of the international community. She concurred with the Congolese delegate that the Council should reinforce the mandate of MONUC to ensure viable and sustained peace and security in the volatile areas. She concluded by reiterating the four-point proposal made by the President of the United Republic of Tanzania to promote peace and good governance in the region. The proposal included the adoption of a non-aggression pact, the promotion of the New Partnership for Africa's Development, an increased level of contacts and exchanges within the region and the cessation of arms proliferation.<sup>7</sup>

#### **Deliberations of 9 July 2003 (4785th meeting)**

The Security Council mission to West Africa was led by the representative of the United Kingdom, visited Guinea-Bissau, Nigeria, Ghana, Côte d'Ivoire, Guinea and Sierra Leone. The mission was scheduled to visit Liberia but, owing to the conflict in Liberia at that time, the mission instead travelled to Accra and met with the parties to the Liberian peace talks gathered under the auspices of the Economic Community of West African States (ECOWAS). The mission met with the President of Guinea-Bissau; the President of Côte d'Ivoire; the President of Ghana and Chairman of ECOWAS (Economic Community of West African States); the President of Nigeria; and the President of Sierra Leone. The mission also met with ministers, Government officials and parliamentarians, leaders of political parties and representatives of civil society. In addition, the mission met with a number of representatives of the United Nations missions, programmes and agencies of the United Nations system.

In its report to the Council dated 11 July 2003,<sup>8</sup> the mission emphasized, inter alia, the need to increase

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<sup>4</sup> S/PV. 4775, pp. 2-4.

<sup>5</sup> Ibid., pp. 4-6.

<sup>6</sup> Ibid., p. 7.

<sup>7</sup> Ibid., p. 8.

<sup>8</sup> S/2003/688.

international support to and coordination with ECOWAS, and stressed the important role of the new Office of the Special Representative of the Secretary-General for West Africa in that regard. In addition, the mission stated that security sector reform was a priority in the region and that both donor countries and the United Nations system should deliver financial and training assistance in that area. The mission also proposed measures to be taken or strengthened to address such issues as the proliferation of small arms, the protection of civilians in armed conflict and the economic factors of instability and war in the region.

At its 4785th meeting, on 9 July 2003, the Council included in its agenda the item entitled "Report of the Security Council mission to West Africa from 26 June to 5 July 2003". The Council heard a briefing, delivered jointly by the representative of the United Kingdom, in his capacity as head of the Security Council mission to West Africa, and the representative of Mexico, in his capacity in his capacity as head of mission in Guinea-Bissau.

In his briefing, the representative of the United Kingdom underlined that the objective of the mission had been to generate within and outside of the United Nations a new momentum of support, assistance and partnership with West Africa. He was hopeful that the mission, as well as other important events such as the official visit of the President of the United States to Africa and the Summit of the African Union in Maputo, would help to trigger a new stage of effective action on African development. In Côte d'Ivoire, he stated that the mission had encouraged the President to speed the national reconciliation process and adopt an amnesty law. The mission also invited the Forces armées nationales de Côte d'Ivoire and Forces nouvelles to engage in closer dialogue, and welcomed the declaration of permanent end to hostilities issued by both groups. In respect of Liberia, the mission took stock of the call formulated by civil society groups and political parties to see an increased international involvement in their country. The head of mission expressed hope for a deployment of forces by ECOWAS, although he stressed that the effective implementation of a ceasefire and the basics of a peace agreement between the parties were a necessary prerequisite for such a deployment to be successful. He noted that, in Sierra Leone, the conditions for self-sustained stability still needed to be attained, and that the focus should be given to the diamond industry and

the security sector. He added that the drawdown of the United Nations Mission in Sierra Leone should be decided with regard to the progress made in the field of national institution-building. He concluded his briefing by stressing that at the regional level, the strong desire to tackle peace and development issues was weakened by a lack of resources. He therefore encouraged the international community to fund and support ECOWAS.<sup>9</sup>

Regarding the situation in Guinea-Bissau, the representative of Mexico informed the Council that the main goal of the visit had been to urge the government to achieve concrete steps in the political process and encourage the prompt holding of legislative elections. He stressed the distinctive, joint nature of the mission as a partnership between the Security Council and the Economic and Social Council. He stated that, this particular configuration allowed the mission to approach the situation of Guinea-Bissau from a double perspective: development and security. While highlighting the combined effect of economic, social and political development on peace and security, he stressed the need to adopt a regional approach to assess the impact of West African dynamics on the future of Guinea-Bissau. He stated that the process of post-conflict political reconstruction remained uncertain and warned that the national institutions were at risk owing to a very high level of instability in the country. In response, a clear commitment from the government was needed as well as increased support from the international community, in particular from the International Monetary Fund, the World Bank and donor countries.<sup>10</sup>

**Decision of 25 July 2003 (4794th meeting):  
statement by the President**

At its 4794th meeting, on 25 July 2003, the Council included in its agenda the item reports of the Security Council missions to Central Africa from 7 to 16 June 2003 and of the Security Council mission to West Africa from 26 June to 5 July 2003.<sup>11</sup> At the meeting, the President (Spain) made a statement on behalf of the Council,<sup>12</sup> by which the Council, inter alia:

<sup>9</sup> S/PV.4785, pp. 2-5.

<sup>10</sup> Ibid., pp. 5-7.

<sup>11</sup> S/2003/653 and S/2003/688.

<sup>12</sup> S/PRST/2003/12.

Welcomed the recommendations made in the reports of its mission to Central Africa undertaken from 7 to 16 June 2003 and its mission to West Africa undertaken from 26 June to 5 July 2003;

Endorsed the recommendations which fall within its area of responsibility and wished to see them implemented;

Emphasized the importance of a subregional approach to issues such as small arms and light weapons, mercenaries, child soldiers and humanitarian access, and stressed that follow-up activity by the United Nations would require close cooperation and coordination throughout the United Nations system.

## Asia

### **Mission to Afghanistan (31 October-7 November 2003)**

#### **Deliberations of 11 November 2003 (4855th meeting)**

The Security Council mission to Afghanistan, was led by the representative of Germany and was based in Kabul but travelled to Herat and Mazar-e-Sharif. A visit to Kandahar was cancelled owing to the prevailing security situation. The mission held discussions with the Afghan Transitional Administration, regional leaders, the United Nations Assistance Mission in Afghanistan, United Nations agencies, the International Security Assistance Force (ISAF), the coalition forces, the diplomatic community, non-governmental organizations and civil society. In its report to the Council of 11 November 2003,<sup>13</sup> the mission found that the withdrawal of all factional forces from Kabul should be addressed as a matter of urgency; that security sector reform should receive prompt financial support from the international community; and that the reform of the Afghan Ministry of Defence should be adapted and applied to the other key State institutions. The mission also recommended that a national reconciliation process be initiated and a conference be organized in follow-up to the Bonn Agreement of 5 December 2010.<sup>14</sup>

At its 4855th meeting, held on 11 November 2003, the Council included in its agenda the report of the Security Council mission to Afghanistan from 31 October to 7 November 2003.<sup>13</sup> During the meeting,

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<sup>13</sup> S/2003/1074.

<sup>14</sup> Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions (see S/2001/1154).

the head of the mission (Germany) briefed Council members on the visit.

In his briefing, the head of mission noted that the mission had given the Council an opportunity to collect information on the ongoing constitutional process, in particular the release of a draft constitution, two years after the signature of the Bonn Agreement. He stressed that the purpose of the mission had been to assure the Afghan people that the Council and the international community would continue to promote and support reconstruction and stabilization efforts in the country. The mission had requested that the various parties and local political actors stop factional fighting, engage in the Bonn process and cooperate with the central Government. The head of mission noted that significant progress had been made towards the reconstruction of the country. However terrorism, factional fighting and drug-related crimes, which were identified by all interlocutors as the three main causes of insecurity, had slowed down the reconstruction efforts and challenged the national institution-building processes. On the crucial issue of security in Afghanistan, he pointed out the destructive effect of terrorist activities on reconstruction efforts. Similarly, he noted that the issue of local factionalism required greater cooperation between the provinces and the central Government and the strengthening of the rule of law. To that end, the mission had strongly encouraged the authorities to apply reforms, already conducted in the northern region, such as the integration of local forces into a national army, the demilitarization of Mazar-e-Sharif and the appointment of staff in key positions in the local administration. In regard to international assistance in the security sector, he recalled that Afghan ownership over its national security was crucial. He acknowledged, however, that the deployment of international forces would be necessary until Afghan security institutions could be developed. In that respect, the mission commended the positive role of the International Security Assistance Force in maintaining security in Kabul and providing reconstruction assistance in Mazar-e-Sharif, and expressed its hope with regard to the contribution of ISAF in supporting the adoption of the new Afghan constitution and the upcoming electoral process. In conclusion, he noted that the mission had also met with representatives of civil society, who underlined the importance of establishing a mechanism for transitional justice, owing the continued presence of perpetrators of grave human rights violations at a high

level in public institutions. However, senior officials of the Government and others suggested that Afghanistan was too weak to face the challenges of the past and that measures to enhance good governance should be given priority. Finally, representatives of women's

organizations pointed out that their active participation in the public arena was being hampered, and expressed special concern over the lack of explicit guarantees for women's rights in the draft constitution.<sup>15</sup>

<sup>15</sup> S/PV.4855, pp. 2-6.

## 55. Justice and the rule of law: the United Nations role

### Initial proceedings

#### Decision of 24 September 2003 (4833rd meeting): statement by the President

At its 4833rd meeting, on 24 September 2003, the Security Council included in its agenda the item entitled "Justice and the rule of law: the United Nations role". Statements were made by the Secretary-General and by all members of the Council.<sup>1</sup>

The Secretary-General observed that the United Nations, through many complex operations, had learned that the rule of law was not a luxury and that justice was not a side issue. He advocated a comprehensive approach to justice and the rule of law, which needed to encompass the entire criminal justice chain. He pointed out that the actions of the United Nations needed to be based in its standards for human rights and the administration of justice and in the principles of international humanitarian law, human rights law, refugee law and criminal law. He stated that the United Nations needed, wherever possible, to guide rather than direct, and reinforce rather than replace, with the aim of leaving behind strong local institutions when it departed. He asserted that ending the climate of impunity was vital to restoring public confidence, and that transitional justice mechanisms needed to concentrate not only on individual responsibility for serious crimes, but also on the need to achieve national reconciliation. He recognized that at times, the goals of justice and reconciliation competed with each other, and added that, in each case, the Council needed to attempt to balance the demands of peace and justice.<sup>2</sup>

<sup>1</sup> At the meeting, Bulgaria, Chile, China, France, Guinea, Mexico, Pakistan, the Russian Federation, Spain and the Syrian Arab Republic were represented by their respective Ministers for Foreign Affairs. The United Kingdom was represented by the Secretary of State for Foreign and Commonwealth Affairs.

<sup>2</sup> S/PV.4833, pp. 2-4.

In their statements, participants called for, inter alia, a more intensive use of measures for the pacific settlement of disputes, as contemplated in Article 33 of the Charter of the United Nations; greater compliance with the resolutions of the Council; ensuring application of international human rights and humanitarian law and all the provisions of the Geneva Conventions; and greater coordination within the United Nations system, as well as with other international institutions, regional organizations, local partners and non-governmental organizations. Many speakers commended the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the International Criminal Court. A number of representatives advocated the formation of a pool of experts for emergency situations in the areas of justice and the rule of law. A number of speakers held the view that justice and the rule of law needed to be given earnest attention in United Nations peacekeeping operations and post-conflict reconstruction. Some representatives emphasized the need for development, which was a necessary condition for justice and the rule of law.

The representative of Pakistan observed that the resolutions and decisions of the Council needed to be implemented uniformly and without discrimination and also with equal force, irrespective of their falling within Chapter VI or Chapter VII of the Charter. He warned that selective implementation eroded confidence in the system and undermined the credibility of the United Nations.<sup>3</sup> The representative of the Syrian Arab Republic expressed the view that a number of the resolutions adopted by the Council had been imposed on some States while not truly imposed on others.<sup>4</sup>

<sup>3</sup> Ibid., p. 4.

<sup>4</sup> Ibid., p. 10.



The representative of the Russian Federation believed that joint efforts needed to be made to ensure that the legal bases for peacekeeping were strengthened, in accordance with the Charter and the decisions of the Council. He also remarked that the work of United Nations structures needed to be conducted in strict accordance with the decisions of the Council and that it needed to preclude any arbitrary or broader interpretation of those decisions, which could have negative consequences for the success of peacekeeping efforts and for the credibility of the United Nations in general.<sup>5</sup>

The representative of the United States expressed the view that launching prosecutions in the midst of negotiations might not be the best route to post-conflict development, whereas flexibility in approach was needed.<sup>6</sup> The representative of the United Kingdom expressed the hope that the International Criminal Court would eventually remove the need for separate international tribunals.<sup>7</sup>

The representative of Cameroon stressed that the United Nations should give priority to providing security to assuring State reform and preventing the breakdown of the State, and to laying down the basis for the establishment of a modern State. In other words, the United Nations was expected to work for the reconstruction of the State, as understood under Articles 2 and 4 of the Charter.<sup>8</sup>

At the same meeting, the President (United Kingdom) made a statement on behalf of the Council,<sup>9</sup> which read, in part:

The Security Council met at the ministerial level on 24 September 2003 to consider "Justice and the rule of law: the United Nations role". Ministers expressed their respective views and understandings on, and reaffirmed the vital importance of, these issues, recalling the repeated emphasis given to them in the work of the Council, for example in the context of the protection of civilians in armed conflict, in relation to peacekeeping operations and in connection with international criminal justice;

The statements made on 24 September demonstrated the abundant wealth of relevant experience and expertise that exists within the United Nations system and in the Member States. Ministers considered that it would be appropriate to examine

further how to harness and direct this expertise and experience so that it would be more readily accessible to the Council, to the wider United Nations membership and to the international community as a whole, so that the lessons and experience of the past could be, as appropriate, learned and built on. The Council welcomed in particular the offer by the Secretary-General to provide a report which could guide and inform further consideration of these matters.

#### **Deliberations of 30 September 2003 (4835th meeting)**

At its 4835th meeting, on 30 September 2003, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations, following which statements were made by the representatives of Argentina, Australia, Austria, Azerbaijan, Bahrain, Brazil, Canada, the Democratic Republic of the Congo, Denmark, Finland, Italy (on behalf of the European Union<sup>10</sup>), Japan, Jordan, Liechtenstein, New Zealand, the Philippines, the Republic of Korea, Romania, San Marino, Serbia and Montenegro, Sierra Leone, Sweden, Switzerland, Trinidad and Tobago and Uruguay, as well as the Legal Counsel of the United Nations.

The Under-Secretary-General for Peacekeeping Operations, on behalf of several Secretariat departments and United Nations entities that were engaged in supporting justice and the rule of law in post-conflict societies, affirmed that the United Nations could no longer afford to treat the rule of law as a side activity in which they engaged "longside political objectives. He advocated ensuring that the rule of law figured more prominently from the early stages of peace negotiations onwards. He believed that it had become clear that the effectiveness of the United Nations in promoting the rule of law in many parts of the world had been hampered by the inadequacy of mandates and resources. He commented that the international tribunals had so far not always proved to be efficient or effective instruments for prosecuting and trying those suspected of the most serious crimes. He expressed support for, inter alia, a move towards broader assistance and support to national justice systems, and stressed the need to ensure that any amnesty clauses in peace agreements exclude amnesties for war crimes, genocide, crimes against

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

<sup>6</sup> Ibid., p. 20.

<sup>7</sup> Ibid., p. 23.

<sup>8</sup> Ibid., p. 19.

<sup>9</sup> S/PRST/2003/15.

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<sup>10</sup> Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

humanity and other serious violations of international human rights and humanitarian law. Finally, he pointed out that any strategy adopted needed to have as its primary objective the promotion of national ownership of justice systems and capacity-building, and that international norms and standards needed to be the reference point of all their work.<sup>11</sup>

Most of the speakers agreed on the importance of, *inter alia*, the strengthening and consolidation of local rule-of-law capacity; the involvement of local actors; the promotion of national ownership and capacity-building; the core of the peaceful settlement of disputes; the establishment of the International Criminal Court, which was based on the principle of complementarity, as well as the other international tribunals; the inclusion of justice and the rule-of-law elements in peace operations and mission mandates; the mainstreaming of rule-of-law aspects into the work of the United Nations; and the need for better resources and technical assistance. Many representatives welcomed the offer by the Secretary-General to provide a report on the issue. Several speakers supported, *inter alia*, the formation of a pool of experts in the rule of law; stronger cooperation between the United Nations and international organizations; and closer coordination between donors.

Some representatives suggested that the Council was well positioned to make use of article 13 (b) of the Rome Statute of the International Criminal Court and refer relevant situations to the Court as a tool for fighting impunity.<sup>12</sup> The representative of New Zealand

expressed the hope that the Council would cooperate with the International Criminal Court within the framework of the Rome Statute and the Charter, and would refrain from actions that would undermine the effective operation of the Court.<sup>13</sup> The representative of Canada suggested that the concerns in some quarters about the theoretical possibility of the International Criminal Court investigating nationals of certain non-State parties were unwarranted. He added that his delegation assumed that in cases where the jurisdiction of Court was clearly accepted by the State affected, and where that State was unwilling or unable to respond to massive crimes, the Council would support the Court in bringing justice for victims.<sup>14</sup> The representative of Sweden suggested that there should be no obstacles to the Court eventually achieving universal application.<sup>15</sup>

The representative of Uruguay expressed the view that justice and the maintenance of international peace and security could sometimes be incompatible goals, and in that context he recalled that article 16 of the Statute of the International Criminal Court authorized the Council to request that the Court suspend investigations or prosecutions that had been initiated if those proceedings interfered with the Council's mission to maintain international peace and security. Nonetheless, he held that resolutions 1422 (2002) and 1487 (2003)<sup>16</sup> were not correct applications of that article of the Statute.<sup>17</sup>

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<sup>11</sup> S/PV.4835, pp. 3-7.

<sup>12</sup> *Ibid.*, p. 20 (Jordan); and p. 22 (Sweden).

<sup>13</sup> *Ibid.*, p. 11.

<sup>14</sup> *Ibid.*, p. 18.

<sup>15</sup> *Ibid.*, p. 22.

<sup>16</sup> For information on these resolutions, see sect. 47.D, of the present chapter, on United Nations peacekeeping.

<sup>17</sup> *Ibid.*, pp. 25-26.

## 56. Briefings

During the period under review, the Security Council heard a number of briefings that were not explicitly connected to any item on the Council's agenda. Where appropriate, the briefings have been covered in the sections of chapter VIII dealing with the regions.<sup>1</sup> Briefings held in closed meetings and those that touched on issues cutting across regions are covered here.

The Council heard briefings in closed meetings from the President of the International Court of Justice,<sup>2</sup> the Secretary-General,<sup>3</sup> and the Chairman-in-Office of the Organization for Security and Cooperation in Europe.<sup>4</sup>

At its 4673rd and 4888th meetings, respectively, the Council heard briefings under the item entitled "Briefings by the Chairmen of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola, the Security Council Committee established pursuant to resolution 1267 (1999), the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia, the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa, and the Working Group of the Security Council on United Nations Peacekeeping Operations"<sup>5</sup> and under the item entitled "Briefings by Chairmen of Security Council Committees and Working Groups".<sup>6</sup> During the briefings, the Chairmen provided an overview of the work of their respective committees and working groups.<sup>7</sup>

At the 4219th meeting on 10 November 2000, and the 4470th meeting, on 7 February 2002, the United Nations High Commissioner for Refugees briefed the Council and made proposals in the areas of peace operations and peacebuilding. The briefings touched on a number of areas relating to refugees, including, inter alia, the need to initiate and implement peace operations more rapidly; the importance of peacebuilding and disarmament, demobilization and reintegration; the gap between emergency, short-term humanitarian activities and the implementation of medium to long-term development and reconstruction programmes; and an overview of the situations in several countries and regions, including Afghanistan and Sierra Leone, and the Balkans and the Great Lakes region. Following the briefings, members of the Council made statements and asked questions, and the United Nations High Commissioner for Refugees responded to points raised by the members of the Council.

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1 See sect. 30.E, with regard to the briefing by Mr. Carl Bildt, Special Envoy of the Secretary-General for the Balkans; and sect. 30.D, footnote 236, with regard to the briefing by His Excellency Mr. Nebojša Čović, Deputy Prime Minister of Serbia, Federal Republic of Yugoslavia in the present chapter.

2 4212th, 4398th and 4636th meetings, held on 31 October 2000, 29 October 2001 and 29 October 2002, respectively.

3 4226th meeting, held on 17 November 2000.

4 4266th meeting, held on 29 January 2001.

5 4673rd meeting, held on 18 December 2002.

6 4888th meeting, held on 22 December 2003. The Council was briefed by the Chairmen of the Committee established pursuant to resolution 661 (1990) concerning the situation between Iraq and Kuwait; the Committee established pursuant to resolution 751 (1992) concerning Somalia; the Committee established pursuant to resolution 918 (1994) concerning Rwanda; the Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone; and the Working Group on General Issues on Sanctions.

7 For more information on the above-mentioned committees, see chap. V, part I, sect. A, with regard to standing committees and ad hoc committees.

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## **Chapter IX**

### **Decisions taken by the Security Council in the exercise of its other functions and powers**

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## **Note**

During the period under review, the Security Council took a number of decisions in the exercise of its functions and powers other than those relating to the maintenance of international peace and security. The Council's practice relating to these decisions has been addressed elsewhere in this Supplement.

The practice of the Council in connection with (a) the appointment of the Secretary-General, and (b) the election of members of the International Court of Justice is dealt with in chapter VI (the relations of the Council with other organs of the United Nations).

Decisions of the Security Council on the question of the admission of new Members to the United Nations are dealt with in chapter VII.

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## **Chapter X**

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

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## Introductory note

Chapter X deals with the practice of the Security Council aimed at promoting and implementing recommendations and methods or procedures for the peaceful settlement of disputes within the framework of Articles 33 to 38 of Chapter VI and Articles 11 and 99 of the Charter.

The period under review was marked by a considerable expansion of the scope of Council action within the framework of Chapter VI of the Charter. Furthermore, following the issuance of the first report of the Secretary-General on the prevention of armed conflict,<sup>1</sup> the Council, by a number of decisions, recalling its key role in the peaceful settlement of disputes under Chapter VI of the Charter, emphasized the importance of finding better ways to prevent the outbreak as well as the recurrence of conflicts. Highlighting its continuing commitment to addressing the prevention of armed conflict in all regions of the world, the Council endorsed the need to create a culture of prevention and reaffirmed that early warning, preventive diplomacy, preventive deployment, preventive disarmament and post-conflict peacebuilding were interdependent and complementary components of a comprehensive conflict prevention strategy. Against this background, mindful of the need to respect the principle of sovereignty and non-interference in matters of domestic jurisdiction of States, the Council increasingly expanded the use of a number of instruments aimed at preventing the outbreak and/or the recurrence of conflicts, including, inter alia, Security Council missions and fact-finding missions, in order to determine whether any dispute or any situation might lead to international friction or give rise to a dispute; support for the good offices of the Special Representatives and Envoys of the Secretary-General; establishment of special political missions in post-conflict situations which included in their mandates elements relating to the implementation of peace agreements and/or ceasefire agreements as well as to political dialogue, national reconciliation and capacity-building; and the inclusion of elements of conflict prevention and peacebuilding in integrated peacekeeping operations.

As chapter VIII of this Supplement sets out a full account of Council proceedings with regard to the peaceful settlement of disputes, the present chapter will not discuss the practice of the Security Council aimed at the peaceful settlement of disputes in a comprehensive manner. Instead, chapter X will focus on selected material which may best serve to highlight the ways in which the provisions of Chapter VI of the Charter were applied and interpreted in the relevant decisions and deliberations of the Council.

The manner of presenting and classifying the relevant material has been devised to set forth the practices and procedures to which the Council has had recourse in a readily accessible form. In line with the previous Supplement of the *Repertoire* covering the period from 1996 to 1999, the material has been categorized under thematic headings rather than individual Articles of the Charter, so as to avoid ascribing to specific Articles of the Charter Council proceedings or decisions, which do not themselves refer to any such Article.

Part I illustrates how, under Article 35, Member States and States which are not members of the United Nations have brought new disputes and situations to the attention of the Security Council. That part also touches upon the functions and

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<sup>1</sup> S/2001/574.



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practice of the General Assembly and the Secretary-General, under Articles 11 (3) and 99 of the Charter respectively, in calling the attention of the Security Council to matters which are likely to threaten the maintenance of international peace and security. Part II sets out investigative and fact-finding activities initiated and performed by the Council that may be deemed to fall under the scope of Article 34. Part III provides an overview of the recommendations and decisions of the Council with regard to the pacific settlement of disputes. Specifically, it illustrates the recommendations of the Council to the parties to a conflict, and its support for the endeavours of the Secretary-General in the peaceful settlement of disputes. Finally, part IV reflects constitutional discussions within the Security Council on the interpretation or application of the provisions of Chapter VI of the Charter.

The following Articles of the Charter are cited in chapter X:

*Article 11*

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

*Article 33*

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

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

*Article 34*

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

*Article 35*

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

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

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

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Article 36

1. *The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.*
2. *The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.*
3. *In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.*

Article 37

1. *Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.*
2. *If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.*

Article 38

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

Article 99

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

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## Part I

### Referral of disputes and situations to the Security Council

#### Note

Within the framework of the Charter, Articles 35 (1) and (2) and 37 (1) are generally regarded as the provisions on the basis of which States may or, in the case of Article 37 (1), shall, refer disputes to the Security Council. The practice of the Council in this regard is described below in five sections.

The first section, entitled “Referrals by States”, provides an overview of the referrals of disputes and situations to the Council under Article 35 (1) and (2). During the period under review, disputes and situations were mainly referred to the Council, generally by means of a communication, by members of the United Nations, either by those directly affected and/or through third States and regional groups. The section also outlines, in the form of a table, new disputes or situations referred to the Council and on the basis of which the Council convened meetings under new agenda items during the period under consideration. Following the trend of previous periods, the number of new referrals to the Council further decreased during the period 2000-2003.

The second section, entitled “Nature of matters referred to the Security Council”, outlines the subject matter of the relevant communications referred by Member States to the Council. This is followed by another section entitled “Action requested of the Security Council” which analyses the type of action requested of the Security Council by Member States submitting a dispute or a situation to the Council.

The last two sections, entitled respectively “Referrals by the Secretary-General” and “Referrals by the General Assembly”, refer to Articles 11 (3) and 99 of the Charter, according to which the General Assembly and the Secretary-General, respectively, may refer matters which are likely to endanger international peace and security to the Council. During the period under review, neither the General Assembly nor the Secretary-General explicitly referred any matters to the Council.

#### Referrals by States

According to Article 35, which, in the absence of evidence pointing to other Charter provisions, is commonly regarded as the basis on which matters are referred to the Council by States, any Member State may bring to the Council’s attention any “dispute” or “situation which might lead to international friction or give rise to a dispute”. While Article 35 was expressly referred to in a small number of communications, most communications did not cite any specific Article as the basis on which they were submitted.<sup>2</sup>

According to Article 35 (2) of the Charter, a State which is not a member of the United Nations may bring to the attention of the Security Council any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the Charter. During the period under consideration, States which were not members of the United Nations did not submit any dispute or situation to the attention of the Council. Situations were referred to the Security Council exclusively under the provisions of Article 35 (1), directly by the affected Member States, either on their own<sup>3</sup> or through communications from third States and/or regional groups.<sup>4</sup>

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<sup>2</sup> For explicit references to Article 35, see the following communications: identical letters dated 14 September 2001 from the representative of Afghanistan addressed to the Secretary-General and the President of the Security Council in connection with the situation in Afghanistan (S/2001/870); and letter dated 13 April 2000 from the representative of Germany addressed to the President of the Security Council in connection with the situation between Eritrea and Ethiopia (S/2000/312).

<sup>3</sup> See, for example, the following letters addressed to the President of the Security Council: letter dated 13 February 2000 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council to discuss the deterioration of the situation of the Serbs and other non-Albanians in Kosovo and Metohija (S/2000/111); letter dated 20 May 2000 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council following the failure of the Presidency of the European Union to extend an invitation to the Federal Republic of Yugoslavia to participate in the Ministerial Meeting of

the Peace Implementation Council in Brussels on 23 and 24 May 2000 (S/2000/458); letter dated 6 June 2000 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council to discuss the “crime of ethnic Albanian terrorists and the failure of the international presences to prevent the crime, as well as the abuse of power by the British members of KFOR (Kosovo Force) who shot at unarmed Serbian civilians” (S/2000/543); letter dated 29 June 2000 from the representative of the Federal Republic of Yugoslavia requesting a meeting of the Council to consider the situation in Kosovo and Metohija (S/2000/636); letter dated 19 July 2000 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council to consider the intention of the United Nations Interim Administration in Kosovo (UNMIK) to “take over the Metallurgical Section of the RMHK Trepca Shareholding Corporation in Kosovska Mitrovica, Kosovo and Metohija” (S/2000/716); and letter dated 14 August 2000 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council to consider “the armed attack on and the usurpation of the RMHK Trepca Shareholding Corporation by the Kosovo Force” (S/2000/801). See also identical letters dated 6 February 2001 from the representative of Bosnia and Herzegovina addressed to the Secretary-General and the President of the Security Council requesting a meeting of the Council to debate the opportunity to mandate a conference to review the implementation of the Dayton Agreement (S/2001/114); and the following letters addressed to the President: letter dated 4 March 2001 from the representative of the former Yugoslav Republic of Macedonia requesting the convening of an emergency session of the Council to present an action plan of his Government containing measures for the cessation of violence and for lasting stabilization on the border with the Federal Republic of Yugoslavia (S/2001/191); letter dated 14 March 2001 from the representative of Burundi requesting an urgent meeting of the Council to discuss the “intensification of the war” and the “serious setback” for the peace process in the country (S/2001/221); letter dated 1 August 2001 from the representative of the Democratic Republic of the Congo requesting an urgent meeting of the Council to discuss the “violations of the integrity of the Congolese territory by Rwanda and Uganda” (S/2001/759); letter dated 18 March 2002 from the representative of the Democratic Republic of the Congo requesting a meeting to discuss the alleged violations by Rwanda of the Lusaka ceasefire agreement (S/2002/286); letter dated 23 May 2002 from the representative of the Federal Republic of Yugoslavia requesting an urgent meeting of the Council regarding the implementation of Security Council resolution 1244 (1999) (S/2002/574); and letter dated 14 August 2003 from the representative of Serbia

and Montenegro requesting an urgent meeting of the Council to consider the latest developments in Kosovo and Metohija, especially the terrorist attack that took place in the village of Goradevac in the Peć region on 13 August 2003 (S/2003/815). See, in addition, letter dated 5 October 2003 from the representative of the Syrian Arab Republic requesting an emergency meeting of the Council to consider the “violations of Syrian and Lebanese airspace committed on 5 October 2003 by the Israeli airforce and the missile attack carried out by the latter on the same day against a civilian site situated inside Syrian territory” (S/2003/939); the same situation was brought to the attention of the Security Council by a letter dated 5 October 2003 from the representative of Lebanon (S/2003/943).

<sup>4</sup> See, for example the following letters addressed to the President of the Security Council: letter dated 10 May 2000 from the representative of Eritrea, in his capacity as Chairman of the Group of African States, requesting an open emergency meeting of the Council to address the situation in Sierra Leone (S/2000/408), and a letter dated 11 May 2000 from the representative of Namibia (S/2000/410) bringing to the attention of the Council the same situations; letter dated 2 October 2000 from the representative of South Africa, in his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement, requesting an urgent meeting of the Council to respond to “the critical situation in Occupied East Jerusalem, other parts of the Occupied Palestinian Territory and parts of Israel” (S/2000/934), and the same situation was brought to the attention of the Council by letters dated 2 October 2000 from the representative of Iraq, in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States; the representative of Malaysia, on behalf of the Non-Aligned Movement; the Permanent Observer of Palestine; and the representative of Malaysia in his capacity as Chairman of the Islamic Group (S/2000/928, S/2000/929, S/2000/930 and S/2000/935, respectively); letter dated 21 November 2000 from the representative of the Libyan Arab Jamahiriya, in his capacity as Chairman of the Arab Group, requesting an urgent meeting of the Council to discuss the deteriorating situation in the occupied Palestinian territory (S/2000/1109); letter dated 15 June 2001 from the representative of the Russian Federation, requesting an open meeting of the Council to consider ways of improving the humanitarian situation in Iraq (S/2001/597); and letter dated 15 August 2001 from the representatives of Qatar and Mali, on behalf of the Islamic Group, requesting a meeting to discuss the deteriorating situation in the occupied Palestinian territory (S/2001/797). See also identical letters dated 20 February 2002 from the Permanent Observer of Palestine addressed to the Secretary-General and the President, requesting an urgent meeting of the Council to

discuss the deteriorating situation in the occupied Palestinian territories, including Jerusalem (S/2002/182), and the following letters addressed to the President: letter dated 20 February 2002 from the representative of Yemen, on behalf of the League of Arab States (S/2002/184) bringing to the attention of the Council the same situation; letter dated 29 March 2002 from the representative of Qatar, in his capacity as Chairman of the Islamic Summit Conference, requesting an urgent meeting of the Council to discuss the developments in the occupied Palestinian territory (S/2002/331); letter dated 1 April 2002 from the representative of Tunisia, in his capacity as Chairman of the Arab Group, requesting a meeting to discuss the “dangerous” situation in the occupied Palestinian territory (S/2002/336); letter dated 2 May 2002 from the representative of the Sudan in his capacity as Chairman of the Arab Group and on behalf of the States Members of the League of Arab States, requesting a meeting of the Council to discuss the deteriorating situation in the occupied Palestinian territory, including Jerusalem (S/2002/510), and the same situation was brought to the attention of the Council by a letter dated 11 June 2002 from the representative of Bahrain in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2002/655); letter dated 10 October 2002 from the representative of South Africa, on behalf of the Non-Aligned Movement, requesting an emergency meeting of the Council on the situation in Iraq (S/2002/1132); letter dated 23 July 2002 from the representative of Saudi Arabia, in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States, requesting the convening of an immediate meeting of the Council to discuss the deteriorating situation in the Occupied Palestinian Territory, including Jerusalem (S/2002/828); letter dated 7 March 2003 from the representative of Malaysia, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement, requesting an open debate of the Council on the new developments pertaining to Iraq (S/2003/283); letter dated 12 September 2003 from the representative of the Sudan, in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States, requesting the convening of an immediate meeting of the Council to consider the “continued Israeli escalation against the Palestinian people and their leadership” (S/2003/880); letter dated 9 October 2003 from the representative of the Syrian Arab Republic, in his capacity as Chairman of the Arab Group, requesting an urgent meeting of the Council to discuss the Israeli decision to construct a wall in the occupied Palestinian territory (S/2003/973), and, in regard to the same situation, letters dated 9 October 2003 from the representatives of Malaysia, on behalf of the Non-Aligned Group, and the Islamic Republic of Iran,

Disputes and situations were generally submitted to the Security Council by means of a communication addressed to the President of the Council. In several instances, however, matters were brought to the Council’s attention through communications addressed to both the President of the Council and the Secretary-General.<sup>5</sup>

Communications by which new disputes or situations were referred to the Council and on the basis of which the Council convened meetings under new agenda items during the period under review are listed in the table below, entitled “Communications bringing disputes or situations to the attention of the Security Council during the period 2000-2003”. It should be borne in mind that the designation of a new agenda item does not necessarily imply the existence of a new dispute or situation, as it can simply be a change in the formulation of the item on the agenda which has been before the Council. Communications by which Member States merely conveyed information, but did not request a Council meeting or other specific Council action, have not been included in the table, as such communications cannot be considered as referrals under Article 35. Furthermore, as was the case in the previous Supplement, the table does not include communications referring to disputes or situations considered under the then existing agenda items by the Council, so as not to codify or classify new developments and deterioration of situations in the ongoing conflicts. It should be noted that the delimitation criteria mentioned above are being used only for the purpose of the following table.

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on behalf of the Organization of the Islamic Conference (S/2003/974 and S/2003/977, respectively).

<sup>5</sup> For example, in connection with the situation in the Middle East, including the Palestinian question, identical letters were submitted on two occasions to the Secretary-General and the President of the Security Council; see identical letters dated 2 October 2000 and 20 February 2002, respectively, from the Permanent Observer of Palestine addressed to the Secretary-General and the President of the Security Council (S/2000/930 and S/2002/182). In connection with the situation in Afghanistan, identical letters were also submitted to the Secretary-General and the President of the Security Council; see identical letters dated 14 September 2001 from the Permanent Representative of Afghanistan addressed to the Secretary-General and the President of the Security Council (S/2001/870).

**Communications bringing disputes or situations to the attention of the Security Council during the period 2000-2003**

<i>Communication</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
<b>The situation in the Middle East, including the Palestinian question</b>		
Letter dated 2 October 2000 from the Permanent Representative of Iraq <sup>a</sup> to the United Nations addressed to the President of the Security Council (S/2000/928)	The convening of the Security Council to discuss the Israeli aggression on the Haram Al-Sharif in the occupied Holy Jerusalem and against Palestinian civilians in the occupied Palestinian territories, including Jerusalem.	4204th meeting 3-5 October 2000
Letter dated 2 October 2000 from the Permanent Representative of Malaysia <sup>b</sup> to the United Nations addressed to the President of the Security Council (S/2000/929)	The convening of an urgent meeting of the Security Council to discuss the latest incidents in Occupied East Jerusalem following a visit of the leader of the Likud Party Ariel Sharon to Al-Haram Al-Sharif.	
Identical letters dated 2 October 2000 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and to the President of the Security Council (S/2000/930)	The convening of an immediate meeting of the Security Council to consider the situation in the occupied East Jerusalem as well as the rest of the Occupied Palestinian Territory.	
Letter dated 2 October 2000 from the Permanent Representative of South Africa <sup>c</sup> to the United Nations addressed to the President of the Security Council (S/2000/934)	The convening of an urgent meeting of the Security Council to respond to the critical situation in the occupied East Jerusalem, other parts of the Occupied Palestinian Territory and parts of Israel.	
Letter dated 2 October 2000 from the Permanent Representative of Malaysia <sup>d</sup> to the United Nations addressed to the President of the Security Council (S/2000/935)	The convening of an emergency meeting of the Security Council to consider the recent Israeli aggression against Al-Haram Al-Sharif and the attacks by Israeli security forces against Palestinian civilians.	
<b>Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)</b>		
Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)	The convening of an emergency session of the Security Council, in which the Minister of Foreign Affairs of the former Yugoslav Republic of Macedonia would present an action plan of his Government to bring about a cessation of violence and lasting stabilization on the border of Kosovo to prevent spillover of violence into Macedonia.	4289th meeting 7 March 2001

**Letter dated 29 November 2002 from the Permanent Representative of Chad to the United Nations addressed to the President of the Security Council (S/2002/1317)**

<p>Letter dated 29 November 2002 from the Permanent Representative of Chad to the United Nations addressed to the President of the Security Council (S/2002/1317)</p>	<p>Request by the Government of Chad to address the Security Council through a representative of the Government concerning the position of Chad on the issue of the Central African crisis.</p>	<p>4659th meeting (private) 9 December 2002</p>
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**Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic and to the United Nations addressed to the President of the Security Council (S/2003/939) and letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943)**

<p>Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939)</p>	<p>The convening of an emergency meeting of the Security Council to consider the violation of Syrian and Lebanese airspace on 5 October by Israeli military aircraft and the missile attack carried out by the latter on the same day against a target inside the territory of the Syrian Arab Republic.</p>	<p>4836th meeting 5 October 2003</p>
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<p>Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943)</p>	<p>The convening of an emergency meeting to consider the violation of Lebanese airspace by Israeli military aircraft targeting a site situated inside the territory of the Syrian Arab Republic.</p>	
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<sup>a</sup> In his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States.  
<sup>b</sup> On behalf of the Non-Aligned Movement.  
<sup>c</sup> In his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement.  
<sup>d</sup> In his capacity as Chairman of the Islamic Group.

**Nature of matters referred to the Security Council**

During the period under review, matters that were brought to the Council's attention were usually referred to as "situations".<sup>6</sup> In some instances, the subject

matter of the relevant communications was referred to as "developments"<sup>7</sup> or "violations of international law",<sup>8</sup> or described in narrative form.<sup>9</sup>

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<sup>6</sup> See, for example, the following letters addressed to the President of the Security Council: in connection with the situation in Sierra Leone, letter dated 10 May 2000 from the representative of Eritrea, in his capacity as Chairman of the Group of African States (S/2000/408), and letter dated 11 May 2000 from the representative of Namibia (S/2000/410); in connection with the situation in the former Yugoslavia, letter dated 29 June 2000 from the representative of the Federal Republic of Yugoslavia (S/2000/636); in connection with the situation in the Middle East, including the Palestinian question, letter dated 2 May 2002 from the representative of the Sudan,

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in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2002/510), and letter dated 11 June 2002 from the representative of Bahrain in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2002/655); in connection with the alleged violations of the territory and airspace of Lebanon and the Syrian Arab Republic by Israeli forces, letter dated 5 October 2003 from the representative of Lebanon (S/2003/943).

<sup>7</sup> See, for example, the following letters addressed to the President of the Security Council: in connection with the situation in the Middle East, including the Palestinian question, letter dated 21 November 2000 from the

It should also be noted that, while the Charter provisions setting out the basis on which States may bring matters likely to endanger international peace and security to the attention of the Council form part of Chapter VI of the Charter, the subject matter of communications submitted to the Council and the type of action requested in relation thereto are not limited by the scope of that Chapter. For instance, during the period under review, several communications submitted to the Council described situations as threatening or endangering regional peace and security,<sup>10</sup> and/or as acts of aggression.<sup>11</sup> However, in

representative of the Libyan Arab Jamahiriya, in his capacity as Chairman of the Arab Group (S/2000/1109), and letter dated 29 March 2002 from the representative of Qatar, in his capacity as Chairman of the Islamic Summit Conference (S/2002/331); in connection with the situation between Iraq and Kuwait, letter dated 7 March 2003 from the representative of Malaysia, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement (S/2003/283); in connection with the situation in the former Yugoslavia, letter dated 14 August 2003 from the representative of Serbia and Montenegro (S/2003/815).

<sup>8</sup> See, for example, the following letters addressed to the President of the Security Council: in connection with the situation in the Middle East, including the Palestinian question, three letters dated 9 October 2003, from the representative of, respectively, the Syrian Arab Republic, in his capacity as Chairman of the Arab Group (S/2003/973), the representative of Malaysia, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement (S/2003/974), and the representative of the Islamic Republic of Iran, on behalf of the Organization of the Islamic Conference (S/2003/977).

<sup>9</sup> See, for example, the following letters addressed to the President: in connection with the situation in the Democratic Republic of the Congo, letter dated 18 March 2002 from the representative of the Democratic Republic of the Congo (S/2002/286); in connection with the situation in the former Yugoslavia, letter dated 19 July 2000 from the representative of the Federal Republic of Yugoslavia (S/2000/716) and letter dated 14 August 2003 from the representative of Serbia and Montenegro (S/2003/815); in connection with the alleged violations of the territory and airspace of Lebanon and the Syrian Arab Republic by Israeli forces, letter dated 5 October 2003 from the representative of the Syrian Arab Republic (S/2003/939).

<sup>10</sup> In a letter dated 21 November 2000 addressed to the President of the Council, the representative of the Libyan Arab Jamahiriya, in his capacity as Chairman of the Arab Group, stated that the “new acts of aggression” reflected the continued determination of the occupation

forces to use military force in an unacceptable manner and that the deteriorating situation in the occupied Palestinian territories was a “threat to the stability of the whole region” (S/2000/1109). In a letter dated 5 October 2003 addressed to the President of the Council, the representative of Lebanon stated that the violations of the Lebanese airspace by Israeli military aircraft targeting a site situated inside the territory of the Syrian Arab Republic posed “serious threats to the security and stability of the region” (S/2003/943 and annex). By a letter dated 14 August 2000 addressed to the President of the Security Council, the representative of the Federal Republic of Yugoslavia referred to the activities of the Kosovo Force (KFOR) and the United Nations Interim Administration Mission in Kosovo (UNMIK) and their “policy of fait accompli” as threatening “peace and security in the region” (S/2000/801).

<sup>11</sup> By a letter dated 5 October 2003 addressed to the President of the Council, the representative of Lebanon denounced the violation of Lebanese airspace by Israeli military aircraft targeting a site situated inside the territory of the Syrian Arab Republic as “acts of aggression” and requested the Security Council to “convene an emergency meeting to consider these acts of aggression” (S/2003/943 and annex). By a letter dated 1 August 2001 addressed to the President of the Council, the representative of the Democratic Republic of the Congo referred to the “Rwandan aggressors and their RCD allies” (Rassemblement congolais pour la démocratie (RCD-Goma); S/2001/759 and annex). By a letter dated 14 August 2000 addressed to the President of the Security Council, the representative of the Federal Republic of Yugoslavia requested an urgent meeting of the Council to consider “the armed attack on and the usurpation of the RMHK Trepca Shareholding Corporation by the Kosovo Force” (S/2000/801). By a letter dated 2 October 2000 addressed to the President of the Security Council, the representative of Malaysia, in his capacity as Chairman of the Islamic Group, requested an emergency meeting of the Security Council to discuss the deteriorating situation following the “Israeli aggression against Al-Haram Al-Sharif and the attacks by Israeli security forces against Palestinian civilians” (S/2000/935). Similar letters, with reference to “acts of aggression”, were addressed to the President of the Security Council, on 2 October 2000, by the representatives of Iraq, in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States, and the Permanent Observer of Palestine, respectively (S/2000/928 and S/2000/930). By a letter dated 21 November 2000 addressed to the President of the Council, the representative of the Libyan Arab Jamahiriya, in his capacity as Chairman of the Arab Group, while requesting an urgent meeting of the Council, referred to the air attacks by the Israeli forces on the Gaza Strip as “acts of aggression”



connection with those communications, the Council did not always determine the existence of a threat to the peace, a breach of the peace or an act of aggression.

### Action requested of the Security Council

In their communications to the Security Council, States mostly requested the Council to convene an urgent meeting to consider the matters.<sup>12</sup> In a number of cases, the submitting States also called upon the Council, in general terms, to take “action” or “concrete measures” on the specific issue brought to its attention.<sup>13</sup>

For example, in a letter dated 14 August 2003 addressed to the President of the Council, the representative of Serbia and Montenegro requested an urgent meeting of the Council to consider “developments in Kosovo and Metohija, especially the terrorist attack that took place in the village of Gorazdevac on 13 August 2003”. In his communication, the representative stated that the “terrorist attacks” were aimed at further destabilizing the situation in the province and represented a serious

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(S/2000/1109). By a letter dated 23 July 2002 addressed to the President of the Security Council, the representative of Saudi Arabia, on behalf of the League of Arab States, requested the convening of an immediate meeting of the Security Council to consider the “continued Israeli military aggression against the Palestinian people and the Palestinian Authority” (S/2002/828).

<sup>12</sup> See table entitled “Communications bringing disputes or situations to the attention of the Security Council during the period 2000-2003”.

<sup>13</sup> See, for example, the following letters addressed to the President of the Security Council: in connection with the situation in the former Yugoslavia, letters dated 13 February 2000 and 14 August 2000 from the representative of the Federal Republic of Yugoslavia (S/2000/111 and S/2000/801); in connection with the situation in the Middle East, including the Palestinian question, letter dated 20 February 2002 from the Permanent Observer of Palestine (S/2002/182), letter dated 20 February 2002 from the representative of Yemen on behalf of the League of Arab States (S/2002/184), letter dated 23 July 2002 from the representative of Saudi Arabia in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2002/828), and letter dated 12 September 2003 from the representative of the Sudan in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2003/880).

challenge to the authority of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) and therefore required, in the view of his Government, an “appropriate action” by the Council.<sup>14</sup>

In other instances, which are presented below as examples, more concrete actions requested of the Council were specified by submitting States. In connection with the situation in the Middle East, including the Palestinian question, the representative of the United Arab Emirates, in his capacity as Chairman of the Arab Group and on behalf of the members of the League of Arab States (LAS), by a letter dated 13 March 2001 addressed to the President of the Council, appealed to the Council to take the necessary steps to safeguard peace and security in the region and to protect the Palestinian people by deploying a United Nations protection force in the Occupied Palestinian Territory, including Jerusalem.<sup>15</sup>

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<sup>14</sup> S/2003/815.

<sup>15</sup> S/2001/216. In connection with the same agenda item, throughout the period under review, a number of Member States requested the Council to take unspecified “actions” or “measures”. See, for instance, the following letters addressed to the President of the Council requesting the Council to convene a meeting and to take “measures” or “actions”: identical letters dated 2 October 2000 from the Permanent Observer of Palestine (S/2000/930); letter dated 21 November 2000 from the representative of the Libyan Arab Jamahiriya (S/2000/1109); letter dated 13 December 2001 from the representative of Egypt, in his capacity as Chairman of the Arab Group (S/2001/1191); letter dated 20 February 2002 from the representative of Yemen, in his capacity as Chairman of the Arab Group (S/2002/184); letter dated 29 March 2002 from the representative of Jordan, in his capacity as Chairman of the Arab Group (S/2002/329); letters dated, respectively, 1 April 2002, 6 April 2002 and 17 April 2002 from the representative of Tunisia, on behalf of the League of Arab States (S/2002/336, S/2002/359, S/2002/431); letter dated 23 July 2002 from the representative of Saudi Arabia, on behalf of the League of Arab States (S/2002/828); letter dated 20 September 2002 from the Permanent Observer of Palestine, on behalf of the States members of the League of Arab States (S/2002/1055); letter dated 12 September 2003 from the representative of the Sudan, as Chairman of the Arab Group and on behalf of the States members of the League of Arab States (S/2003/880); and letter dated 9 October 2003 from the representative of the Syrian Arabic Republic, as Chairman of the Arab Group (S/2003/973).

In connection with the situation in Bosnia and Herzegovina, by identical letters dated 6 February 2001 addressed to the Secretary-General and to the President of the Security Council, the representative of Bosnia and Herzegovina requested a meeting of the Council to debate “the opportunity to mandate a conference to review the implementation of the Dayton Peace Accords and necessary revision thereto”.<sup>16</sup>

In connection with the situation in the former Yugoslav Republic of Macedonia, by a letter dated 4 March 2001, addressed to the President of the Security Council, the representative of the former Yugoslav Republic of Macedonia requested an emergency session of the Council for his country’s Minister for Foreign Affairs to present an action plan for the cessation of violence and to secure lasting stabilization on the border with the Federal Republic of Yugoslavia.<sup>17</sup>

In another instance, in connection with the situation in Burundi, by a letter dated 14 March 2001 addressed to the President of the Security Council, the representative of Burundi, after requesting a meeting of the Council to discuss the escalation of war and the peace process in Burundi and outlining his expectations for the meeting, called on the Council to adopt a resolution or a statement by the President before the holding in Arusha, from 19 to 24 March 2001, of the meeting of the parties and that of the Implementation Monitoring for the Agreement.<sup>18</sup>

In connection with the situation in the Democratic Republic of the Congo, by a letter dated 1 August 2001 addressed to the President of the Security Council, the representative of the Democratic Republic of the Congo, while drawing the attention of the Council to violations of its territorial integrity and requesting an urgent meeting of the Council, called upon the Council, *inter alia*, to demand, under Chapter VII of the Charter, the immediate and unconditional withdrawal of Ugandan and Rwandan forces from the territory of the Democratic Republic of the Congo and to take enforcement action against Rwanda and the Rassemblement congolais pour la démocratie (RCD-Goma).<sup>19</sup> By a subsequent letter dated 18 March 2002 addressed to the President of the Security Council, the

representative of the Democratic Republic of the Congo, bringing to the attention of the Council a number of violations of the Lusaka ceasefire agreement, called on the Council urgently to meet to denounce Rwanda and RCD-Goma for the resumption of hostilities and demand a halt of the hostilities immediately and unconditionally and withdraw their troops to their initial positions.<sup>20</sup>

With regard to the situation in Côte d’Ivoire, the representative of Senegal, in his capacity as representative of the Chairman of the Economic Community of West African States (ECOWAS), by a letter dated 19 December 2002 addressed to the President of the Security Council, appealed to the Council to provide assistance to ECOWAS in its efforts to find a solution to the crisis.<sup>21</sup> At its 4680th meeting held on 20 December 2002, the Council considered for the first time the item “The situation in Côte d’Ivoire” and, in that connection, the President of the Council, in his introductory remarks, drew the attention of members of the Council to the letter from the representative of Senegal.

Finally, in another instance, in the context of the Jammu and Kashmir dispute, the representative of Pakistan, by identical letters dated 19 August 2003 addressed to the Secretary-General and the President of the Security Council, respectively, brought to the attention of the Council matters relating to “peace and security in Asia”. By the same letter, he called upon the Council to facilitate the resumption of a serious, substantive and sustained dialogue between India and Pakistan for the peaceful resolution of the dispute.<sup>22</sup>

#### Referrals by the Secretary-General

While Article 99 stipulates that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, he did not invoke Article 99, either expressly or by implication, during the period under review. However, he drew the attention of the Security Council to a number of deteriorating situations which were already on the Council’s agenda, and requested the Council to consider taking appropriate action. For example, in connection with the situation in the Democratic

<sup>16</sup> S/2001/114.

<sup>17</sup> S/2001/191.

<sup>18</sup> S/2001/221.

<sup>19</sup> S/2001/759 and annex.

<sup>20</sup> S/2002/286.

<sup>21</sup> S/2002/1386.

<sup>22</sup> S/2003/823.

Republic of the Congo, by a letter dated 15 May 2003 addressed to the President of the Security Council, the Secretary-General expressed his concern at the rapidly deteriorating situation in and around Bunia, which had become the stage of major violent clashes between Hema- and Lendu-based militia groups, exacerbated by outside interference. Referring to the likely further worsening of the situation and its serious humanitarian consequences, the Secretary-General requested the Security Council urgently to consider his proposal for the rapid deployment to Bunia of a multinational force, acting under Chapter VII of the Charter, aimed at stabilizing the situation in Bunia and protecting the civilian population.<sup>23</sup> In response, the Council convened a meeting and adopted resolution 1484 (2003), authorizing the deployment of such a multinational force in Bunia.<sup>24</sup>

In connection with the situation in Liberia, by a letter dated 28 June 2003 addressed to the President of the Security Council, the Secretary-General expressed his concern regarding the flagrant violations of the ceasefire which shook the foundations of the Accra peace talks. He therefore demanded “urgent and decisive action from the Security Council”, by requesting it to authorize the deployment to Liberia of a multinational force, under Chapter VII of the Charter, to prevent a major humanitarian tragedy and to stabilize the situation in that country.<sup>25</sup> By a subsequent letter dated 8 July 2003 addressed to the

President of the Security Council, the Secretary-General recalled his letter of 28 June 2003 and, in the light of the rapidly unfolding political situation, appealed again to the Council to take urgent action to authorize the deployment to Liberia of a multinational force with the primary objective of preventing a major humanitarian tragedy in the country. He also brought to the attention of the Council a number of urgent initiatives he had taken, such as appointing a new Special Representative for Liberia to lead and coordinate the activities of the United Nations in the country and dispatching his Special Representative for West Africa to Accra.<sup>26</sup> In response, the Council convened a meeting and adopted resolution 1497 (2003), authorizing the deployment of such a multinational force in Liberia.<sup>27</sup>

In addition to the above-mentioned communications, the Secretary-General, as part of his general reporting obligations, regularly informed the Security Council of relevant developments on matters of which the Council was seized.

#### **Referrals by the General Assembly**

Under Article 11 (3) of the Charter, the General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. During the period under review, the General Assembly did not refer any matters to the Security Council under this Article.<sup>28</sup>

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<sup>23</sup> S/2003/574.

<sup>24</sup> S/PV.4764.

<sup>25</sup> S/2003/678.

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<sup>26</sup> S/2003/695.

<sup>27</sup> S/PV.4803.

<sup>28</sup> See, chapter VI, part I, section B for more details.

## **Part II**

### **Investigation of disputes and fact-finding**

#### **Note**

Article 34 of the Charter provides that “the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security”. However, Article 34 does not exclude other organs from performing investigative functions nor does it limit the Council’s general competence to

obtain knowledge of the relevant facts of any dispute or situation by dispatching a fact-finding mission.

During the period under consideration, the Council performed and initiated, or requested the Secretary-General to undertake, a number of investigative and fact-finding activities that may be deemed to fall within the scope of Article 34 or be related to its provisions. The following part will provide an overview of the practice of the Security Council in connection with Article 34 of the Charter, including the presentation of two case studies in which

the Security Council endorsed the Secretary-General's initiative to establish bodies entrusted with fact-finding and investigative functions.<sup>29</sup> The first case study sets out, in connection with the situation in the Middle East, including the Palestinian question, the details of the decision-making process leading to the approval by the Council of the decision of the Secretary-General to deploy a fact-finding team to develop accurate information regarding events in the Jenin refugee camp in April 2002, as well as the subsequent developments owing to which the fact-finding team was disbanded. The second case study, in connection with the situation in Côte d'Ivoire, concerns the dispatch, upon reports of mass killings and grave violations of human rights, of a fact-finding mission to the country.

In addition to the above-mentioned fact-finding and investigative missions, the Council continued to request the Secretary-General to report on relevant developments in connection to matters of which the Council was seized. Furthermore, in a number of instances, the Council dispatched missions consisting of Council members to conflict areas, including Afghanistan,<sup>30</sup> Burundi, the Democratic Republic of the Congo,<sup>31</sup> East Timor and Indonesia,<sup>32</sup> Eritrea and Ethiopia,<sup>33</sup> Sierra Leone,<sup>34</sup> Central Africa,<sup>35</sup> the Great

Lakes Region,<sup>36</sup> West Africa,<sup>37</sup> Belgrade, Federal Republic of Yugoslavia and Kosovo.<sup>38</sup> In general terms, during the period under consideration, the Council noted with satisfaction, in connection with the prevention of armed conflicts, the increased recourse, with the consent of receiving Member States, to Security Council missions to areas of conflict or potential conflict.<sup>39</sup> The Council missions were not expressly charged with investigative tasks, but did serve, *inter alia*, to form an impression of the respective situations on the ground.

Finally, during the period under consideration, the Security Council adopted two decisions by which it underlined the importance that it attached to fact-finding missions of the Secretary-General in the context of the prevention of armed conflict. In relation to the item entitled "Ensuring an effective role of the Security Council in the maintenance of international peace and security", the Council, recalling the statements by the President of 30 November 1999 and 20 July 2000 on the prevention of armed conflicts,<sup>40</sup> by resolution 1327 (2000) of 30 November 2000, welcomed the intention of the Secretary-General to send fact-finding missions to areas of tension more

<sup>29</sup> In one instance during the period under consideration, the Council requested the Secretary-General to initiate or perform fact-finding or investigative functions. In connection with the situation in the Democratic Republic of the Congo, by a statement of the President dated 18 October 2002, the Council, condemning the continuing violence in the east of the Democratic Republic of the Congo, in particular the attack on Uvira by Mai Mai and other forces, invited the Secretary-General to report further on the events in the region of Uvira (S/PRST/2002/27).

<sup>30</sup> The mission of the Council visited Afghanistan from 31 October to 7 November 2003. For details, see the terms of reference (S/2003/930) and the final report (S/2003/1074).

<sup>31</sup> The mission of the Council visited the Democratic Republic of the Congo from 4 to 8 May 2000. For details, see the terms of reference (S/2000/344) and the final report (S/2000/416).

<sup>32</sup> The mission of the Council visited East Timor and Indonesia from 9 to 17 November 2000. For details, see the terms of reference (S/2000/103) and the final report (S/2000/1105).

<sup>33</sup> Missions of the Council visited Eritrea and Ethiopia from 9 to 10 May 2000 and from 21 to 25 February 2002, respectively. For details, see the terms of reference (S/2000/392 and S/2002/129) and the final reports

(S/2000/413 and S/2002/205).

<sup>34</sup> The mission of the Council visited Sierra Leone from 7 to 14 October 2000. For details, see the terms of reference (S/2000/886) and the final report (S/2000/992).

<sup>35</sup> The mission visited Central Africa from 7 to 16 June 2003. For details, see the terms of reference (S/2003/558) and the final report (S/2003/653).

<sup>36</sup> Missions of the Council visited the Great Lakes region from 15 to 26 May 2001 and from 27 April to 7 May 2002. For details, see the terms of reference (S/2001/408 and S/2002/430) and the final reports (S/2001/521 and Add. 1; and S/2002/537 and Add. 1).

<sup>37</sup> The mission of the Council visited West Africa from 26 June to 5 July 2003. For details, see the terms of reference (S/2003/525) and the final report (S/2003/688).

<sup>38</sup> Missions of the Council visited Kosovo from 27 to 29 April 2000 and from 16 to 18 June 2001, respectively; for details, see the terms of reference (S/2000/320 and S/2001/482) and the final reports (S/2000/363 and S/2001/600). The mission of the Council visited Kosovo and Belgrade, from 13 to 17 December 2002; for details, see the terms of reference (S/2002/1271) and the final report (S/2002/1376).

<sup>39</sup> Resolution 1366 (2001), ninth preambular paragraph.

<sup>40</sup> S/PRST/1999/34 and S/PRST/2000/25.

frequently.<sup>41</sup> Similarly, by resolution 1336 (2001) of 30 August 2001, in connection with the role of the Security Council in the prevention of armed conflicts, the Council supported the enhancement of the role of the Secretary-General in the field of conflict prevention including by increasing the use of United Nations interdisciplinary fact-finding and confidence-building missions to regions of tension, by developing regional prevention strategies with regional partners and appropriate United Nations organs and agencies, and by improving the capacity and resource base for preventive action in the Secretariat.<sup>42</sup>

### Case 1

#### The situation in the Middle East, including the Palestinian question

By identical letters dated 10 April 2002 addressed to the Secretary-General and the President of the Security Council, respectively, the Permanent Observer of Palestine stated that the critical situation in the occupied cities of Jenin and Nablus and the adjacent refugee camps that had come under attack by Israeli occupying forces was of profound concern. He therefore called upon the international community to take action to ensure the implementation of resolutions 1402 (2002) and, most recently, resolution 1403 (2002), and to “bring an immediate halt to the Israeli onslaught against the Palestinian people in the Occupied Palestinian Territory”.<sup>43</sup>

In response to the request contained in a letter from the representative of Tunisia dated 17 April 2002 addressed to the President of the Council, the Council met on 18 and 19 April 2002 to consider the situation in the Middle East, including the Palestinian question.<sup>44</sup> During the meeting, several speakers expressed their support for an investigation into the events in the Jenin refugee camps, and some explicitly requested it.<sup>45</sup> The representative of Egypt stated that the Council had to act decisively and immediately

dispatch a mission of its members to investigate the facts and held that such a mission should be accompanied by representatives of all the bodies and organs of the United Nations system, the Secretary-General and humanitarian and human rights agencies due to submit a report to the Council within two weeks. He further argued that on the basis of that report, the Council could consider the international community’s options with respect to legal measures to address recent and ongoing events.<sup>46</sup> The representative of France maintained that the extreme seriousness of the eyewitness reports made it absolutely necessary to find out the truth, in an objective manner and that an international fact-finding committee had to be sent to Jenin.<sup>47</sup>

On the same day, at the 4516th meeting, the Council unanimously adopted resolution 1405 (2002), welcoming the initiative of the Secretary-General to develop accurate information regarding recent events in the Jenin refugee camp through a fact-finding team and requesting him to keep the Council informed.<sup>48</sup>

By a letter dated 22 April 2002 addressed to the President of the Security Council, the Secretary-General informed the Council that, pursuant to resolution 1405 (2002), he had established a fact-finding team, which would begin its work without delay by traveling to the region to initiate its mission on the ground. He stated that he had called on the team to report to him expeditiously its findings and conclusions. He further informed the Council that he expected that the Government of Israel and the Palestinian Authority would fully cooperate with the team and provide free and complete access to all sites, sources of information and individuals that the team considered necessary for the exercise of the functions of the mission.<sup>49</sup>

On 1 May 2002, by a letter addressed to the President of the Council, the Secretary-General informed the Council that, soon after he had announced his plan to deploy the fact-finding team, the Government of Israel began to express concerns related to the composition of the team, the scope of its mandate, how the mandate would be carried out and various procedural matters. He further informed the

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<sup>41</sup> Resolution 1327 (2000), annex V.

<sup>42</sup> Resolution 1366 (2001), para. 18.

<sup>43</sup> S/2002/370.

<sup>44</sup> S/PV.4515 and resumption 1.

<sup>45</sup> S/PV.4515, p. 12 (Pakistan); pp. 12-13 (South Africa); pp. 16-17 (Morocco); p. 18 (Algeria); p. 29 (the Sudan); p. 37 (Islamic Republic of Iran); and p. 38 (Mauritania); S/PV.4515 (Resumption 1), p. 2 (China); p. 6 (France); p. 7 (Mauritius); p. 9 (Colombia); p. 10 (Ireland); p. 11 (United Kingdom); p. 12 (Mexico); and p. 14 (Singapore).

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<sup>46</sup> S/PV.4515, p. 10.

<sup>47</sup> S/PV.4515 (Resumption 1), p. 6.

<sup>48</sup> Resolution 1405 (2002), para. 2.

<sup>49</sup> S/2002/475.

Council of an announcement made by the Government of Israel, that, as long as essential issues raised by the delegation of Israel and terms of a fair examination had not been met, it would not be possible for the clarification process to begin. In his letter, the Secretary-General stated that, throughout the process, the United Nations had made every effort to accommodate the concerns of the Government of Israel within the mandate given to him by the Security Council. However, in the light of the announcement by the Government of Israel and of additional issues raised by high-level Israeli officials, it seemed evident that the team would not be able to proceed to the area to begin its mission in the near future. For those reasons, the Secretary-General informed the Council of his intention to disband the fact-finding team the following day. He stated that he regretted being unable to provide the information requested by the Council in resolution 1405 (2002), and especially that the long shadow cast by recent events in the Jenin refugee camp would remain in the absence of such a fact-finding exercise.<sup>50</sup>

At the 4525th meeting of the Council, held on 3 May 2002, the Permanent Observer of Palestine stated that the Council should “order” Israel not to impede the fact-finding team, request the Secretary-General to dispatch the team immediately, in pursuance of resolution 1405 (2002), and require the two sides to cooperate with the team without conditions. He noted that a resolution by the Arab Group drafted along those lines had not gained enough support in the face of opposition by one permanent member, and he expressed the view that backtracking by the Council would constitute a “genuine scandal”, a breach of the Charter and the abdication by the Council of its responsibility. He hoped that the Council would be able to adopt an appropriate resolution and, if it failed to do so, his delegation would seek a resumption of the tenth emergency session of the General Assembly.<sup>51</sup> In response, the representative of Israel expressed his country’s reservations about the fact-finding mission which should have been aimed at developing, in his view, “accurate information” and not reaching any conclusion nor making recommendations, in line with the fact-finding principles set out in General Assembly resolution 46/59 of 1991. He added that his country would have expected the fact-finding team to address

the activities of “both sides”, including the use of a United Nations-administered camp as a centre for terrorist activity.<sup>52</sup>

During the subsequent debate, the representative of the Sudan, speaking on behalf of the Group of Arab States, called on the Council to bring about respect for its authority by condemning the rejection of the Secretary-General’s initiative to dispatch a fact-finding mission and insisting on obtaining the details of the “heinous crimes” committed in Jenin, and of “all the massacres committed against the Palestinian people”. Failure by the Council to fulfill its duty, he added, would prompt the Arab Group to resort to the General Assembly.<sup>53</sup> Similarly, a number of other speakers condemned Israel’s “disdain” for the Council and its decisions.<sup>54</sup> The representative of the United Kingdom “deplored” Israel’s failure to cooperate with the United Nations in allowing the deployment of the fact-finding team, while the representative of France stated that the Council and the Secretary-General must be respected and deplored Israel’s “serious error” in failing to do so.<sup>55</sup> The representative of the United States, while regretting Israel’s decision to deny access to the Secretary-General’s fact-finding team, supported the Secretary-General in his decision to disband the team.<sup>56</sup>

## Case 2 The situation in Côte d’Ivoire

By a letter dated 19 December 2002 addressed to the President of the Security Council, the representative of Senegal, in his capacity as representative of the Chairman of Economic Community of West African States, appealed to the Security Council to provide assistance to ECOWAS in its efforts to find a solution to the crisis in Côte d’Ivoire. In view of the extreme urgency, he requested the Council to consider without delay the specific

<sup>52</sup> *Ibid.*, p. 5.

<sup>53</sup> *Ibid.*, p. 7.

<sup>54</sup> S/PV.4525, pp. 8-10 (Tunisia); and pp. 12-13 (Egypt); S/PV.4525 (Resumption 1), and Corr.1 pp. 10-11 (the United Arab Emirates); p. 12 (Indonesia); pp. 15-16 (Islamic Republic of Iran); and pp. 28-30 (Mauritius).

<sup>55</sup> S/PV.4525 (Resumption 1) and Corr.1, p. 33 (United Kingdom); and p. 34 (France).

<sup>56</sup> *Ibid.*, p. 25.

<sup>50</sup> S/2002/504.

<sup>51</sup> S/PV.4525, p. 3.

forms and modalities of United Nations support for the efforts actively undertaken by ECOWAS.<sup>57</sup>

In response to that request, the Council met on 20 December 2002 to consider the situation in Côte d'Ivoire.<sup>58</sup> By a statement of the President, adopted at that meeting, the Council, expressing its grave concern at the situation in Côte d'Ivoire and at reports of mass killings and grave violations of human rights, commended the Secretary-General for his efforts to promote a negotiated settlement, in coordination with ECOWAS, and requested the Secretary-General to keep it regularly informed about the situation. By the same statement, the Council further called on all parties to

ensure full respect for human rights and international humanitarian law and welcomed the decision by the Secretary-General to request the United Nations High Commissioner for Human Rights to gather precise information about violations of human rights and international humanitarian law in Côte d'Ivoire, including through the dispatch of a fact-finding mission to the country.<sup>59</sup>

A multidisciplinary technical assessment mission visited Côte d'Ivoire from 24 February to 7 March 2003 seeking an assessment of the role the United Nations could play in the implementation of the Linas-Marcoussis Agreement of 23 January 2003<sup>60</sup>.

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<sup>57</sup> S/2002/1386.

<sup>58</sup> S/PV.4680.

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<sup>59</sup> S/PRST/2002/42.

<sup>60</sup> For details of the mission's findings see S/2003/374, paras. 31-67.

### Part III

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

### Note

Chapter VI of the Charter contains various provisions according to which the Security Council may make recommendations to the parties to a dispute or situation. According to Article 33 (2) of the Charter, the Council may call on the parties to settle their disputes by such peaceful means as provided for in Article 33 (1). According to Article 36 (1) the Council may "recommend appropriate methods or procedures of adjustment". Article 37 (2) envisages that the Council may "recommend such terms of settlement as it may consider appropriate", and Article 38 provides that it may "make recommendations to the parties with a view to a pacific settlement of the dispute".

As part of its efforts aimed at the peaceful settlement of conflicts within the framework of Chapter VI of the Charter, the Council frequently endorsed or supported peace agreements concluded by the parties to a conflict, or recommended various methods or procedures of settlement, such as bilateral

or multilateral negotiations,<sup>61</sup> political settlement or dialogue aimed at achieving national reconciliation,<sup>62</sup> democratic means such as elections<sup>63</sup> or the establishment of a representative government, as well as peace-consolidating activities such as disarmament, demobilization and reintegration programmes for former combatants.<sup>64</sup> In several instances, the Council made recommendations with regard to good offices, mediation or conciliation efforts to be undertaken by

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<sup>61</sup> See, for instance, the following decisions of the Council: in connection with the situation in Somalia, S/PRST/2003/19; in connection with the situation in Afghanistan, S/PRST/2000/12; in connection with the situation in Georgia, resolutions 1287 (2000) and 1393 (2002); in connection with the situation between Eritrea and Ethiopia, resolution 1297 (2000); and in connection with the situation in Croatia, resolution 1285 (2000).

<sup>62</sup> See, for example, in connection with the situation in Somalia, S/PRST/2001/1 and S/PRST/2001/30; and in connection with the situation in Angola, S/PRST/2002/7.

<sup>63</sup> See, for example, in connection with the situation in Tajikistan and along the Tajik-Afghan border, S/PRST/2000/9 and S/PRST/2000/17; and in connection with the situation in East Timor, S/PRST/2001/32.

<sup>64</sup> See, for example, in connection with the situation in Sierra Leone, S/PRST/2001/38.

the Secretary-General,<sup>65</sup> or with regard to such efforts undertaken by Governments of neighboring countries,<sup>66</sup> regional leaders,<sup>67</sup> or undertaken by regional arrangements,<sup>68</sup> by expressing its support and calling upon the parties to a conflict to cooperate with such efforts. In one instance, in connection with its consideration of the agenda item “Strengthening cooperation between the United Nations system and the Central African region in the maintenance of peace and security”, the Council welcomed the subregional efforts to promote conflict prevention, management and resolution in Central Africa. In that context, the Council recognized the steps taken by Central African countries to settle conflicts by peaceful means

including through the conclusion, with the strong support of the United Nations Standing Advisory Committee on Security Questions in Central Africa, of a Protocol<sup>69</sup> establishing, on 24 June 2000, the Council for Peace and Security in Central Africa, comprising a Mutual Assistance Pact and a Non-Aggression Pact.<sup>70</sup>

During the period under review, the Council dealt with a growing number of intra-State conflicts characterized by inter-ethnic and interreligious violence, collapse of central State authority, humanitarian crises and implications threatening the stability of neighbouring countries. For example, in connection with the situation in Angola, the Council reiterated the União Nacional para a Independência Total de Angola’s (UNITA) primary responsibility for the continuing conflict in Angola and recognized that the fulfillment by the latter of the “Accordos de Paz”, the Lusaka Protocol and the relevant resolutions of the Security Council was the only viable basis for a political settlement of the conflict in Angola.<sup>71</sup> In connection with the situation in the Democratic Republic of the Congo, by resolution 1468 (2003), the Council welcomed the agreement reached by the Congolese parties in Pretoria, on 6 March 2003, on the transitional arrangements and called upon them to establish as soon as possible a Transitional Government.<sup>72</sup>

In setting out the parameters for a peace process or settlement to achieve its objective and to prevent a relapse into conflict, the Council often made precise recommendations. For instance, in connection with the situation in Western Sahara, explicitly acting under Chapter VI of the Charter, the Council supported the peace plan for self-determination of the people of Western Sahara put forward by the Secretary-General and his Personal Envoy as an “optimum political solution” on the basis of agreement between the two parties.<sup>73</sup> Similarly, in connection with the situation in Cyprus, the Council expressed its support for the “carefully balanced” settlement plan proposed by the Secretary-General on 26 February 2003.<sup>74</sup> In connection with the situation in Somalia, the Council stated that the Arta peace process continued to be the

<sup>65</sup> See, for example, in connection with the situation in Western Sahara, resolutions 1301 (2000) and 1309 (2000). See also, in connection with the situation in Cyprus, resolution 1475 (2003).

<sup>66</sup> See, for example, in connection with the situation in Somalia, S/PRST/2002/8.

<sup>67</sup> See, for instance, in connection with the situation in Burundi, resolution 1286 (2000).

<sup>68</sup> See Chapter XII, part III of this volume, for further details on the manner in which the Council has encouraged efforts undertaken by regional arrangements in the pacific settlement of disputes. By way of example, in connection with the situation in Côte d’Ivoire, the Council supported the efforts by ECOWAS to achieve a pacific settlement of the conflict, which included support for the deployment of a subregional peacekeeping force. By a statement of the President dated 20 December 2002 (S/PRST/2002/42), the Council strongly supported the efforts of ECOWAS to promote a peaceful resolution of the conflict and urged the leaders of ECOWAS to continue their efforts in a coordinated manner. In the Democratic Republic of the Congo, the Council supported the efforts by the Southern African Development Community (SADC) and the Organization of African Unity (OAU)/African Union to advance the peace process. By a statement of the President dated 26 January 2000, the Council valued the vital contribution of SADC and expressed its appreciation for the role of OAU in the Lusaka process (S/PRST/2000/2). During the period under review, by a series of decisions, the Council continued to support and encourage the efforts made by the Intergovernmental Authority on Development (IGAD), the Organization of African Unity/African Union and the League of Arab States to find a political solution to the crisis in Somalia and called for closer interaction between those organizations and the Council to achieve national reconciliation (S/PRST/2000/22, S/PRST/2001/1, S/PRST/2001/30, S/PRST/2002/8, S/PRST/2002/35 and resolution 1425 (2002)).

<sup>69</sup> Resolution 55/34 B.

<sup>70</sup> S/PRST/2002/31.

<sup>71</sup> S/PRST/2001/24.

<sup>72</sup> Resolution 1468 (2003), para. 1.

<sup>73</sup> Resolution 1495 (2003), para. 1.

<sup>74</sup> Resolution 1475 (2003), para. 4.



most viable basis for peace and national reconciliation in the country.<sup>75</sup>

In a number of instances, the Council, acting on the basis of relevant Security Council decisions, dispatched Security Council missions to conflict areas to, *inter alia*, express its support for efforts towards peaceful settlement of disputes undertaken either by the local actors or regional organizations and to examine how those efforts could be best supported. Thus, for instance, in the terms of reference for its mission to Sierra Leone from 7 to 14 October 2000, the Council stated as its objective to “support the efforts of the Government of Sierra Leone and review with it the progress made with regard to certain aspects of the implementation of the Peace Agreement signed in Lomé on 7 July 1999, and to explore the possibilities for support on the part of the Council”.<sup>76</sup> In the terms of reference for its mission to Eritrea and Ethiopia in 2000, the Council stated that the mission would strongly urge both parties to refrain from resorting to force and further hostilities, and to commit “immediately, seriously and without precondition” to negotiations to achieve final consolidated technical arrangements for implementation of the OAU Framework Agreement and its Modalities for Implementation.<sup>77</sup> In the terms of reference of its subsequent mission to Eritrea and Ethiopia, the Council noted that the objective of the mission was to support the peace process between the two neighbouring countries and the efforts to implement the Algiers Agreements and the relevant Council resolutions.<sup>78</sup>

This part of the chapter will provide an overview of the Council’s practice in relation to the peaceful settlement of disputes by highlighting relevant decisions adopted by the Council during the period under review. As it is not always possible to ascertain the specific provisions of the Charter on which individual Council decisions have been based, the following overview will aim to set out relevant decisions in a systematic order, without ascribing them to specific Articles of the Charter. Since Council decisions related to investigation and fact-finding missions have been already covered in part II of this chapter, they will not be reflected here.

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<sup>75</sup> S/PRST/2001/30.

<sup>76</sup> S/2000/886.

<sup>77</sup> S/2000/392.

<sup>78</sup> S/2002/129.

The practice of the Council under Chapter VI of the Charter is described below in four sections. Section A captures the relevant decisions of the Council on general and thematic issues touching upon the provisions of Chapter VI of the Charter. In particular, it outlines the decisions of the Council relating to the prevention of armed conflicts as well as their recurrence. Section B illustrates various ways in which the Council, in dealing with specific situations under its consideration, encouraged and supported efforts in the peaceful settlement of disputes. Section C provides, within the framework of the Council’s efforts towards the pacific settlement of disputes, an overview of the decisions of the Council involving the Secretary-General. Finally, section D briefly illustrates various ways in which the Council, in dealing with specific situations under its consideration, encouraged and supported efforts by regional organizations in the peaceful settlement of disputes.

#### **A. Decisions of the Security Council on general and thematic issues relating to the pacific settlement of disputes**

The following section provides an overview of the decisions of the Council on general and thematic issues relating to the pacific settlement of disputes. By such decisions, the Council underscored the centrality of Chapter VI of the Charter in the United Nation’s system of collective security and emphasized its commitment to address the prevention and recurrence of armed conflicts in all regions of the world. Furthermore, during the period under review, the Council established the Ad hoc Working Group on Conflict Prevention and Resolution in Africa with the mandate to, *inter alia*, monitor the implementation of previous statements by the President and resolutions regarding conflict prevention and resolution in Africa.<sup>79</sup>

#### **The role of the Security Council in the pacific settlement of disputes**

At the end of its first thematic debate on the item entitled “The role of the Security Council in the pacific settlement of disputes”, by a statement of the President dated 13 May 2003, the Council reaffirmed its commitment to maintain international peace and

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<sup>79</sup> S/2002/207.

security through effective collective measures for the prevention and removal of threats to the peace or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which might lead to a breach of the peace. It further recognized that the United Nations and its organs could play an important role in preventing disputes from arising between parties, in preventing existing disputes from escalating into conflicts and in containing and resolving the conflicts when they occurred. The Council also recalled that the Charter of the United Nations, particularly Chapter VI, set forth the means and a framework for the pacific settlement of disputes and underscored that the efforts to strengthen the process of the peaceful settlement of disputes should be continued and made more effective. Finally, the Council reiterated its commitment to make wider and more effective use of the procedures and means enshrined in the provisions of the Charter on the pacific settlement of disputes, particularly Articles 33 to 38, as one of the essential components of its work to promote and maintain international peace and security.<sup>80</sup>

#### **Role of the Security Council in the prevention of armed conflicts**

By a statement of the President dated 20 July 2000, the Council recalled its key role in the peaceful settlement of disputes under Chapter VI of the Charter and reaffirmed the importance of its consideration of all situations that might deteriorate into armed conflict, and of considering follow-up action, as appropriate. In that regard, it expressed continued willingness to consider the use of Council missions, with the consent of host countries, in order to determine whether any dispute, or any situation that might lead to international friction or give rise to a dispute, was likely to endanger the maintenance of international peace and security, and to make recommendations for action by the Council, as appropriate. By the same statement, the Council underlined the importance of the peaceful settlement of disputes and recalled the obligation of parties to disputes to seek actively a peaceful solution in accordance with the provisions of Chapter VI of the Charter. It also recalled the obligation of all Member States to accept and carry out its decisions, including those for the prevention of armed conflict. The Council

stressed the need for the maintenance of regional and international peace and stability and friendly relations among all States, and underlined the overriding humanitarian and moral imperative as well as the economic advantages of preventing the outbreak and escalation of conflicts. It highlighted, in that regard, the need to create a culture of prevention and reaffirmed that early warning, preventive diplomacy, preventive deployment, preventive disarmament, and post-conflict peacebuilding were interdependent and complementary components of a comprehensive conflict prevention strategy. The Council therefore emphasized its continuing commitment to addressing the prevention of armed conflicts in all regions of the world.

Recognizing the importance of effective post-conflict peacebuilding strategies in preventing the re-emergence of conflicts, the Council also recognized the need for close cooperation among bodies of the United Nations system and with other organizations and arrangements in the area of post-conflict peacebuilding, and expressed its willingness to consider ways to improve such cooperation. It also stressed that the design of peacekeeping mandates could help prevent the re-emergence of conflicts. Finally, underlining the importance of long-term development of post-conflict societies and the maintenance of lasting peace, the Council highlighted the importance of strengthening its cooperation with the Economic and Social Council in the area of the prevention of armed conflicts. The Council also emphasized the importance of preventive deployment in armed conflicts and reiterated its willingness to consider the deployment, with the consent of the host country, of preventive missions in appropriate circumstances.<sup>81</sup>

By resolution 1366 (2001) of 30 August 2001, having considered the report of the Secretary-General on the prevention of armed conflict and the recommendations contained therein,<sup>82</sup> the Council, while reiterating that conflict prevention was one of the primary responsibilities of Member States and emphasizing the importance of a comprehensive strategy for the prevention of armed conflicts, which included elements of early warning, preventive diplomacy, preventive deployment, practical

<sup>80</sup> S/PRST/2003/5.

<sup>81</sup> S/PRST/2000/25.

<sup>82</sup> S/2001/574 and Corr. 1.

disarmament measures and post-conflict peacebuilding, expressed its determination to pursue the objective of prevention of armed conflict as an integral part of its responsibility for the maintenance of international peace and security. It also reaffirmed its role in the peaceful settlement of disputes, and reiterated its call upon Member States to settle their disputes by peaceful means as set forth in Chapter VI of the Charter, including by use of regional preventive mechanisms and more frequent resort to the International Court of Justice.<sup>83</sup>

### **Peacebuilding: towards a comprehensive approach**

By a statement of the President dated 20 February 2001, the Council reaffirmed that the quest for peace required a comprehensive, concerted and determined approach addressing the root causes of conflicts, including their economic and social dimensions. Recognizing that peacemaking, peacekeeping and peacebuilding were often closely interrelated, the Council stressed that this interrelationship required a comprehensive approach in order to preserve the results achieved and prevent the recurrence of conflicts. To that effect, the Council reiterated the value of including, as appropriate, peacebuilding elements in the mandates of peacekeeping operations. Further recognizing that peacebuilding aimed at preventing the outbreak, the recurrence or continuation of armed conflict and therefore encompassed a wide range of political, developmental, humanitarian and human rights programmes and mechanisms, the Council underlined that short- and long-term actions, tailored to address the particular needs of societies sliding into conflict or emerging from it, were required. The Council specified that such actions should focus on fostering sustainable institutions and processes in areas such as sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence. To that end, the Council recognized the need for the early involvement on the ground of peacebuilding actors and an orderly assumption of their responsibilities. To avoid any gap between peacekeeping and peacebuilding, the Council expressed its determination, where appropriate, to consult at various stages of any

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<sup>83</sup> Resolution 1366 (2001), paras. 1 and 9.

peacekeeping operation, peacebuilding elements within the State concerned and with relevant actors primarily responsible for coordinating and implementing aspects of peacebuilding activities.<sup>84</sup>

## **B. Recommendations relating to methods, procedures or terms of the pacific settlement of disputes**

Section B provides an overview of the Council's practices aimed at the pacific settlement of disputes in application of Chapter VI of the Charter. It lists decisions, within the regional context, by agenda item and in chronological order, in which the Council requested or called upon parties to settle their disputes by peaceful means; recommended procedures or methods of settlement; or proposed or endorsed, welcomed or supported terms of settlement. Although the relevant decisions are presented by agenda item, it should be noted that, during the period under review, the Council increasingly demonstrated in its decisions a regional approach to the prevention and resolution of conflicts.<sup>85</sup>

## **Africa**

### **The situation in Angola**

By a statement of the President dated 20 September 2001, while expressing its concern at the continuing conflict in Angola, the Council reiterated its position that the primary responsibility for the continued fighting rested with the leadership of the armed faction of UNITA, which was refusing to fulfill its obligations under the "Accordos de Paz", the Lusaka Protocol and the relevant resolutions of the Security Council, the only viable basis for political settlement of the conflict in Angola. The Council considered the agenda for peace proposed by the Government of Angola as a useful indication of areas where an agreement should be reached or progress made. It therefore called on UNITA to cease all military action and to enter into a dialogue with the Government of Angola on how to conclude the implementation of the Lusaka Protocol.<sup>86</sup>

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<sup>84</sup> S/PRST/2001/5.

<sup>85</sup> See, for instance, S/PRST/2002/36 and S/PRST/2001/38.

<sup>86</sup> S/PRST/2001/24.

By a statement of the President dated 28 March 2002, the Council welcomed the communiqué issued by the Government of Angola on 13 March 2002 as a positive, constructive and forward-looking approach to ending the conflict and resuming the process of national reconciliation. It called upon UNITA to show a similar position, with the aim of achieving national reconciliation including through a general ceasefire in Angola. The Security Council urged UNITA to give a clear and positive response to the Government's offer of peace to implement fully the Lusaka Protocol.<sup>87</sup>

By resolution 1412 (2002) of 17 May 2002, the Council welcomed the historic step taken by the Government of Angola and UNITA, on 4 April 2002, in signing the Memorandum of Understanding Addendum to the Lusaka Protocol for the Cessation of Hostilities and the Resolution of the Outstanding Military Issues under the Lusaka Protocol.<sup>88</sup> In view of the developments, by resolution 1433 (2002) of 15 August 2002, the Council terminated the mandate of the United Nations Office in Angola (UNOA), established pursuant to resolution 1268 (1999), and established the United Nations Mission in Angola (UNMA), whose mandate included, *inter alia*, assisting the parties in concluding and implementing the Lusaka Protocol.

Subsequently, the Council welcomed the steps taken by the Government of Angola and UNITA towards the full implementation of the "Accordos de Paz", the Lusaka Protocol, the Complementary Memorandum of Understanding to the Lusaka Protocol for the Cessation of Hostilities and the Resolution of the Remaining Military Issues Pending by its resolution 1439 (2002) of 18 October 2002.<sup>89</sup>

### **The situation in Burundi**

By resolution 1286 (2000) of 19 January 2000, the Council warmly endorsed and strongly supported the designation by the Eighth Arusha Regional Summit on 1 December 1999 of Nelson Mandela, former President of the Republic of South Africa, as the new

Facilitator of the Arusha peace process. The Council expressed its strongest support for his efforts to achieve a peaceful solution to the conflict in Burundi, and welcomed the successful meeting in Arusha on 16 January 2000 launching his initiative. While reiterating its strong support for the renewed Arusha peace process, the Council endorsed the call at the Eighth Arusha Regional Summit for all parties to the conflict in Burundi to extend maximum cooperation to the new peace process Facilitator, and called for increased efforts to build an internal political partnership in Burundi. It further commended those Burundian parties, including the Government, which had demonstrated their commitment to continue negotiations, and called on all parties remaining outside the Arusha peace process to cease hostilities and to participate fully in the process.<sup>90</sup>

By a statement of the President dated 29 September 2000, the Council welcomed the signature, on 28 August 2000, of the Arusha Peace Accord, as well as the signatures added to the Accord at a regional summit, held on 20 September 2000, in Nairobi. The Council stressed that the key to achieving a lasting peace agreement rested with the Burundian parties and urged all parties to work towards resolving any remaining differences over the Peace Accord, and to proceed to its implementation. It also renewed its call to all parties that remained outside the peace process to cease hostilities and join the process. In that regard, the Council supported the call of the Facilitator to the rebel groups to clarify their positions by 20 October 2000. By the same statement, the Council also requested the Secretary-General urgently to report to it on specific actions the United Nations could undertake in the consolidation of peace and economic recovery in Burundi.<sup>91</sup> To that end, on the basis of recommendations by the Secretary-General, the Council revised and expanded the mandate of the United Nations Office in Burundi (UNOB), established in November 1993, to help to implement the Arusha Peace Accord.<sup>92</sup>

By a number of subsequent resolutions and statements, the Council reiterated its support for the Arusha peace process and its call on all parties that remained outside the peace process to cease hostilities

<sup>87</sup> S/PRST/2002/7.

<sup>88</sup> Resolution 1412 (2002), third preambular paragraph.

The Council reiterated its support for the Lusaka Protocol by resolution 1432 (2002) of 15 August 2002. By resolution 1404 (2002) of 18 April 2002, the Council had already welcomed, in the preambular paragraphs of the resolution, the ceasefire agreement signed in Luanda on 4 April 2002.

<sup>89</sup> Resolution 1439 (2002), third preambular paragraph.

<sup>90</sup> Resolution 1286 (2000), paras. 1, 2 and 4.

<sup>91</sup> S/PRST/2000/29.

<sup>92</sup> S/2001/1207. For details, see chapter V, sect. I.E.

and to participate fully in the process.<sup>93</sup> For instance, by a statement of the President dated 26 September 2001, while welcoming the installation of the transitional government, the Council expressed its concern regarding the recent increase in violence and recalled the urgent need to bring about a negotiated settlement of the conflict. It thus called upon the Facilitation, the Regional Peace Initiative on Burundi, the Government of Burundi, the signatory parties, and the armed groups to devote their full attention to the achievement of a ceasefire.<sup>94</sup>

By a statement of the President dated 7 February 2002, the Council welcomed the steps taken by the Governments of Burundi and of the Democratic Republic of the Congo to normalize their relations. In that regard, it welcomed the joint communiqué they issued on 7 January and called on them to implement as soon as possible the elements agreed upon.<sup>95</sup>

By a statement of the President dated 18 December 2002, the Council welcomed the signing of the Ceasefire Agreement between the Transitional Government of Burundi and the National Council for the Defence of Democracy — Forces for the Defence of Democracy, in Arusha, on 2 December 2002.<sup>96</sup> Subsequently, by another statement of the President dated 4 December 2003, the Council welcomed the progress made by the Burundian parties, in particular by the signing, in Pretoria, of the protocols of 8 October and 2 November 2003 and by the conclusion, on 16 November 2003, in Dar-es-Salaam, of the Global Ceasefire Agreement between the Transitional Government of Burundi and the National Council for the Defence of Democracy — Forces for the Defence of Democracy.<sup>97</sup>

#### **The situation in Côte d'Ivoire**

By resolution 1464 (2003) of 4 February 2003, the Council endorsed the agreement signed by political forces of Côte d'Ivoire in Linas-Marcoussis, on

23 January 2003, and called upon all Ivorian political forces to implement it fully and without delay.<sup>98</sup>

In view of those developments, by resolution 1479 (2003) of 13 May 2003, the Council established the United Nations Mission in Côte d'Ivoire (MINUCI) to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement,<sup>99</sup> complementing the operations of the French forces and the Economic Community of West African States forces.<sup>100</sup>

#### **The situation concerning the Democratic Republic of the Congo**

By resolutions 1291 (2000) of 24 February 2000 and 1304 (2000) of 16 June 2000, the Council reiterated its strong support for the Ceasefire Agreement signed at Lusaka on 10 July 1999 and called upon the parties to fulfill their obligations under the Agreement.<sup>101</sup> By the former resolution, the Council also expanded the mandate of the United Nations Organization Mission in the Democratic Republic of Congo (MONUC), established pursuant to resolution 1279 (1999), to monitor the implementation of the Ceasefire Agreement and to investigate violations of the ceasefire.<sup>102</sup>

By resolution 1332 (2000) of 14 December 2000, the Council welcomed the agreements reached at Maputo, on 27 November 2000, concerning the disengagement of forces, as well as the signing, on 6 December 2000, of the Harare Agreement, pursuant to the Kampala Disengagement Plan of 8 April 2000.<sup>103</sup> It further called upon all parties to the Ceasefire Agreement signed at Lusaka to cease hostilities and to continue to intensify their dialogue to

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<sup>98</sup> Resolution 1464 (2003), para. 1. The Council reaffirmed its endorsement of the Linas-Marcoussis Agreement by resolution 1479 (2003) of 13 May 2003.

<sup>99</sup> The Linas-Marcoussis Agreement was signed in January 2003 by all political forces in Côte d'Ivoire. For details, see S/2003/99, annex 1.

<sup>100</sup> Resolution 1479 (2003), para. 2.

<sup>101</sup> Following the continuation of hostilities in the Democratic Republic of the Congo, the Council reiterated such call by a statement of the President dated 7 September 2000 (S/PRST/2000/28).

<sup>102</sup> Resolution 1291 (2000), paras. 4 and 7.

<sup>103</sup> Resolution 1332 (2000), seventh preambular paragraph. The Council reiterated its support of the Lusaka Protocol as well as the Kampala and Harare plans by resolutions 1341 (2001) of 22 February 2001 and 1355 (2001) of 15 June 2001.

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<sup>93</sup> S/PRST/2001/6; S/PRST/2001/17; S/PRST/2001/26; resolution 1375 (2001); S/PRST/2001/33; and S/PRST/2002/40.

<sup>94</sup> S/PRST/2001/26.

<sup>95</sup> S/PRST/2002/3. By a statement of the President dated 18 December 2002, the Council recalled the communiqué and renewed its appeal to the parties to implement and finalize the accord (S/PRST/2002/40).

<sup>96</sup> S/PRST/2002/40.

<sup>97</sup> S/PRST/2003/30.

implement the Agreement, as well as the Kampala, Maputo and Harare agreements, and to take additional steps, within the framework of these agreements, to accelerate the peace process.<sup>104</sup>

By a statement of the President dated 3 May 2001, the Council affirmed that the only viable solution to the crisis in the Democratic Republic of the Congo remained the full implementation of the Lusaka Ceasefire Agreement and the relevant Security Council resolutions. Furthermore, it emphasized the importance of a comprehensive approach addressing all the root causes of the conflict to achieve a lasting peace settlement in the country.<sup>105</sup>

By a statement of the President dated 15 August 2002, the Council welcomed the signing in Pretoria on 30 July 2002 of the Peace Agreement between the Governments of the Democratic Republic of the Congo and the Rwandese Republic on the Withdrawal of the Rwandan Troops from the Territory of the Democratic Republic of the Congo and the dismantling of the ex-Rwandese Armed Forces and Interahamwe Forces in the Democratic Republic of the Congo.<sup>106</sup> By resolution 1445 (2002) of 4 December 2002, the Council reiterated its support for the aforementioned Peace Agreement and also welcomed the signing by the Democratic Republic of the Congo and Uganda of the Luanda Agreement.<sup>107</sup>

By a statement of the President dated 16 May 2003, the Council welcomed the Agreement on the Engagement to Relaunch the Ituri Pacification Process, signed in Dar-es-Salaam on 16 May 2003, and called upon the parties to implement it fully and without delay.<sup>108</sup>

#### **The situation between Eritrea and Ethiopia**

By resolution 1297 (2000) of 12 May 2000, while condemning the renewed fighting between Eritrea and Ethiopia, the Council demanded the earliest possible reconvening, without preconditions, of substantive peace talks, under the auspices of the Organization of African Unity, on the basis of the Framework Agreement approved on 17 December 1998 and the

Modalities for Implementation.<sup>109</sup> The Council also endorsed the communiqué issued by the Chairman of the Organization of African Unity on 5 May 2000, which recorded the achievements of the negotiations led by OAU, including the areas of convergence already established between the two parties.<sup>110</sup>

By resolution 1312 (2000) of 31 July 2000, following a ceasefire agreement between Ethiopia and Eritrea on 18 June 2000,<sup>111</sup> and on the basis of the report of the Secretary-General of 30 June 2000,<sup>112</sup> as well as communications received from both parties,<sup>113</sup> the Council established the United Nations Mission in Ethiopia and Eritrea (UNMEE) mandated to, inter alia, establish and put into operation the mechanism for verifying the cessation of hostilities.<sup>114</sup>

By resolution 1320 (2000) of 15 September 2000, the Council expressed its strong support for the Agreement on Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, signed on 18 June 2000 in Algiers, and the official communications by each Government requesting United Nations assistance in the implementation of the Agreement.<sup>115</sup> The Council also called upon the parties to fulfill all their obligations under international law, including the Agreement on Cessation of Hostilities.<sup>116</sup> In addition, the Council called on the parties to

<sup>109</sup> Resolution 1297 (2000), para. 3.

<sup>110</sup> *Ibid.*, para. 7.

<sup>111</sup> On 30 May 2000, proximity talks started between the two parties under the chairmanship of the Minister of Justice of Algeria and the Personal Envoy of the Chairman of OAU in Algiers, which culminated in Agreement on Cessation of Hostilities (S/2000/601, annex). On 12 December 2000, the Governments of Ethiopia and Eritrea signed the Comprehensive Peace Agreement (S/2000/1183), by which the parties agreed permanently to terminate military hostilities and to respect and implement fully the Agreement on Cessation of Hostilities. The Agreement also provided for, inter alia, the establishment of a neutral boundary commission mandated to delimit and demarcate the colonial treaty border based on pertinent colonial treaties and applicable international law.

<sup>112</sup> S/2000/643.

<sup>113</sup> S/2000/612 and S/2000/627.

<sup>114</sup> Resolution 1312 (2000), para. 1.

<sup>115</sup> Resolution 1320 (2000), fifth preambular paragraph.

<sup>116</sup> *Ibid.*, para. 1.

<sup>104</sup> Resolution 1332 (2000), para. 2.

<sup>105</sup> S/PRST/2001/13.

<sup>106</sup> S/PRST/2002/24.

<sup>107</sup> Resolution 1445 (2002), para. 1.

<sup>108</sup> S/PRST/2003/6.

continue negotiations and conclude without delay a comprehensive and final peace settlement.<sup>117</sup>

Following that appeal, by a statement of the President dated 21 November 2000, the Council noted with appreciation the rounds of proximity talks that had taken place and, pursuant to paragraph 14 of resolution 1320 (2000), called upon the parties to continue negotiations and to conclude without delay a final and comprehensive peace settlement.<sup>118</sup>

In a subsequent statement by the President dated 9 February 2001, the Council, reiterating its strong support for the Agreement on Cessation of Hostilities, strongly welcomed and supported the subsequent Peace Agreement between the parties signed in Algiers on 12 December 2000 ("Algiers Agreement"). The Council also encouraged both parties to continue working towards the full and prompt implementation of the Algiers Agreement and, in that connection, it also welcomed the agreement reached by the parties on 6 February 2001 to move forward with the establishment of the temporary security zone (TSZ) on 12 February 2001.<sup>119</sup>

By resolution 1344 (2001) of 15 March 2001, the Council called upon the parties to continue working towards the full and prompt implementation of their agreements, including an expeditious completion of the remaining steps, in particular the rearrangement of forces necessary for the establishment of the temporary security zone.<sup>120</sup>

By a statement of the President dated 15 May 2001, the Council encouraged both parties to continue working towards the full and prompt implementation of the Agreements and, in that context, to take concrete confidence-building measures. While reaffirming its continued commitment to a peaceful definitive settlement of the conflict, the Council noted with satisfaction that the parties had agreed to the Secretary-General's proposal of 1 May 2001 on the composition

of the Boundary and Claims Commissions, as critical components to the peaceful definitive settlement of the conflict. It therefore called on the parties to cooperate fully with the Boundary Commission and to fulfil their financial responsibilities regarding the Boundary Commission's work.<sup>121</sup>

By resolution 1369 (2001) of 14 September 2001, the Council called upon the parties urgently to resolve the outstanding issues in accordance with the Algiers Agreements and fulfil, *inter alia*, the following obligations: (a) to provide freedom of movement and access for personnel and supplies of UNMEE as required for the performance of its duties; (b) to facilitate the establishment of a secure and practicable air corridor between Addis Ababa and Asmara, by accepting the proposal made in that regard by the Special Representative of the Secretary-General; (c) to provide full information on the local militia and police in the temporary security zone as well as on the minefields; (d) to conclude the status-of-forces agreement; and (e) to release and return the remaining prisoners of war and detainees under the auspices of the International Committee of the Red Cross.<sup>122</sup> By the same resolution the Council also encouraged all States and international organizations to support the peace process.<sup>123</sup>

By resolution 1434 (2002) of 6 September 2002, the Council decided to review frequently the progress made by the parties in the implementation of their commitments pursuant to the Algiers Agreements, including through the Boundary Commission.<sup>124</sup>

By resolution 1466 (2003) of 14 March 2003, noting that the peace process was entering its crucial phase of demarcation, and emphasizing the importance of ensuring expeditious implementation of the Boundary Decision while maintaining stability in all areas affected by the Decision, the Council urged both Ethiopia and Eritrea to continue to assume their responsibilities and fulfill their commitments under the Algiers Agreements. It further called upon them to cooperate fully and promptly with the Boundary

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<sup>117</sup> *Ibid.*, para. 14.

<sup>118</sup> S/PRST/2000/34.

<sup>119</sup> S/PRST/2001/4. The Council reiterated its support for the Algiers Agreements by several subsequent decisions. See, for example, resolution 1344 (2001) of 15 March 2001; S/PRST/2001/14; resolution 1369 (2001) of 14 September 2001; S/PRST/2002/1; resolution 1398 (2002) of 15 March 2002; resolution 1430 (2002) of 14 August 2002; resolution 1434 (2002) of 6 September 2002; and resolution 1466 (2003) of 14 March 2003.

<sup>120</sup> Resolution 1344 (2001), para. 2.

<sup>121</sup> S/PRST/2001/14.

<sup>122</sup> Resolution 1369 (2001), para. 5.

<sup>123</sup> *Ibid.*, para. 7.

<sup>124</sup> Resolution 1434 (2002), para. 2. By resolution 1430 (2002) of 14 August 2002, the Security Council adjusted the mandate of UNMEE to assist the Boundary Commission in the expeditious and orderly implementation of its Delimitation Decision.

Commission to enable it to fulfill its mandate of delimiting and demarcating the boundary.<sup>125</sup>

By a statement of the President dated 17 July 2003, the Council welcomed the public commitment of both parties to a full and expeditious implementation of the Algiers Agreement of 12 December 2000, and reaffirmed its commitment to contribute to the completion of the peace process. The Council also welcomed the parties' acceptance of the 13 April 2002 delimitation decision as final and binding.<sup>126</sup>

By resolution 1507 (2003) of 12 September 2003, the Council urged the Governments of Ethiopia and Eritrea to assume their responsibilities and to take further concrete steps to fulfill their commitments under the Algiers Agreements, and therefore renewed its call upon the parties to cooperate fully with the Boundary Commission.<sup>127</sup>

#### **The situation in Guinea-Bissau**

By a statement of the President dated 5 May 2003, the Council welcomed the initiative of the President of Guinea-Bissau to host negotiations on the issue of Casamance and appealed to him to continue to cooperate constructively with the Government of Senegal in order to contribute to a solution of the issue.<sup>128</sup>

#### **The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone**

By a statement of the President dated 21 December 2000, the Council, while condemning the incursions into Guinea by rebel groups coming from Liberia and Sierra Leone, noted with interest the common undertakings assumed by Guinea, Liberia and Sierra Leone at the twenty-fourth ordinary session of the Authority of Heads of State and Government of ECOWAS held in Bamako on 15 and 16 December 2000, and called upon them to implement those undertakings fully and without delay.<sup>129</sup>

<sup>125</sup> Resolution 1466 (2003), fifth preambular paragraph and para. 2.

<sup>126</sup> S/PRST/2003/10.

<sup>127</sup> Resolution 1507 (2003), paras. 3 and 4.

<sup>128</sup> S/PRST/2003/8.

<sup>129</sup> S/PRST/2000/41.

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

By a statement of the President dated 27 August 2003, the Council welcomed the Comprehensive Peace Agreement reached by the Government of Liberia, rebel groups, political parties and civil society leaders in Accra on 18 August 2003. The Council urged all parties to respect fully the ceasefire and implement their commitments under the Comprehensive Peace Agreement.<sup>130</sup>

By resolution 1509 (2003) of 19 September 2003, the Council reaffirmed its support for the Comprehensive Peace Agreement and the Liberian ceasefire agreement signed at Accra on 17 June 2003 and urged the parties to move forward with the implementation of those agreements immediately in order to ensure the peaceful formation of a transitional government.<sup>131</sup> By the same resolution, the Council established the United Nations Mission in Liberia (UNMIL), to support, inter alia, the implementation of the ceasefire agreement and the peace process.<sup>132</sup>

#### **The situation in Sierra Leone**

By resolution 1289 (2000) of 7 February 2000, the Council reiterated its call upon the parties to fulfil all their commitments under the Peace Agreement, signed in Lomé on 7 July 1999, to facilitate the restoration of peace, stability, national reconciliation and development in Sierra Leone, and stressed that the responsibility for the success of the peace process ultimately lay with the people and leaders of Sierra Leone.<sup>133</sup>

By resolution 1334 (2000) of 22 December 2000, the Council took note of the ceasefire agreement signed in Abuja on 10 November 2000 between the Government of Sierra Leone and the Revolutionary United Front (RUF). Expressing its concern at the failure of RUF fully to meet its obligations under the agreement, the Council called upon the latter to give a more convincing demonstration of its commitment to the ceasefire and the peace process.<sup>134</sup>

<sup>130</sup> S/PRST/2003/14.

<sup>131</sup> Resolution 1509 (2003), thirteenth preambular paragraph. The Council reiterated its support for the Comprehensive Peace Agreement by resolution 1521 (2003) of 22 December 2003.

<sup>132</sup> Resolution 1509 (2003), paras. 1 and 3.

<sup>133</sup> Resolution 1289 (2000), para. 3.

<sup>134</sup> Resolution 1334 (2000), para. 2.



By resolution 1346 (2001) of 30 March 2001, the Council expressed its deep concern that the ceasefire agreement of 10 November 2000 had not been fully implemented, and demanded that RUF take immediate steps to fulfil its commitments under the agreement.<sup>135</sup> It called upon all the parties to the Sierra Leone conflict to intensify their efforts towards the full and peaceful implementation of the ceasefire agreement and the resumption of the peace process, taking into account the basis of the agreement and relevant Council resolutions.<sup>136</sup> By the same resolution, the Council revised the concept of operations for the United Nations Mission in Sierra Leone (UNAMSIL), including assisting the Government of Sierra Leone in the promotion of a political process which should lead to a renewed disarmament, demobilization and reintegration programme and the holding, in due course, of free and fair elections.<sup>137</sup>

By a statement of the President dated 19 December 2001, the Council welcomed the holding in New York, on 16 November 2001, of the fifth meeting of the United Nations-ECOWAS-Sierra Leone coordination mechanism and the progress made in the peace process in Sierra Leone. It appealed to the international community for substantial financial assistance for the programme for the disarmament, demobilization and reintegration of former combatants and other peace consolidating activities in Sierra Leone.<sup>138</sup>

By resolution 1400 (2002) of 28 March 2002, the Council encouraged the Government of Sierra Leone and RUF to strengthen their efforts towards the full implementation of the ceasefire agreement.<sup>139</sup> The Council also welcomed the summit meeting of the Mano River Union Presidents and urged the Presidents to continue the dialogue and to implement their commitments to building regional peace and security, including through the efforts of ECOWAS.<sup>140</sup>

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<sup>135</sup> Resolution 1346 (2001), para. 7.

<sup>136</sup> *Ibid.*, para. 10.

<sup>137</sup> *Ibid.*, para. 3.

<sup>138</sup> S/PRST/2001/38.

<sup>139</sup> Resolution 1400 (2002), para. 4.

<sup>140</sup> *Ibid.*, para. 11. The Council renewed such appeals by subsequent resolutions (for example, resolutions 1436 (2002) and 1508 (2003)).

### **The situation in Somalia**

By a statement of the President dated 29 June 2000, the Council expressed its full support for the efforts exerted by the Intergovernmental Authority on Development (IGAD) to find a political solution to the crisis in Somalia. It also welcomed and fully supported the initiative of the President of Djibouti aimed at restoring peace and stability in the country and urged States and international organizations, in a position to do so, to give those efforts political support and to provide financial and technical assistance to the Government of Djibouti to this end. Finally, the Council strongly urged the representatives of all social and political forces of Somali society to participate actively and in a constructive spirit in the work of the Somalia National Peace and Reconciliation Conference in Arta, Djibouti. In this regard, it also urged the warlords and faction leaders to desist from obstructing and undermining efforts to achieve peace.<sup>141</sup>

By a statement of the President dated 11 January 2001, the Council welcomed and supported the outcome of the Somalia National Peace and Reconciliation Conference held in Arta, the establishment of the Transitional National Assembly and the Transitional National Government. It also strongly urged all political groups in the country, in particular those remaining outside the Arta peace process, to engage in peaceful and constructive dialogue with the Transitional National Government in order to promote national reconciliation and facilitate the democratic elections scheduled for 2003.<sup>142</sup>

By a statement of the President dated 31 October 2001, reaffirming that the Arta peace process continued to be the most viable basis for peace and national reconciliation in Somalia, the Council urged the Transitional National Government, political and traditional leaders and factions in Somalia to make every effort to complete, without preconditions, the peace and reconciliation process through dialogue and involvement of all parties in a spirit of mutual accommodation and tolerance. It also called upon all parties to refrain from actions that would undermine the Arta peace process. The Council then called upon

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<sup>141</sup> S/PRST/2000/22.

<sup>142</sup> S/PRST/2001/1. The Council reiterated its support for the Arta peace process by several subsequent statements by the President (for example, S/PRST/2001/30 and S/PRST/2002/8).

the concerned States in the Horn of Africa to contribute constructively to the peace efforts in Somalia and acknowledged Djibouti's major contribution to the Arta peace process, while welcoming its continued role in this regard.<sup>143</sup>

By a statement of the President dated 28 March 2002, the Council strongly supported the decisions of the ninth Summit of the Intergovernmental Authority on Development, held in Khartoum on 10 and 11 January 2002, and by the Intergovernmental Authority on Development Foreign Ministers Committee on 14 February 2002 to convene, without conditions, a national reconciliation conference for Somalia in Nairobi in April 2002, including the Transitional National Government and all other Somali parties. The Council strongly supported the call upon Kenya, Ethiopia and Djibouti (the "frontline States") by the ninth Summit to coordinate their efforts for national reconciliation in Somalia under the supervision of the Chairman of IGAD, to hold the reconciliation conference under the auspices of the President of Kenya, as the coordinator of the frontline States. Stating that the constructive and coordinated involvement by all frontline States was crucial for the restoration of peace and stability in Somalia, the Council called upon all States in the region, including States that were not members of IGAD, to contribute constructively to the peace efforts for Somalia, including by using their influence to bring on board Somali groups that had not yet joined the peace process. Finally, the Council endorsed the establishment of the Somalia Contact Group, responsible, inter alia, for promoting the completion of the Arta peace process, as well as a working mission to the region, consisting of interested members of the Council and Secretariat staff. In connection with the latter, the Council expressed its determination to address, based on the report to be submitted by the mission and the upcoming report by the Secretary-General, how it might further support in a practical and concrete manner the peace efforts in Somalia on a comprehensive basis.<sup>144</sup>

By resolution 1425 (2002) of 22 July 2002, while underlining the role played by IGAD and the frontline States, the Council expressed its support and expectation that the planned national reconciliation

conference for Somalia, to be held in Nairobi, would move forward as a matter of urgency with the pragmatic and result-oriented involvement of the frontline States.<sup>145</sup>

By a statement of the President dated 12 December 2002, the Council firmly supported the unified approach of IGAD to national reconciliation in Somalia, and reiterated its strong support for the Somalia National Reconciliation Process and the ongoing Somalia National Reconciliation Conference in Eldoret, Kenya. The Council urged all parties throughout Somalia to participate in the process in accordance with the framework established by IGAD, and expected the decisions adopted throughout the process to be abided by and implemented expeditiously, including the Declaration on Cessation of Hostilities and the Structures and Principles of the Somalia National Reconciliation Process, signed by all delegates in Eldoret on 27 October 2002 (the "Eldoret Declaration"). Welcoming the Eldoret Declaration as an important step towards ending violence, the Council called upon all parties to cease all acts of violence and to respect the cessation of hostilities. The Council also welcomed the Joint Declaration issued by the involved parties in Mogadishu on 2 December 2002 (the "Mogadishu Declaration"). The Council also noted with satisfaction the commencement of the second phase of the Somalia National Reconciliation Process in Eldoret on 2 December 2002 and welcomed it as a significant step forward. The Council therefore strongly encouraged all parties to continue to participate constructively, in accordance with the framework established by the Technical Committee of IGAD, in a spirit of tolerance and mutual accommodation during each phase of the process. Finally, the Council renewed its commitment to assist the parties in the implementation of the steps and conclusions for peace, as adopted throughout the Somalia National Reconciliation Process.<sup>146</sup>

By a statement of the President dated 12 March 2003, while reiterating its firm support for the Somalia National Reconciliation Process and the ongoing Somalia National Reconciliation Conference in Kenya, the Council strongly encouraged all parties throughout Somalia to participate in the process, as a unique opportunity to restore peace and stability in the

<sup>143</sup> S/PRST/2001/30.

<sup>144</sup> S/PRST/2002/8.

<sup>145</sup> Resolution 1425 (2002), fourth preambular paragraph.

<sup>146</sup> S/PRST/2002/35.

country. The Council demanded that the Somali parties abide by and implement expeditiously the decisions adopted throughout the process, including the Declaration on Cessation of Hostilities and the Eldoret Declaration, as well as the Mogadishu Declaration.<sup>147</sup>

By a statement of the President dated 11 November 2003, while reiterating again its support for the Somali National Reconciliation Process, the Council commended the progress made and acknowledged the challenges ahead. It further welcomed the relevant decisions made by the tenth Summit of the Intergovernmental Authority on Development and the first meeting of the Intergovernmental Authority on Development Ministerial Facilitation Committee on the Somali peace process in October 2003. The Council urged all Somali leaders to participate constructively in the meeting of leaders planned by the Facilitation Committee in Kenya in November 2003 to bridge their differences and to reach agreements on a viable government and a durable and inclusive solution to the conflict in Somalia.<sup>148</sup>

**Letter dated 2 October 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council**

By a statement of the President dated 10 October 2003, the Council welcomed the agreement on security arrangements reached in Naivasha, Kenya, between the Government of the Sudan and the Sudan People's Liberation Movement/Army. Reiterating its welcome for the signing of the Machakos Protocol as a viable basis for a resolution of the conflict in the Sudan, the Council looked forward to the successful conclusion of a comprehensive peace agreement, based on the Machakos Protocol. The Council also welcomed the continuation of the ceasefire and assured the parties of its readiness to support them in the implementation of the comprehensive peace agreement.<sup>149</sup>

**The situation concerning Western Sahara**

By resolution 1292 (2000) of 29 February 2000, while noting the concerns expressed in the latest report of the Secretary-General on the possibility of achieving

consensual implementation of the settlement plan and agreements adopted by the parties, the Council urged the parties to cooperate so as to achieve a lasting solution.<sup>150</sup>

By resolution 1301 (2000) of 31 May 2000, the Council decided to extend the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) for a further period of two months, with the expectation that the parties would offer the Personal Envoy of the Secretary-General specific and concrete proposals to resolve the multiple problems relating to the implementation of the settlement plan and explore all ways and means to achieve an early, durable and agreed resolution to their dispute over Western Sahara.<sup>151</sup>

By resolution 1359 (2001) of 29 June 2001, the Council took into consideration a number of documents: the official proposals submitted by the Frente Popular para la Liberación de Saguía el Hamra y de Río de Oro on the implementation of the settlement plan, the draft framework agreement on the status of Western Sahara contained in annex I to the report of the Secretary-General, and the memorandum of the Government of Algeria on the draft status for Western Sahara.<sup>152</sup> The Council therefore encouraged the parties, under the auspices of the Secretary-General's Personal Envoy, to discuss the draft framework agreement on the status of Western Sahara and negotiate any specific changes they would like to see in the proposal, as well as discuss any other proposal for a political solution which might be put forward by the parties, to arrive at a mutually

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<sup>150</sup> Resolution 1292 (2000), sixth preambular paragraph.

<sup>151</sup> Resolution 1301 (2000), para. 1. By a series of subsequent resolutions, the Security Council continued to extend the mandate of MINURSO for additional periods of two to six months, with the expectation that the parties would meet in direct talks under the auspices of the Personal Envoy of the Secretary-General to try to resolve the multiple problems relating to the implementation of the settlement plan, and to try to agree upon a mutually acceptable political solution to their dispute over Western Sahara. See resolutions 1309 (2000), 1324 (2000), 1342 (2001), 1349 (2001), 1359 (2001), 1380 (2001), 1394 (2002), 1406 (2002), 1429 (2002), 1463 (2003), 1469 (2003), 1485 (2003), 1495 (2003) and 1513 (2003).

<sup>152</sup> Resolution 1359 (2001), seventh, eighth and ninth preambular paragraphs.

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<sup>147</sup> S/PRST/2003/2.

<sup>148</sup> S/PRST/2003/19.

<sup>149</sup> S/PRST/2003/16.

acceptable agreement.<sup>153</sup> It also affirmed that, while the aforementioned discussion continued, the official proposals submitted by the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente Polisario) to overcome the obstacles preventing implementation of the settlement plan should be considered and recalled that, given that nothing would be agreed until everything had been agreed, by engaging in these negotiations the parties would not prejudice their final positions.<sup>154</sup>

By resolution 1429 (2002) of 30 July 2002, following the presentation of the report of the Secretary-General dated 19 February 2002 and the four options contained therein,<sup>155</sup> the Council called upon the parties and the States of the region to cooperate fully with the Secretary-General and his Personal Envoy.<sup>156</sup>

By resolution 1495 (2003) of 31 July 2003, acting under Chapter VI of the Charter, having considered the report of the Secretary-General of 23 May 2003<sup>157</sup> and the peace plan for self-determination of the people of Western Sahara presented by his Personal Envoy,<sup>158</sup> as well as the responses of the parties and the neighbouring States,<sup>159</sup> the Council supported the peace plan for self-determination of the people of Western Sahara put forward by the Secretary-General and his Personal Envoy as an optimum political solution on the basis of agreement between the two parties.<sup>160</sup> It further called upon the parties to work with the United Nations and with each other towards acceptance and implementation of the peace plan.<sup>161</sup>

## Asia

### The situation in Afghanistan

By a statement of the President dated 7 April 2000, the Council reiterated that there was no military solution to the conflict in Afghanistan and that only a

negotiated political settlement aimed at the establishment of a broad-based, multi-ethnic and fully representative government acceptable to all Afghans could lead to peace and national reconciliation. Noting that the United Front of Afghanistan was willing to talk with the Taliban, the Council recalled its demand that the parties, and in particular the Taliban, resume negotiations under the auspices of the United Nations without delay or preconditions in full compliance with the relevant resolutions of the General Assembly and the Council.<sup>162</sup> In addition, the Council urged the members of the “six plus two” group<sup>163</sup> and the Afghan parties to implement the Tashkent Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan,<sup>164</sup> particularly the agreement of members of the group not to provide military support to any Afghan party and to prevent the use of their territories for such purposes.<sup>165</sup>

By resolution 1383 (2001) of 6 December 2001, the Council endorsed the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, as reported in the letter from the Secretary-General dated 5 December 2001,<sup>166</sup> and called upon all Afghan groups to implement the Agreement in full, in particular through full cooperation with the Interim Authority.<sup>167</sup> By several subsequent resolutions, the Council reiterated its endorsement of the aforementioned Agreement.<sup>168</sup>

By resolution 1453 (2002) of 24 December 2002, the Council welcomed and endorsed the Declaration on Good-Neighbourly Relations signed by the Transitional Administration of Afghanistan and the Governments of China, the Islamic Republic of Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan, the States neighbouring Afghanistan, in Kabul on 22 December 2002. It also called on all States to respect the

<sup>153</sup> *Ibid.*, para. 2.

<sup>154</sup> *Ibid.*, paras. 3 and 4.

<sup>155</sup> S/2002/178.

<sup>156</sup> Resolution 1429 (2002), para. 2.

<sup>157</sup> S/2003/565.

<sup>158</sup> *Ibid.*, annex II.

<sup>159</sup> *Ibid.*, annex III.

<sup>160</sup> Resolution 1495 (2003), para. 1.

<sup>161</sup> *Ibid.*, para. 2.

<sup>162</sup> S/PRST/2000/12.

<sup>163</sup> The “six plus two group” consisted of China, Islamic Republic of Iran, Pakistan, Tajikistan, Turkmenistan, Uzbekistan, plus the Russian Federation and the United States.

<sup>164</sup> S/1999/812, annex.

<sup>165</sup> S/PRST/2000/12.

<sup>166</sup> S/2001/1154 (also known as the “Bonn Agreement”).

<sup>167</sup> Resolution 1383 (2001), paras. 1 and 2.

<sup>168</sup> Resolutions 1386 (2001), 1401 (2002) and 1419 (2002).

Declaration and to support the implementation of its provisions.<sup>169</sup>

### **The situation in East Timor**

By a statement of the President dated 3 August 2000, paying tribute to the progress made by the Transitional Administration, the Council welcomed the significant progress made in building healthy relations between East Timor and Indonesia. Furthermore, the Council strongly supported the steps taken by the Transitional Administration to strengthen the involvement and direct participation of the East Timorese people in the administration of their territory and, in particular, the establishment of the National Council and the reorganization of the Transitional Administration, with a view to building capacity in the territory in the run-up to independence.<sup>170</sup>

Following the murder of three United Nations staff members in Atambua, West Timor, by armed militias on 6 September 2000, the Council responded to the deteriorating security situation by adopting resolution 1319 (2000) on 8 September 2000. By that resolution, the Council called on the Government of Indonesia to take immediate steps, in fulfilment of its responsibilities, to disarm and disband militia immediately, restore law and order in the affected areas in West Timor, ensure safety and security in the refugee camps and for humanitarian workers, and prevent cross-border incursions into East Timor.<sup>171</sup>

By resolution 1338 (2001) of 31 January 2001, the Council extended the mandate of the United Nations Transitional Administration in East Timor (UNTAET), a multidimensional peacekeeping operation fully responsible for the administration of East Timor during its transition to independence, and encouraged efforts to achieve the goal of independence by the end of 2001, acknowledging that it was the responsibility of UNTAET to ensure free and fair

elections in collaboration with the people of East Timor.<sup>172</sup>

By a statement of the President dated 10 September 2001, the Council expressed its appreciation to UNTAET for facilitating a smooth and representative election process and called upon all parties to respect fully and implement the election results, which provided the basis for a broad-based Constituent Assembly. The Council urged all parties to work together to draft a constitution which reflected the will of the East Timorese people and to cooperate for the successful completion of the final steps towards independence, in a complex process of stabilization in East Timor.<sup>173</sup>

By a statement of the President dated 31 October 2001, the Council welcomed the political progress achieved towards establishing an independent East Timorese State and endorsed the recommendation by the Constituent Assembly that independence be declared on 20 May 2002. The Council concurred with the assessment of the Secretary-General that premature withdrawal of the international presence could have a destabilizing effect in a number of crucial areas and that the United Nations should remain engaged in East Timor to protect the major achievements so far realized by the Transitional Administration, to build upon those achievements in cooperation with other actors and to assist the East Timorese Government in ensuring security and stability.<sup>174</sup>

By resolution 1410 (2002) of 17 May 2002, noting the existence of challenges to the short- and long-term security and stability of an independent East Timor and determining that ensuring the security of the boundaries of East Timor and preserving its internal and external stability was necessary for the maintenance of peace and security in the region, the Council established the United Nations Mission of Support in East Timor (UNMISSET), whose mandate included the implementation of programmes for “stability, democracy and justice”.<sup>175</sup>

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<sup>169</sup> Resolution 1453 (2002), paras. 1 and 2. The Council reiterated its endorsement of the Declaration on Good-Neighbourly Relations and renewed its call to the parties to respect the Declaration by resolution 1471 (2003) of 28 March 2003 and its statement by the President dated 17 June 2003 (S/PRST/2003/7).

<sup>170</sup> S/PRST/2000/26.

<sup>171</sup> Resolution 1319 (2000), para. 1. The call upon the Government of Indonesia to disarm and disband the militia was reiterated by the Council in a statement by the President dated 6 December 2000 (S/PRST/2000/39).

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<sup>172</sup> Resolution 1338 (2001), fifth preambular paragraph and para. 2.

<sup>173</sup> S/PRST/2001/23.

<sup>174</sup> S/PRST/2001/32.

<sup>175</sup> Resolution 1410 (2002), fifteenth preambular paragraph and paras. 1 and 4. The mandate was subsequently extended by resolution 1480 (2003).

Following the entry into force of East Timor's first Constitution on 22 March and the presidential elections on 14 April, by a statement of the President dated 20 May 2002, the Council welcomed the attainment of independence by East Timor and expressed its strong support for the leadership of East Timor as it assumed authority for governing the new, sovereign State of East Timor.<sup>176</sup>

**Letter dated 10 November 2000 from the  
Chargé d'affaires a.i. of the Permanent Mission  
of Solomon Islands to the United Nations  
addressed to the President of the Security  
Council**

By a statement of the President issued at the 4224th meeting on 16 November 2000, the Council strongly supported the Townsville Peace Agreement, concluded on 15 October 2000, for the cessation of hostilities between the Malaita Eagle Force and the Isatabu Freedom Movement and for the restoration of peace and ethnic harmony in Solomon Islands. The Council also encouraged all parties to cooperate in promoting reconciliation, so that the objectives of the Townsville Peace Agreement could be met, and urged all parties to continue to cooperate in accordance with the Peace Agreement, namely, to restore and maintain peace and ethnic harmony, to renounce the use of armed force and violence, to settle their differences through consultation and peaceful negotiation, and to confirm their respect for human rights and the rule of law.<sup>177</sup>

**The situation in Tajikistan and along the Tajik-  
Afghan Border**

By a statement of the President dated 21 March 2000, the Council welcomed the decisive progress in the implementation of the General Agreement on the Establishment of Peace and National Accord in Tajikistan achieved owing to the efforts of the President of the Republic of Tajikistan and the leadership of the Commission on National Reconciliation. The Council welcomed, in particular, the holding on 27 February 2000 of the first multiparty and pluralistic parliamentary election in Tajikistan, in spite of serious problems and shortcomings, as noted by the Joint Electoral Observation Mission for

Tajikistan. It also noted that, with the holding of the election, the transition period envisaged in the General Agreement came to a close. In that connection, the Council noted with satisfaction that the United Nations had played an important role in this success and welcomed the instrumental efforts of all the actors involved in the implementation of the General Agreement, namely: the United Nations Mission of Observers in Tajikistan (UNMOT), supported by the Contact Group of Guarantor States and International Organizations, the Mission of the Organization for Security and Cooperation in Europe and the collective peacekeeping forces of the Commonwealth of Independent States.<sup>178</sup>

## Europe

### The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, underlining its commitment and support for the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto,<sup>179</sup> as well as for the Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina of 10 November 1995,<sup>180</sup> the Council called upon the parties to comply strictly with their obligations under those Agreements, and reminded the parties that, in accordance with the Peace Agreement, they had committed themselves to cooperate fully with all entities involved in the implementation of the peace settlement.<sup>181</sup> By the same resolution, and by a series of subsequent resolutions,<sup>182</sup> the Council extended the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to implement the reform and

<sup>178</sup> S/PRST/2000/9. The Council welcomed once again the success achieved by the peace process in Tajikistan by a statement of the President dated 12 May 2000 (S/PRST/2000/17).

<sup>179</sup> The Peace Agreement (S/1995/999, annex) was negotiated in Dayton and signed in Paris on 14 December 1995. It has become customary to refer to this agreement as the "Dayton Agreement".

<sup>180</sup> S/1995/1021, annex.

<sup>181</sup> Resolution 1305 (2000), preambular paragraph 3 and paras. 1 and 3. The Council reiterated its support for the Peace Agreement and continued to call upon the parties to respect the Peace Agreement by several subsequent resolutions. See resolution 1357 (2001) and 1423 (2002).

<sup>182</sup> Resolutions 1305 (2000), 1357 (2001), 1418 (2002), 1420 (2002), 1421 (2002), and 1423 (2002).

<sup>176</sup> S/PRST/2002/13.

<sup>177</sup> S/PRST/2000/33.

restructuring of law enforcement agencies in Bosnia and Herzegovina and thus to contribute to strengthening the rule of law, as set out by the Dayton Agreement.<sup>183</sup>

### **The situation in Croatia**

By resolution 1285 (2000) of 13 January 2000, the Council reiterated its concern about the lack of substantive progress towards a settlement of the disputed issue of Prevlaka in the continuing bilateral negotiations between the parties pursuant to the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia of 23 August 1996 and noted that the presence of the United Nations Mission of Observers in Prevlaka (UNMOP) continued to be essential to maintain conditions conducive to a negotiated settlement of the issue of Prevlaka.<sup>184</sup> Calling for the resumption of the discussions, the Council also urged the parties to abide by their mutual commitments and implement fully such Agreement and stressed, in particular, the urgent need for the parties to fulfil rapidly and in good faith their commitment to reach a negotiated resolution of the disputed issue of Prevlaka.<sup>185</sup> By several subsequent resolutions the Council renewed its call upon the parties to reach a negotiated solution to the issue.<sup>186</sup>

By resolution 1335 (2001) of 12 January 2001, welcoming the commitment by the parties to resume as soon as possible bilateral talks on the disputed issue of Prevlaka,<sup>187</sup> the Council called on the parties to resume talks and encouraged them to make use of the recommendations and options to develop confidence-building measures with which they were provided in resolution 1252 (1999).<sup>188</sup>

By resolution 1387 (2002) of 15 January 2002, the Council welcomed the continuing progress in the normalization of relations between the Governments of the Republic of Croatia and the Federal Republic of Yugoslavia and the establishment of an interstate Border Commission, and urged the parties to accelerate efforts towards a negotiated settlement on the disputed issue of Prevlaka.<sup>189</sup>

By resolution 1437 (2002) of 11 October 2002, noting with satisfaction that the overall situation in the UNMOP area of responsibility had remained stable and calm, and encouraged by the progress made by the parties in normalizing their bilateral relationship, in particular through negotiations aimed at finding a transitional arrangement for the Prevlaka peninsula, the Council commended the role played by the Mission and decided to terminate it on 15 December 2002.<sup>190</sup>

By a statement of the President dated 12 December 2002, the Council welcomed the protocol signed by the Governments of Croatia and the Federal Republic of Yugoslavia on 10 December 2002, establishing a provisional cross-border regime on the Prevlaka peninsula.<sup>191</sup> The Council stressed that the protocol represented a further step forward in the process of strengthening of confidence and good neighbourly relations between both countries and welcomed the commitment of both Governments to continue negotiations on the Prevlaka dispute with a view to amicably resolving all outstanding issues.<sup>192</sup>

### **The situation in Cyprus**

By resolution 1475 (2003) of 14 April 2003, expressing its support for the “carefully balanced” settlement plan proposed by the Secretary-General on 26 February 2006, the Council called on all concerned to negotiate within the framework of the good offices of the Secretary-General, using the plan to reach a comprehensive settlement.<sup>193</sup>

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<sup>183</sup> Resolution 1305 (2000), para. 19.

<sup>184</sup> Resolution 1285 (2000), eighth and tenth preambular paragraphs Established by resolution 1038 (1996), UNMOP was mandated to monitor the demilitarization of the Prevlaka peninsula and of the neighbouring areas in Croatia and the Federal Republic of Yugoslavia and to hold regular meetings with the local authorities in order to strengthen liaison, reduce tensions, improve safety and security and promote confidence between the parties.

<sup>185</sup> *Ibid.*, para. 4.

<sup>186</sup> Resolutions 1307 (2000) of 13 July 2000, 1335 (2001) of 12 January 2001 and 1362 (2001) of 11 July 2001.

<sup>187</sup> See S/2000/1265 and S/2001/13.

<sup>188</sup> Resolution 1335 (2001), ninth preambular paragraph and

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para. 3.

<sup>189</sup> Resolution 1387 (2002), para. 3. The Council renewed such call by resolutions 1424 (2002) of 12 July 2002 and 1437 (2002) of 11 October 2002.

<sup>190</sup> Resolution 1437 (2002), fifth preambular paragraph and para. 1.

<sup>191</sup> S/2002/1348.

<sup>192</sup> S/PRST/2002/34.

<sup>193</sup> Resolution 1475 (2003), para. 4.

During the period under review, the Council continued to extend the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP), which, according to resolution 186 (1964), was to prevent a recurrence of fighting between the Greek Cypriot and Turkish Cypriot communities and to contribute to the maintenance and restoration of law and order and a return to normal conditions.<sup>194</sup>

### **The situation in Georgia**

By resolution 1287 (2000) of 31 January 2000, while welcoming the decision on further measures for the settlement of the conflict in Abkhazia adopted by the Council of Heads of State of the Commonwealth of Independent States (CIS) on 30 December 1999, the Council encouraged the parties to seize the opportunity of the appointment of a new Special Representative of the Secretary General to renew their commitment to the peace process.<sup>195</sup> In addition, the Council reiterated its call for the parties to the conflict to deepen their commitment to the United Nations-led peace process, to continue to expand their dialogue, and to display without delay the necessary will to achieve substantial results on the key issues of the negotiations, in particular on the distribution of constitutional competences between Tbilisi and Sukhumi as part of a comprehensive settlement, with full respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders.<sup>196</sup> Finally, the Council demanded that both sides observe strictly the Agreement on a Ceasefire and Separation of Forces.<sup>197</sup> By the same resolution, and seven other subsequent resolutions, the Council extended the mandate of the United Nations Observer Mission in Georgia (UNOMIG), established pursuant to resolution 858 (1993), to verify compliance with the ceasefire agreement between the Government of Georgia and the Abkhaz authorities in Georgia, to investigate reported or alleged violations of the Agreement and to resolve or contribute to the resolution of such incidents.<sup>198</sup>

<sup>194</sup> Resolution 186 (1964), para. 5.

<sup>195</sup> Resolution 1287 (2000), fourth preambular paragraph and para. 2.

<sup>196</sup> *Ibid.*, para. 4.

<sup>197</sup> *Ibid.*, para. 9.

<sup>198</sup> Resolutions 1287 (2000), 1311 (2000), 1339 (2001), 1364 (2001), 1427 (2002), 1393 (2002), 1462 (2003), and 1494 (2003).

By a statement of the President dated 11 May 2000, believing that the resolution of issues related to the improvement of the humanitarian situation, to socio-economic development and to ensuring stability in the conflict zone would facilitate the peace process, the Council called upon the parties to finalize and sign a draft agreement on peace and guarantees for the prevention of armed confrontation and a draft protocol on the return of refugees to the Gali region and measures for economic rehabilitation.<sup>199</sup>

By resolution 1311 (2000) of 28 July 2000, the Council welcomed the decision of the parties to accelerate work on the draft protocol on the return of refugees to the Gali region and on the draft agreement on peace and guarantees for the prevention and non-resumption of hostilities.<sup>200</sup> Welcoming the commitment of the parties not to use force for the resolution of any disputed question, the Council renewed its demand to both sides to strictly observe the Agreement on a Ceasefire and Separation of Forces.<sup>201</sup>

By resolution 1339 (2001) of 31 January 2001, the Council called upon the parties, in particular the Abkhaz side, to undertake immediate efforts to move beyond the impasse and to engage in negotiations on the core political questions of the conflict and all other outstanding issues in the United Nations-led peace process.<sup>202</sup>

By a statement of the President dated 21 March 2001, while encouraging the two sides to engage with renewed commitment in the peace process, the Council welcomed the successful holding of the third meeting on confidence-building measures between the Georgian and Abkhaz sides, in Yalta, on 15 and 16 March 2001, and the resumption of dialogue between them, as well as the documents signed there.<sup>203</sup> The Council also expressed its hope that such developments would lead to a narrowing of the positions of the two sides and stimulate further constructive dialogue aimed at achieving a comprehensive political settlement of the conflict, including a settlement of the political status of Abkhazia within the State of Georgia and other key issues.<sup>204</sup>

<sup>199</sup> S/PRST/2000/16.

<sup>200</sup> Resolution 1311 (2000), sixth preambular paragraph.

<sup>201</sup> *Ibid.*, paras. 5 and 11.

<sup>202</sup> Resolution 1339 (2001), para. 5.

<sup>203</sup> S/2001/242, annex.

<sup>204</sup> S/PRST/2001/9.



By resolution 1393 (2002) of 31 January 2002, the Council welcomed and supported the finalization of the document on “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi” and its letter of transmittal as positive elements for launching the peace process and facilitating meaningful negotiations between the parties.<sup>205</sup> The Council therefore strongly urged the parties, in particular the Abkhaz side, to receive the document and its letter of transmittal in the near future, to give them full and open consideration, and to engage in constructive negotiations on their substance without delay.<sup>206</sup> In addition, while condemning violations of the Agreement on a Ceasefire and Separation of Forces, the Council welcomed and strongly supported the protocol signed by the two sides, on 17 January 2002, regarding the situation in the Kodori Valley and called for its full implementation.<sup>207</sup> Finally, the Council urged the parties to ensure the necessary revitalization of the peace process in all its major aspects, to resume their work in the Coordinating Council and its relevant mechanisms, to build on the results of the third meeting on confidence-building measures between the Georgian and Abkhaz sides held in Yalta and to implement the proposals agreed to on that occasion, in a purposeful and cooperative manner.<sup>208</sup>

By resolution 1427 (2002) of 29 July 2002, recalling its support for the document on “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi”, the Council regretted the lack of progress on the initiation of political status negotiations and, in particular, the refusal of the Abkhaz side to agree to a discussion on the substance of the document.<sup>209</sup>

**Security Council resolutions 1160 (1998),  
1199 (1998), 1203 (1998), 1239 (1999)  
and 1244 (1999)**

By a statement of the President dated 19 December 2000, expressing its grave concern at the situation in certain municipalities in southern Serbia, Federal Republic of Yugoslavia, and particularly in the

Ground Safety Zone, the Council strongly condemned the violent action by ethnic Albanian extremist groups in southern Serbia, and called for an immediate and complete cessation of violence in the area. The Council also welcomed the start of a dialogue between the Serbian and Yugoslav authorities and representatives of the affected communities which could facilitate a lasting settlement to the problem. In that regard, the Council equally welcomed the commitment of the Yugoslav authorities to work towards a peaceful settlement, based on democratic principles, and to respect the provisions of resolution 1244 (1999) and the military-technical Agreement contained therein. Finally, the Security Council welcomed specific measures taken by the international security presence (the Kosovo Force) to address the problem as well as the constructive dialogue between the Kosovo Force (KFOR) and the Yugoslav and Serbian authorities, including through the Joint Implementation Commission.<sup>210</sup>

By a statement of the President dated 16 March 2001, the Council called for an end to all acts of violence in Kosovo, in particular those ethnically motivated, and urged all political leaders in Kosovo to condemn these acts and to increase their efforts to create inter-ethnic tolerance. It called on all parties to support the efforts of the United Nations Interim Administration Mission in Kosovo (UNMIK) to build a stable multi-ethnic democratic society in Kosovo and to ensure suitable conditions for Kosovo-wide elections. By the same statement, the Council expressed its concern about the security situation in certain municipalities in Southern Serbia as a result of the violent actions of ethnic Albanian armed groups. It welcomed the ceasefire agreements signed on 12 March 2001 and called for strict compliance with their provisions. It also stressed that a peaceful settlement of this crisis could only be achieved through substantial dialogue and therefore welcomed the plan of the Government of Yugoslavia for Southern Serbia and supported its initiative to find a peaceful and durable solution through a process of dialogue and confidence-building measures. Finally, the Council noted that the swift implementation of confidence-building measures would be an important element in a peaceful settlement, and underlined the importance of continued

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<sup>205</sup> Resolution 1393 (2002), paras. 3 and 4.

<sup>206</sup> *Ibid.*, para. 6.

<sup>207</sup> *Ibid.*, paras. 8 and 9.

<sup>208</sup> *Ibid.*, para. 10.

<sup>209</sup> Resolution 1427 (2002), paras. 3, 4 and 6. The Council reiterated its regret for the lack of progress by resolution 1462 (2003) of 30 January 2003.

<sup>210</sup> S/PRST/2000/40.

political and financial support for this process by the international community.<sup>211</sup>

By a statement of the President dated 9 November 2001, the Security Council welcomed the signing, on 5 November 2001, of the UNMIK-Federal Republic of Yugoslavia Common Document. The Council also encouraged the further development of a constructive dialogue between UNMIK and the authorities of the Federal Republic of Yugoslavia.<sup>212</sup>

By a statement of the President dated 13 February 2002, the Council, noting the progress made in the implementation of resolution 1244 (1999) and the Constitutional Framework for Provisional Self-Government, called on Kosovo's elected representatives to resolve the deadlock over the formation of executive structures of the provisional self-governing institutions and to allow the functioning of those institutions, in accordance with the Constitutional Framework and the outcome of the elections.<sup>213</sup>

By a statement of the President dated 24 April 2002, welcoming the progress made in the formation of the executive bodies of the Provisional Institutions of Self-Government in Kosovo to include representatives of all communities, the Council encouraged the Provisional Institutions of Self-Government, in full cooperation with the Special Representative of the Secretary-General and in strict compliance with resolution 1244 (1999), to take on the tasks assigned to them by the Constitutional Framework.<sup>214</sup>

By a statement of the President dated 6 February 2003, condemning all attempts to establish and maintain structures and institutions as well as initiatives inconsistent with resolution 1244 (1999) and the Constitutional Framework, the Council called for the authority of UNMIK to be respected throughout Kosovo, and encouraged the establishment of direct dialogue between Pristina and Belgrade on issues of practical importance to both sides. Condemning the violence within the Kosovo Albanian community, as well as the violence against the Kosovo Serb community, the Council urged local institutions and leaders to exert influence on the climate for the rule of law by condemning all violence and actively

supporting the efforts of the police and the judiciary. The Council also stressed that all communities should make renewed efforts to inject momentum into improving inter-ethnic dialogue and promoting the reconciliation process, not least through full cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.<sup>215</sup>

## Middle East

### The situation in the Middle East

During the period under review, the Council continued to extend the mandate of the United Nations Disengagement Observer Force (UNDOF), established pursuant to resolution 350 (1974), to monitor the ceasefire between Israel and the Syrian Arab Republic and supervise the disengagement of Israeli and Syrian forces.<sup>216</sup>

The Council also continued to extend the mandate of the United Nations Interim Force in Lebanon (UNIFIL), established pursuant to resolutions 425 (1978) and 426 (1978), to confirm the withdrawal of Israeli forces, restore international peace and security and assist the Government of Lebanon in restoring its effective authority in the area.<sup>217</sup>

### The situation in the Middle East, including the Palestinian question

By resolution 1322 (2000) of 7 October 2000, the Council expressed concern for the events that had taken place at Haram Al-Sharif in Jerusalem on 28 September 2000 that lead to numerous deaths and injuries. The Council called for the immediate cessation of violence and for all necessary steps to ensure that violence ceased, that new provocative actions were avoided, and that the situation returned to normality. It further called for the immediate resumption of negotiations within the Middle East

<sup>211</sup> S/PRST/2001/8.

<sup>212</sup> S/PRST/2001/34.

<sup>213</sup> S/PRST/2002/4.

<sup>214</sup> S/PRST/2002/11.

<sup>215</sup> S/PRST/2003/1.

<sup>216</sup> Resolutions 1300 (2000), 1328 (2000), 1351 (2001), 1381 (2001), 1415 (2002), 1451 (2002), 1488 (2003) and 1520 (2003).

<sup>217</sup> Resolutions 1288 (2000), 1310 (2000), 1337 (2001), 1365 (2001), 1391 (2002), 1428 (2002), 1461 (2003) and 1496 (2003).

peace process on its agreed basis with the aim of achieving an early final settlement between the Israeli and Palestinian sides.<sup>218</sup>

By resolution 1397 (2002) of 12 March 2002, the Council demanded the immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction, and called upon the Israeli and Palestinian sides to cooperate in the implementation of the Tenet work plan and the recommendations contained in the Mitchell report with the aim of resuming negotiations on a political settlement.<sup>219</sup>

By resolution 1402 (2002) of 30 March 2002, following the further deterioration of the situation, including the suicide bombings in Israel and the military attacks against the headquarters of the President of the Palestinian Authority, the Council called upon both parties to move immediately to a meaningful ceasefire. It further called upon the withdrawal of Israeli troops from Palestinian cities and urged the parties to cooperate fully with the Special Envoy to implement the Tenet work plan and the recommendations contained in the Mitchell report with the aim of resuming negotiations on a political settlement.<sup>220</sup>

By a statement of the President dated 10 April 2002, the Council supported the Joint Statement issued in Madrid on 10 April 2002 by the Secretary-General, the Minister for Foreign Affairs of the Russian Federation, the Secretary of State of the United States, the Minister for Foreign Affairs of Spain and the High Representative for European Union Common Foreign and Security Policy. The Council called upon the Government of Israel, the Palestinian Authority and all States in the region to cooperate with the efforts to achieve the goals set out in the Joint Statement.<sup>221</sup> Similarly, by a statement of the President dated 18 July 2002, the Council supported the Joint Statement of the “Quartet” on 16 July 2002 and called upon the parties to achieve the goals set out in the Statement.<sup>222</sup>

By resolution 1435 (2002), expressing its concern at the reoccupation of the headquarters of the President

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<sup>218</sup> Resolution 1322 (2000), second preambular paragraph, paras. 4 and 6.

<sup>219</sup> Resolution 1397 (2002), paras. 1 and 2.

<sup>220</sup> Resolution 1402 (2002), para. 1.

<sup>221</sup> S/PRST/2002/9, annex.

<sup>222</sup> S/PRST/2002/20.

of the Palestinian Authority in the city of Ramallah on 19 September 2002, as well as of other Palestinian cities, the Council reiterated its demand for the complete cessation of all acts of violence and demanded that Israel cease measures in and around Ramallah and withdraw its forces from the Palestinian cities towards the return to the positions held prior to September 2000. It also called upon the Palestinian Authority to meet its expressed commitment to ensure that those responsible for terrorist acts were brought to justice. Finally, the Council expressed its full support for the efforts of the Quartet and called upon the Government of Israel, the Palestinian Authority and all States in the region to cooperate with those efforts, recognizing in this context the continuing importance of the initiative endorsed at the Arab League Summit, held in Beirut on 27 and 28 March 2002.<sup>223</sup>

By resolution 1515 (2003) of 19 November 2003, the Council endorsed the Quartet performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict and called upon the parties to fulfil their obligations under the road map in cooperation with the Quartet.<sup>224</sup>

### **C. Decisions involving the Secretary-General in the Council's efforts at the pacific settlement of disputes**

While Article 99 of the Charter provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, the Charter does not otherwise describe or define the role of the Secretary-General in relation to matters of peace and security. Nevertheless, the Council's efforts, aimed at the peaceful settlement of disputes, frequently require the involvement of the Secretary-General, who, in coordination with the Council or at its request, facilitates peace efforts in various ways.

During the period under review, the Council increasingly recognized, in a number of decisions, the important role that the Secretary-General was called upon to play in the prevention of armed conflicts and requested him to submit proposals relating to early warning and preventive measures. By a statement of

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<sup>223</sup> Resolution 1435 (2002), paras. 1-5.

<sup>224</sup> Resolution 1515 (2003), paras. 1 and 2.

the President dated 20 July 2000, in connection with the Council's consideration of the item entitled "Role of the Security Council in the prevention of armed conflicts", the Council recalled the essential role of the Secretary-General in the prevention of armed conflicts, in accordance with Article 99 of the Charter, and expressed its willingness to take appropriate preventive action in response to matters brought to its attention by States or the Secretary-General and which it deemed likely to endanger the maintenance of international peace and security. The Council further encouraged the ongoing efforts within the United Nations system to enhance its early warning capacity, and noted in that regard the importance of drawing on information from a variety of sources, given the multiple factors that contribute to conflict. It thus invited the Secretary-General to make recommendations to the Council, taking into account the views of Member States, and in light of past experiences, on the most effective and appropriate early warning strategies, bearing in mind the need to link early warning with early response. The Council invited the Secretary-General to present to the Council reports on such disputes, including, as appropriate, early warning and proposals for preventive measures.<sup>225</sup>

The Council also recognized, by resolution 1366 (2001) of 30 August 2001, the role of the Secretary-General in the prevention of armed conflict, and the importance of enhancing his role in accordance with Article 99 of the Charter. By that resolution, while acknowledging that the attempt to prevent armed conflict was an integral part of its primary responsibility for the maintenance of international peace and security and emphasizing the importance of a comprehensive strategy comprising operational and structural measures for prevention of armed conflict, the Council recognized the 10 principles outlined by the Secretary-General in his report on prevention of armed conflicts<sup>226</sup> as well as his essential role in the prevention of armed conflict and the importance of efforts to enhance his role in accordance with Article 99 of the Charter.<sup>227</sup> By the same resolution, the Council called upon Member States, as well as regional and subregional organizations and arrangements, to support the development of a comprehensive conflict

prevention strategy as proposed by the Secretary-General, and expressed its willingness to give prompt consideration to early warning or prevention cases brought to its attention by the Secretary-General.<sup>228</sup> The Council therefore encouraged the Secretary-General to convey to the Security Council his assessment of potential threats to international peace and security with due regard to relevant regional and subregional dimensions, as appropriate, in accordance with Article 99 of the Charter.<sup>229</sup> The Council also invited the Secretary-General to refer to the Council information and analyses from within the United Nations system on cases of serious violations of international law, including international humanitarian law and human rights law and on potential conflict situations arising, *inter alia*, from ethnic, religious and territorial disputes, poverty and lack of development, and expressed its determination to give serious consideration to such information and analyses regarding situations which it deemed to represent a threat to international peace and security.<sup>230</sup> The Council also supported the enhancement of the role of the Secretary-General in conflict prevention, including by increased use of United Nations interdisciplinary fact-finding and confidence-building missions to regions of tension, developing regional prevention strategies with regional partners and appropriate United Nations organs and agencies, and improving the capacity and resource base for preventive action in the Secretariat.<sup>231</sup>

During the period under review, in accordance with the provisions of Article 33 of the Charter, the Council frequently called on the parties to a dispute or situation to cooperate in negotiations held under the auspices of the Secretary-General, expressed support for conciliation efforts undertaken by the Secretary-General, expressly requested the Secretary-General to assume an active role in the process of achieving a political settlement, or endorsed the initiative of the Secretary-General within the framework of his mission of good offices. In that context, the Secretary-General made increased use of special envoys, advisers and representatives to assist him in his efforts.<sup>232</sup> For

<sup>225</sup> S/PRST/2000/25.

<sup>226</sup> S/2001/574.

<sup>227</sup> Resolution 1366 (2001), eighth and eleventh preambular paragraphs.

<sup>228</sup> *Ibid.*, para. 3.

<sup>229</sup> *Ibid.*, para. 5.

<sup>230</sup> *Ibid.*, para. 10.

<sup>231</sup> *Ibid.*, para. 18.

<sup>232</sup> For example, the Special Adviser to the Secretary-General on Africa, the Special Adviser to the Secretary-General on Cyprus, the Special Representative for the

instance, through an exchange of letters, the Security Council took note of the intention of the Secretary-General to appoint a Special Representative for the Great Lakes region.<sup>233</sup> The Special Representative was given the tasks, *inter alia*, of representing the Secretary-General at the meetings and deliberations under the Arusha peace process in Burundi and addressing the regional dimensions of the conflict in the Democratic Republic of the Congo. Furthermore, with respect to Burundi, following the signing of the Arusha peace agreement, the Special Representative had been mandated to stay engaged within the overall efforts of the international community to address the grave political and humanitarian situation in Burundi and its regional dimensions.<sup>234</sup>

Beyond the discharge of his good offices, the Secretary-General increasingly proposed the establishment or continuation of special political missions in a number of places around the world to undertake peacebuilding efforts to prevent conflicts or the re-emergence of conflicts, including political, humanitarian and development assistance as well as assistance to transitional national governments in establishing viable institutions. The Council formally endorsed the efforts of the Secretary-General in that context by a statement of the President dated 20 February 2001, issued in connection with the Council's consideration of the item entitled "Peacebuilding: towards a comprehensive approach". By the statement, the Council underlined the importance of the presence of special representatives of the Secretary-General or other suitable United Nations coordination arrangements, such as the resident coordinator system, in coordinating the elaboration and implementation of peacebuilding programmes by

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Great Lakes region and the Adviser to the Secretary-General for Special Assignments in Africa. During the period under consideration, the Council, by a statement of the President dated 31 October 2001

(S/PRST/2001/31), urged the Secretary-General to appoint women as Special Representatives and Special Envoys to pursue good offices on his behalf in accordance with his strategic plan of action.

<sup>233</sup> S/2000/907 and S/2000/908. The Council subsequently took note, through an exchange of letters, of the Secretary-General's intention to appoint another Special Representative for the Great Lakes region in 2002 (S/2002/1174 and S/2002/1175).

<sup>234</sup> S/2000/907.

international organizations and donor countries in close cooperation with local authorities.<sup>235</sup>

The following overview sets out examples, by region and in chronological order, of decisions by which the Security Council specifically requested, supported, endorsed, encouraged or welcomed the Secretary-General's endeavours in the peaceful settlement of disputes and the prevention of conflict or its recurrence.

## Africa

### The situation in Angola

By resolution 1294 (2000) of 13 April 2000, while reaffirming its view that a continued presence of the United Nations in Angola could contribute greatly to the promotion of peace, national reconciliation, human rights and regional security, the Council extended the mandate of the United Nations Office in Angola and requested the Secretary-General to continue his efforts to implement the tasks of UNOA as outlined in resolution 1268 (1999), which included, *inter alia*, exploring effective measures for restoring peace, assisting the Angolan people in the area of capacity-building, humanitarian assistance and the promotion of human rights. The Council further requested the Secretary-General to provide every three months a report on developments in Angola, including his recommendations about additional measures the Council might consider to promote the peace process in Angola.<sup>236</sup>

By a statement of the President dated 20 September 2001, the Council noted the positive contribution that UNOA was making towards finding a solution to the Angolan conflict and reiterated its full support for the work of the Office of the Representative of the Secretary-General.<sup>237</sup>

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<sup>235</sup> S/PRST/2001/5.

<sup>236</sup> Resolution 1294 (2000), paras. 1, 2 and 3. Through subsequent exchange of letters between the Secretary-General and the President of the Security Council, the Council agreed to the extension of the UNOA mandate until 15 August 2002. For details, see S/2000/977, S/2000/987, S/2001/351, S/2001/387, S/2001/956, S/2001/973, S/2002/411, S/2002/412, S/2002/768 and S/2002/769.

<sup>237</sup> S/PRST/2001/24.

Following the signing of the Lusaka Protocol, by resolution 1433 (2002) of 15 August 2002, the Council, while expressing its appreciation for the work of UNOA and underlining that the presence of the United Nations in Angola could contribute to the consolidation of peace through the promotion of political, military, human rights, humanitarian and economic goals, terminated the mandate of UNOA and established the United Nations Mission in Angola as a follow-on mission.<sup>238</sup> The mandate of UNMA was (a) to assist the parties in concluding the Lusaka Protocol by chairing the Joint Commission and leading the completion of the agreed list of tasks which remained pending under the Lusaka Protocol; and (b) to assist the Government of Angola in undertaking a number of tasks which included, inter alia, the building of institutions to consolidate peace and enhance the rule of law.<sup>239</sup> By the same resolution, the Council welcomed the appointment of a resident Special Representative of the Secretary-General to serve as the head of UNMA and oversee a coordinated and integrated approach to United Nations activities in Angola, as reflected in the UNMA mandate.<sup>240</sup>

#### **The situation in Burundi**

By a statement of the President dated 29 June 2001, the Council encouraged the Secretary-General, through his representatives, to continue to engage the armed groups which remained outside the Arusha peace process and to contribute to coordinated efforts to bring about a political settlement to the conflict.<sup>241</sup>

By resolution 1375 (2001) of 29 October 2001, the Council supported the efforts of the Secretary-General, in particular the work of his Special Representative for the Great Lakes region in his capacity as Chairman of the Arusha Agreement Implementation Monitoring Committee.<sup>242</sup>

In addition, by an exchange of letters between the Secretary-General and the President of the Security Council, the Council continuously extended the mandate of the United Nations Operation in Burundi, established in November 1993, whose mandate

included, inter alia, the facilitation of the restoration of constitutional rule in Burundi through the implementation of the Arusha Peace and Reconciliation Agreement for Burundi and subsequent ceasefire agreements.<sup>243</sup>

By a statement of the President dated 22 December 2003, the Council welcomed the Secretary-General's decision to examine the situation in Burundi with a view to submitting recommendations to the Council, and requested him to undertake in that regard the appropriate preparatory work and assessment of ways in which the United Nations might provide the most efficient support for the full implementation of the Arusha peace agreement. By the same statement, the Council took note of the latest report of the Secretary-General on the situation in Burundi and welcomed the work carried out, in often difficult conditions, by the Special Representative of the Secretary-General and the staff of UNOB. The Council therefore approved the renewal of the Office's mandate.<sup>244</sup>

#### **The situation in the Central African Republic**

By a statement of the President dated 10 February 2000, while recognizing the significant progress made by the Government of the Central African Republic in implementing the Bangui Agreements and the National Reconciliation Pact as the foundations of peace and stability in the country, the Council commended the United Nations Mission in the Central African Republic (MINURCA) and the Special Representative of the Secretary-General for the contribution they had made to the resolution of peace and security in the country.<sup>245</sup> By the same statement, the Council also welcomed the decision by the Secretary-General to establish the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA).<sup>246</sup>

<sup>243</sup> See S/2000/1096, S/2000/1097, S/2001/1076 and S/2001/1027. See also S/PRST/2009/30.

<sup>244</sup> S/PRST/2003/30.

<sup>245</sup> S/PRST/2000/5.

<sup>246</sup> BONUCA was established on 15 February 2000 for one year through an exchange of letters between the Secretary-General and the President of the Security Council. See S/1999/1235 and S/1999/1236. During the period under review, on the basis of the recommendations of the Secretary-General, the Council decided to extend the mandate of BONUCA for four further periods, the last of which terminated on 31 December 2004. See S/2000/943, S/2000/944,

<sup>238</sup> Resolution 1433 (2002), para. 1.

<sup>239</sup> *Ibid.*, para 3.

<sup>240</sup> *Ibid.*, para. 2.

<sup>241</sup> S/PRST/2001/17.

<sup>242</sup> Resolution 1375 (2001), sixth preambular paragraph.

The Council reiterated its support by a statement of the President dated 8 November 2001 (S/PRST/2001/33).

The mandate of BONUCA was to support the Transitional Government's efforts to consolidate peace and national reconciliation, strengthen democratic institutions, and facilitate the mobilization at the international level of political support and resources for national reconstruction and economic recovery in the country.<sup>247</sup> By a statement of the President dated 26 September 2001, the Council approved a revision to the mandate of BONUCA to include various measures for the strengthening of the mandate of BONUCA, particularly in the areas of the judicial system, institution-building, enhancing the effectiveness of its early warning capabilities and human rights.<sup>248</sup>

### **The situation in Côte d'Ivoire**

By a statement of the President dated 20 December 2002, the Council commended the Secretary-General for his efforts to promote a negotiated settlement, in coordination with the Economic Community of West African States. The Council requested him to continue those efforts, particularly by providing all necessary support and assistance to the mediation efforts of ECOWAS, and to keep it regularly informed about the situation.<sup>249</sup>

By resolution 1464 (2003) of 4 February 2003, while endorsing the Linas-Marcoussis Agreement, the Council expressed its gratitude to the Secretary-General for the vital role he had played in the smooth conduct of the meetings held, and encouraged him to continue to contribute to a final settlement of the crisis in Côte d'Ivoire. The Council further requested the Secretary-General to submit to the Council recommendations on how the United Nations could support fully the implementation of the Linas-Marcoussis Agreement, in accordance with the request by the Round Table of Ivorian political forces and by the Conference of Heads of State on Côte d'Ivoire. Finally, the Council welcomed the intention of the Secretary-General to appoint a Special Representative for Côte d'Ivoire, based in Abidjan, and requested him to do so as soon as possible.<sup>250</sup>

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S/2001/886, S/2002/929, S/2002/930, S/2003/889, S/2003/890 and S/PRST/2001/25.

<sup>247</sup> For further details, see S/1999/35.

<sup>248</sup> S/PRST/2001/25. See also S/PRST/2001/18 and S/2001/886.

<sup>249</sup> S/PRST/2002/42.

<sup>250</sup> Resolution 1464 (2003), paras. 4, 5 and 6.

By resolution 1479 (2003) of 13 May 2003, the Council reaffirmed its strong support for the Special Representative of the Secretary-General and approved his full authority for the coordination and conduct of all the activities of the United Nations system in Côte d'Ivoire. By the same resolution, the Council established the United Nations Mission in Côte d'Ivoire with a mandate to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement. It further approved the establishment of a small staff to support the Special Representative of the Secretary-General on political, legal, civil affairs, civilian police, elections, media and public relations, humanitarian and human rights issues.<sup>251</sup>

### **The situation concerning the Democratic Republic of the Congo**

By resolution 1291 (2000) of 24 February 2000, the Council reiterated its strong support for the Special Representative of the Secretary-General in the Democratic Republic of the Congo and his overall authority over United Nations activities in the country, and called on all parties to cooperate fully with him.<sup>252</sup>

By a statement of the President dated 23 July 2002, the Council welcomed the efforts and good offices of the Republic of South Africa,<sup>253</sup> in its capacity as chair of the African Union, and of the Secretary-General in helping the Democratic Republic of the Congo and Rwanda to reach an agreement to tackle the problem of the armed groups and to take forward the withdrawal of Rwandan troops, in the context of the full withdrawal of all foreign troops from the territory of the Democratic Republic of the Congo, in accordance with the Lusaka Ceasefire Agreement and relevant Council resolutions.

By a subsequent statement of the President dated 18 October 2002, the Council encouraged all local actors, including the parties to the conflict as well as civil society and religious organizations, to engage in talks to end the hostilities and agree on a basis for peaceful coexistence in the region during the transitional period in the Democratic Republic of the Congo. In that regard, the Council encouraged the Secretary-General to consider using his good offices to

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<sup>251</sup> Resolution 1479 (2003), paras. 1, 2 and 3.

<sup>252</sup> Resolution 1291 (2000), para. 2.

<sup>253</sup> S/PRST/2002/22.

promote and facilitate such talks, with the United Nations Organization Mission in the Democratic Republic of the Congo providing support where applicable.<sup>254</sup>

By resolution 1445 (2002) of 4 December 2002, while supporting the signature of the Pretoria Agreement between the Democratic Republic of the Congo and the Rwandese Republic on 30 July 2002, as well as the Luanda Agreement between the Democratic Republic of the Congo and Uganda, the Council welcomed, *inter alia*, the efforts of the Secretary-General in facilitating the adoption of those agreements.<sup>255</sup>

#### **The situation between Eritrea and Ethiopia**

By resolution 1320 (2000) of 15 September 2000, the Council welcomed the intention of the Secretary-General to appoint a special representative who would be responsible for all aspects of the work of the United Nations in the fulfilment of the mandate of the United Nations mission. The Council further requested the Secretary-General to coordinate with the Organization of African Unity in the implementation of the Agreement on Cessation of Hostilities.<sup>256</sup>

By a statement of the President dated 21 November 2000, the Council expressed its continuing support for, among others, the efforts of the Secretary-General and his Special Envoy to find a peaceful and lasting solution to the conflict.<sup>257</sup>

By a subsequent statement of the President dated 9 February 2001, the Council expressed its strong support for the role of the Secretary-General in continuing to help in the implementation of the Algiers Agreement, including through his own good offices, for the efforts of his Special Representative and for the contributions of relevant United Nations entities.<sup>258</sup>

By resolution 1398 (2002) of 15 March 2002, expressing its resolve to support the parties in the implementation of the decision of the Boundary

Commission, the Council invited the Secretary-General to submit recommendations to the Council on how the United Nations Mission in Ethiopia and Eritrea could play an appropriate role in the border demarcation process, including with regard to demining for demarcation.<sup>259</sup>

By resolution 1466 (2003) of 14 March 2003, the Council expressed its strong support for the Special Representative of the Secretary-General for his work in support of the peace process.<sup>260</sup>

#### **The situation in Guinea-Bissau**

By an exchange of letters between the Secretary-General and the President of the Council during the period under review, the Security Council took note of the intention of the Secretary-General to extend the mandate of the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS), established pursuant to resolution 1233 (1999).<sup>261</sup> The mandate of the mission included, *inter alia*, the facilitation of the implementation of the Abuja agreement of 1 November 1998 and dialogue among all actors, and the promotion of national reconciliation in order to support national efforts to consolidate and maintain peace, democracy and the rule of law, including the strengthening of democratic institutions.<sup>262</sup>

#### **The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone**

By a statement of the President dated 21 December 2000, while paying tribute to ECOWAS and its Chairman for the important role played towards restoring peace and security in the three countries of the Mano River Union, the Council requested the Secretary-General to consider what support the international community, and in particular the United Nations, might provide to ECOWAS in order to ensure security on the border between Guinea, Liberia and Sierra Leone.<sup>263</sup>

<sup>254</sup> S/PRST/2002/27.

<sup>255</sup> Resolution 1445 (2002), para. 1.

<sup>256</sup> Resolution 1320 (2000), paras. 3 and 4.

<sup>257</sup> S/PRST/2000/34.

<sup>258</sup> S/PRST/2001/4. The Council reiterated its support for the Secretary-General's good offices by several subsequent decisions. See, for example, resolutions 1344 (2001), 1369 (2001), 1398 (2002) and 1340 (2002), and S/PRST/2001/14.

<sup>259</sup> Resolution 1398 (2002), para. 9.

<sup>260</sup> Resolution 1466 (2003), para. 17.

<sup>261</sup> S/2000/201 and S/2000/202; S/2000/941 and S/2000/942; S/2001/960 and S/2001/961; S/2002/916 and S/2002/917; and S/2003/1096 and S/2003/1097.

<sup>262</sup> S/2000/201.

<sup>263</sup> S/PRST/2000/41.



### **The situation in Liberia**

By a statement of the President dated December 2002, with a view to achieving the objectives of ending the violence and promoting national reconciliation, the Council stated that it was committed to promote an expanded role for the United Nations Peacebuilding Support Office in Liberia (UNOL), along with the more active participation of the Office of the Special Representative of the Secretary-General for West Africa (UNOWA). The tasks outlined by the Council included, *inter alia*, offering assistance to the Liberian authorities and to the public for strengthening democratic institutions and the rule of law; contributing to and monitoring the preparation of free and fair elections in 2003; promoting national reconciliation and resolution of the conflict, including through support for initiatives on the ground; and supporting the Government of Liberia in the implementation of peace agreements to be adopted.<sup>264</sup>

By resolution 1509 (2003) of 19 September 2002, the Council, while noting the intention of the Secretary-General to terminate UNOL and transfer its major functions to the United Nations Mission in Liberia relating to supporting the implementation of the peace agreement and of the peace process welcomed the appointment by the Secretary-General of his Special Representative for Liberia to direct the operations of UNMIL and coordinate all United Nations activities in Liberia.<sup>265</sup>

### **The situation in Sierra Leone**

By resolution 1436 (2002) of 24 September 2002, the Council welcomed the commitment of the Secretary-General to find a solution to the conflict in Liberia in order to build peace in the subregion, including through the establishment of a contact group.<sup>266</sup>

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<sup>264</sup> S/PRST/2002/36. Following an agreement with the Government of Liberia, the mandate of UNOL was revised through an exchange of letters between the Secretary-General and the President of the Security Council (S/2003/468 and S/2003/469).

<sup>265</sup> Resolution 1509 (2003), nineteenth and twentieth preambular paragraphs and para. 2.

<sup>266</sup> Resolution 1436 (2002), para. 13.

### **The situation in Somalia**

By a statement of the President dated 11 January 2001, the Council invited the Secretary-General to prepare a proposal for a peacebuilding mission in Somalia, outlining possible ways to advance the peace process further, with specific attention to the security situation in the country.<sup>267</sup> In his report of 11 October 2001, however, the Secretary-General indicated that the security situation did not make it possible to deploy a peacebuilding office in the country and recommended that, owing to the valuable role it played in monitoring and reporting on the situation in Somalia, the mandate of the United Nations Political Office for Somalia (UNPOS) be renewed for two years.<sup>268</sup> The mandate of UNPOS included, *inter alia*, assisting in advancing the cause of peace and reconciliation through contacts with Somali leaders, civic organizations and the States and organizations concerned; monitoring the situation in Somalia; and supporting the initiative taken by the Government of Djibouti that led to the formation of the Transitional National Government.

By a statement of the President dated 31 October 2001, the Council requested the Secretary-General to take a number of steps in support of the peace process in Somalia, including the following: (a) dispatching a Headquarters-led inter-agency mission to carry out a comprehensive assessment, based on existing general United Nations standards, of the security situation in Somalia, including in Mogadishu; (b) preparing proposals for ways in which the United Nations might further assist in the demobilization of militia members and the training of police personnel from the Transitional National Government; (c) considering the scope for adjustments, as appropriate, to the mandate for the United Nations Political Office for Somalia; and (d) consulting all those concerned on finding practical and constructive ways to, *inter alia*, promote coherency of policy approaches to Somalia and consolidate support for peace and reconciliation in the country.<sup>269</sup>

By a statement of the President dated 28 March 2002, the Council encouraged the Secretary-General,

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<sup>267</sup> S/PRST/2001/1.

<sup>268</sup> S/2001/963. Through an exchange of letters between the Secretary-General and the President of the Security Council, the Council further extended the mandate of UNPOS for the biennium 2002/2003 (S/2001/1097 and S/2001/1098).

<sup>269</sup> S/PRST/2001/30.

through his Special Adviser and the United Nations Political Office for Somalia, to support actively the initiative of the Intergovernmental Authority on Development in the period ahead. The Council also requested the Secretary-General to utilize to the fullest his Representative, in close cooperation with the United Nations Resident Coordinator for Somalia, to coordinate ongoing peacebuilding activities and provide for their incremental expansion. The Council reiterated that a comprehensive post-conflict peacebuilding mission should be deployed once security conditions permitted.<sup>270</sup>

By a statement of the President dated 12 December 2002, the Council encouraged the Secretary-General to support actively the Somalia National Reconciliation Process sponsored by the Intergovernmental Authority on Development and the Conference in Eldoret. In addition, recognizing that a comprehensive post-conflict programme for disarmament, demobilization, rehabilitation and reintegration would be an important contribution for peace and stability in Somalia, the Council requested the Secretary-General to continue putting into place, in a coherent manner, preparatory activities on the ground for a comprehensive post-conflict peacebuilding mission in Somalia once security conditions permitted.<sup>271</sup>

#### **The situation concerning Western Sahara**

By resolution 1292 (2000) of 29 February 2000, the Council reiterated its full support for the continued efforts exerted by the Secretary-General, his Personal Envoy, his Special Representative and the United Nations Mission for the Referendum in Western Sahara to implement the settlement plan and agreements adopted by the parties to hold a free, fair and impartial referendum for the self-determination of the people of Western Sahara. The Council also supported the intention of the Secretary-General to ask his Personal Envoy to consult the parties and, taking into account existing and potential obstacles, to explore ways and means to achieve an early, durable and agreed resolution of the dispute.<sup>272</sup>

By resolution 1359 (2001) of 29 June 2001, following the presentation of the official proposals submitted by the Frente Popular para la Liberación de Saguía el-Hamra and Río de Oro (Frente Polisario), and of the memorandum of the Government of Algeria, the Council fully supported the efforts of the Secretary-General to invite all the parties to meet directly or through proximity talks, under the auspices of his Personal Envoy.<sup>273</sup>

By resolution 1429 (2002) of 30 July 2002, having considered the report of the Secretary-General dated 19 February 2002 and the four options contained therein,<sup>274</sup> the Council strongly supported the efforts of the Secretary-General and his Personal Envoy to find a political solution to the long-standing dispute. It further invited the Personal Envoy to pursue those efforts, taking into account the concerns expressed by the parties, and expressed its readiness to consider any approach providing for self-determination that might be proposed by the Secretary-General and his Personal Envoy, consulting, as appropriate, others with relevant experience.<sup>275</sup>

By resolution 1495 (2003) of 31 July 2003, acting under Chapter VI of the Charter, having considered the report of the Secretary-General of 23 May 2003<sup>276</sup> and the peace plan for self-determination of the people of Western Sahara presented by his Personal Envoy,<sup>277</sup> as well as the responses of the parties and the neighbouring States,<sup>278</sup> the Council continued to support strongly the efforts of the Secretary-General and his Personal Envoy and similarly supported their peace plan for self-determination of the people of Western Sahara as an optimum political solution on the basis of agreement between the two parties.<sup>279</sup>

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Secretary-General. See, for example, resolutions 1301 (2000), 1309 (2000), 1324 (2000), 1342 (2001), 1349 (2001) and 1359 (2001).

<sup>273</sup> Resolution 1359 (2001), para. 2.

<sup>274</sup> S/2002/178.

<sup>275</sup> Resolution 1429 (2002), para. 1.

<sup>276</sup> S/2003/565.

<sup>277</sup> *Ibid.*, annex II.

<sup>278</sup> *Ibid.*, annex III.

<sup>279</sup> Resolution 1495 (2003), para. 1.

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<sup>270</sup> S/PRST/2002/8.

<sup>271</sup> S/PRST/2002/35.

<sup>272</sup> Resolution 1292 (2000), fifth preambular paragraph and para. 2. By several subsequent decisions, the Council renewed its full support to the Personal Envoy of the

**Letter dated 2 October 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council**

By a statement of the President dated 10 October 2003, while welcoming the signing of the Machakos Protocol and looking forward to the successful conclusion of a comprehensive peace agreement on that basis, the Council requested the Secretary-General, in that connection, to initiate preparatory work, in consultation with the parties, the IGAD facilitators and the International Observers, on how the United Nations could best fully support the implementation of a comprehensive peace agreement.<sup>280</sup>

**Letter dated 30 April 2001 from the Secretary-General addressed to the President of the Security Council (S/2001/434)**

By an exchange of letters between the Secretary-General and the President of the Security Council, the Council welcomed the intention of the Secretary-General to establish the Office of the Special Representative of the Secretary-General for West Africa.<sup>281</sup> The mandate of the office included, inter alia, carrying out good offices roles and special assignments in countries of the subregion on behalf of the Secretary-General, including in the areas of conflict prevention and peacebuilding efforts.<sup>282</sup>

By a statement of the President dated 19 December 2001, the Council welcomed the establishment of UNOWA to ensure, inter alia, the strengthening of harmonization and coordination of the activities of the United Nations system in an integrated regional perspective and to the development of a fruitful partnership with ECOWAS, other subregional organizations and international and national actors, including civil society. The Council also emphasized that greater subregional integration must remain a key goal for the United Nations system in the search for lasting solutions to the conflicts in West Africa.<sup>283</sup>

**The situation in Africa**

By a statement of the President dated 31 January 2002, the Council called on the United Nations system

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<sup>280</sup> S/PRST/2003/16.

<sup>281</sup> S/2001/1128 and S/2001/1129.

<sup>282</sup> S/2001/1128.

<sup>283</sup> S/PRST/2001/38.

to intensify its cooperation, including assistance within existing resources, with the Organization of African Unity and subregional organizations in Africa in the field of capacity-building, particularly in early warning conflict prevention and peacekeeping. It also stressed the importance of the following: (a) effective interaction between the United Nations system and OAU and subregional organizations through the exchange of information and analysis at the conflict prevention stage; (b) coordination and clear understanding of respective roles in forwarding peace processes; and (c) coordinated support to national and regional peacebuilding efforts. In that regard, the Council welcomed the establishment of UNOWA and requested the Secretary-General to take all necessary measures for that Office to be fully operational. The Council further noted with satisfaction that good offices missions carried out by prominent political leaders of Africa facilitated significant progress in the political settlement of certain conflicts; it encouraged OAU and subregional organizations, taking into account the specific situation of conflicts, to seek appointment of such figures as special envoys as well as to employ where appropriate the traditional methods of conflict resolution including the establishment of councils of elders. Finally, the Council stressed the importance of the preventive character of such efforts and emphasized the need for their proper coordination.<sup>284</sup>

**Asia**

**The situation in Afghanistan**

By a statement of the President dated 7 April 2000, the Council, reiterating its position that the United Nations should continue to play its central and impartial role in international efforts towards a peaceful resolution of the conflict in Afghanistan, welcomed the appointment of a new Personal Representative of the Secretary-General and the activities of the United Nations Special Mission to Afghanistan (UNSMA) to facilitate a political process aimed at achieving a lasting political settlement to the conflict.<sup>285</sup>

By resolution 1333 (2000) of 19 December 2000, the Council supported the efforts of the Personal

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<sup>284</sup> S/PRST/2002/2.

<sup>285</sup> S/PRST/2000/12.

Representative of the Secretary-General for Afghanistan to advance the peace process through political negotiations between the Afghan parties aimed at the establishment of a broad-based, multi-ethnic and fully representative government, and called upon the warring factions to cooperate fully with the efforts to conclude a ceasefire and begin discussions leading to a political settlement.<sup>286</sup>

By resolution 1378 (2001) of 14 November 2001, the Council welcomed the intention of the Special Representative of the Secretary-General to convene an urgent meeting of the various Afghan processes and called upon the United Front of Afghanistan and all Afghans represented in those processes to participate in good faith and without preconditions.<sup>287</sup> The Council also endorsed the approach outlined by the Special Representative of the Secretary-General. Finally, affirming that the United Nations should play a central role in supporting the efforts of Afghanistan to establish a new and transitional administration leading to the formation of a new government, the Council expressed its full support for the Special Representative of the Secretary-General in the accomplishment of his mandate. Similarly, by resolution 1383 (2001) of 6 December 2001, while endorsing the Bonn Agreement, the Council reaffirmed its full support for the Special Representative of the Secretary-General and endorsed his mission.<sup>288</sup>

By resolution 1401 (2002) of 28 March 2002, the Council endorsed the establishment of the United Nations Assistance Mission in Afghanistan (UNAMA), in accordance with the mandate and structure contained in the report of the Secretary-General.<sup>289</sup> The core mandate of the mission included, *inter alia*, the promotion of national reconciliation through the good offices of the Special Representative of the Secretary-General.<sup>290</sup>

### **The situation in East Timor**

By resolution 1338 (2001) of 31 January 2001, the Council commended the work of the United Nations Transitional Administration in East Timor and

the leadership of the Special Representative of the Secretary-General. It further requested the Special Representative to continue to take steps to delegate progressively further authority within the East Timor Transitional Administration to the East Timorese people until authority was fully transferred to the Government of an independent State of East Timor. It also encouraged UNTAET to continue to support fully the transition to independence.<sup>291</sup>

By a statement of the President dated 31 October 2001, the Council expressed its appreciation to the Special Representative of the Secretary-General for East Timor and to UNTAET for their efforts in developing detailed plans for the future United Nations presence in East Timor. It further took note of the observation of the Secretary-General that the mandate of the Transitional Administration should be extended until independence and endorsed his plans for adjusting the size and configuration of UNTAET in the months prior to independence. The Council further endorsed the recommendations of the Secretary-General for a continued and appropriately reduced United Nations integrated mission in the post-independence period, and requested the Secretary-General to continue planning and preparation for this mission, in consultation with the East Timorese people, and to submit further and more detailed recommendations to the Council.<sup>292</sup>

By resolution 1392 (2002) of 31 January 2002, the Council commended the work of UNTAET and the leadership of the Special Representative of the Secretary-General in assisting the people of East Timor in laying the foundation for the transition to independence.<sup>293</sup>

By resolution 1410 (2002) of 17 May 2002, the Council welcomed the Secretary-General's intention to appoint the Resident Coordinator of the United Nations Development Programme as his deputy Special Representative and underlined the importance of a smooth transition of the United Nations role towards traditional development assistance.<sup>294</sup>

Following the entry into force of East Timor's first Constitution on 22 March and the presidential

<sup>286</sup> Resolution 1333 (2000), fourth preambular paragraph.

<sup>287</sup> Resolution 1378 (2001), fifth and eighth preambular paragraphs, and para. 3.

<sup>288</sup> Resolution 1383 (2001), para. 3.

<sup>289</sup> S/2002/278.

<sup>290</sup> Resolution 1401 (2002), para. 1.

<sup>291</sup> Resolution 1338 (2001), third preambular paragraph and paras. 3 and 4.

<sup>292</sup> S/PRST/2001/32.

<sup>293</sup> Resolution 1392 (2002), second preambular paragraph.

<sup>294</sup> Resolution 1410 (2002), twelfth preambular paragraph.

elections on 14 April, by a statement of the President dated 20 May 2002, the Council expressed its deep appreciation for the efforts of the Secretary-General and his Special Representative, and noted with satisfaction the role played by the United Nations and UNTAET in restoring peace to East Timor, and in building a solid foundation for a democratic, viable and stable East Timor.<sup>295</sup>

### **The situation in Tajikistan and along the Tajik-Afghan border**

By a statement of the President dated 12 May 2000, the Council expressed its appreciation to the Secretary-General for his intention to inform the Council of the modalities of the establishment and functioning of a United Nations post-conflict peacebuilding office in Tajikistan, to consolidate peace and promote democracy.<sup>296</sup> Following the termination of the United Nations Mission of Observers in Tajikistan on 15 May 2000, the United Nations Tajikistan Office of Peacebuilding (UNTOP) was subsequently established through an exchange of letters between the Secretary-General and the President of the Security Council.<sup>297</sup> The mandate of UNTOP was to provide the political framework and leadership for post-conflict peacebuilding activities of the United Nations system in the country, and to that end, mobilize international support.<sup>298</sup>

### **Letter dated 31 March 1998 from the Chargé d'affaires a.i. of the Permanent Mission of Papua New Guinea to the United Nations addressed to the President of the Security Council (S/1998/287)**

By an exchange of letters between the Secretary-General and the President of the Security Council, the Council took note of the intention of the Secretary-General to extend the mandate of the United Nations Political Office in Bougainville (UNPOB), which included, *inter alia*, monitoring and reporting on the

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<sup>295</sup> S/PRST/2002/13.

<sup>296</sup> S/PRST/2000/17.

<sup>297</sup> S/2000/519 and S/2000/518. During the period under review, through exchanges of letters between the Secretary-General and the President of the Security Council, the mandate of UNTOP was extended three times until 1 June 2004. See S/2001/445, S/2001/446, S/2002/501, S/2002/502, S/2003/542 and S/2003/543.

<sup>298</sup> S/2000/518.

implementation of the Lincoln Agreement on Peace, Security and Development in Bougainville and the Arawa Agreement as well as chairing the Peace Process Consultative Committee.<sup>299</sup>

Following the expiration of the final extension of the mandate of UNPOB, by a letter dated 23 December 2003 addressed to the Secretary-General, the Council took note of the Secretary-General's intention to establish a small, follow-on United Nations Observer Mission in Bougainville (UNOMB) to finish the residual tasks of UNPOB and support the efforts of the parties in the transitional period leading to the elections.<sup>300</sup>

## **Americas**

### **The question concerning Haiti**

By a statement of the President dated 15 March 2000,<sup>301</sup> the Council commended the Representative of the Secretary-General, the United Nations Civilian Police Mission in Haiti (MIPONUH), whose mandate had been terminated, the International Civilian Mission in Haiti (MICIVIH) and all the previous missions deployed in Haiti to assist the Government of Haiti in supporting the professionalization of the Haitian National Police force, consolidating Haiti's system of justice and other national institutions and promoting human rights.

## **Europe**

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

By resolution 1305 (2000) of 21 June 2000, the Council emphasized its full support for the continued role of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina in monitoring the implementation of the Peace Agreement and giving guidance to and coordinating the activities of the civilian organizations and agencies involved in

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<sup>299</sup> S/2000/1139 and S/2000/1140; S/2001/1202 and S/2001/1203; and S/2002/1379 and S/2002/1380. In a letter dated 22 October 2001, the Secretary-General informed the Council that UNPOB would perform additional functions in the area of weapons collection and disposal as spelled out in part E of the Bougainville Peace Agreement (S/2001/988).

<sup>300</sup> S/2003/1199.

<sup>301</sup> S/PRST/2000/8.

assisting the parties to implement the Peace Agreement.<sup>302</sup>

By a statement of the President dated 12 December 2002, the Council expressed its deep appreciation for the efforts of the Secretary-General, his Special Representative and the personnel of the United Nations Mission in Bosnia and Herzegovina for their contributions to the implementation of the Peace Agreement.<sup>303</sup>

### **The situation in Cyprus**

By a series of letters from the President of the Security Council addressed to the Secretary-General, the Council took note of the missions of good offices carried out by the Secretary-General and his Special Adviser in Cyprus.<sup>304</sup>

By resolution 1475 (2003) of 14 April 2003, the Council welcomed the report of the Secretary-General of 1 April 2003 on his mission of good offices in Cyprus<sup>305</sup> and commended the extraordinary effort made by the Secretary-General, his Special Adviser and his team since 1999 in pursuance of his good offices mission and within the framework of Security Council resolution 1250 (1999). The Council further commended the Secretary-General for taking the initiative to present to the parties a comprehensive settlement plan aimed at bridging the gaps between them, drawing upon the talks that began in December 1999 under the auspices of the United Nations and, following negotiations, to revise the plan on 10 December 2002 and 26 February 2003. Subsequently, the Council gave its full support to the Secretary-General's plan of 26 February 2003 as a unique basis for further negotiations and asked him to continue to make available his good offices for Cyprus.<sup>306</sup>

### **The situation in Georgia**

By resolution 1287 (2000) of 31 January 2000, the Council strongly supported the sustained efforts of

the Secretary-General and his Special Representative, with the assistance of the Russian Federation in its capacity as facilitator as well as of the Group of Friends of the Secretary-General and the Organization for Security and Cooperation in Europe (OSCE), to promote the stabilization of the situation and the achievement of a comprehensive political settlement, including a settlement on the political status of Abkhazia within the State of Georgia. It also supported the efforts of the Secretary-General to find ways to improve the observance by the parties of human rights as an integral part of the work towards a comprehensive political settlement.<sup>307</sup>

By a statement of the President dated 11 May 2000, the Council welcomed the efforts by the Special Representative of the Secretary-General to enhance contacts at all levels between the Georgian and Abkhaz sides, and called upon the parties to continue to expand such contacts. It further supported the appeal by the Secretary-General to both sides to make more active use of the Coordinating Council machinery, and actively to consider the paper prepared by the Special Representative concerning the implementation of the agreed confidence-building measures. The Council also joined the Secretary-General in encouraging the parties to be ready to consider proposals, based on the decisions of the Council, to be presented in due course by the Special Representative on the question of the distribution of constitutional competences between Tbilisi and Sukhumi.<sup>308</sup>

By a statement of the President dated 14 November 2000, the Council welcomed all the efforts that had been undertaken, in particular by the Special Representative, with a view to alleviating tensions and increasing confidence between the parties.<sup>309</sup>

By resolution 1339 (2001) of 31 January 2001, the Council strongly supported the intention of the Special Representative to submit, in the near future, the draft paper containing specific proposals to the parties on the question of the distribution of constitutional

<sup>302</sup> Resolution 1305 (2000), para. 4. The Council subsequently reiterated its support by resolutions 1357 (2001), 1396 (2002), 1423 (2002) and 1491 (2003).

<sup>303</sup> S/PRST/2002/33.

<sup>304</sup> S/2000/1189, S/2001/557, S/2001/1183 and S/2002/1403.

<sup>305</sup> S/2003/398.

<sup>306</sup> Resolution 1475 (2003), paras. 1, 2, 4 and 5.

<sup>307</sup> Resolution 1287 (2000), paras. 3 and 7. Such support was renewed by several subsequent decisions of the Council. See, for example, resolutions 1311 (2000) of 28 July 2000, 1339 (2001) of 31 January 2001 and 1364 (2001) of 31 July 2001, and S/PRST/2000/32.

<sup>308</sup> S/PRST/2000/16. This support was renewed by the Council through resolution 1311 (2000) of 28 July 2000 (see resolution 1311 (2000), para. 3).

<sup>309</sup> S/PRST/2000/32.

competences between Tbilisi and Sukhumi as a basis for meaningful negotiations.<sup>310</sup> By a statement of the President dated 24 April 2001, the Council called upon the parties to constructively accept the aforementioned proposals and, subsequently, by resolution 1364 (2001) of 31 July 2001, regretted that the Special Representative had not been in a position to submit them.<sup>311</sup>

By resolution 1393 (2002) of 31 January 2002, while welcoming and supporting the finalization of the document “Basic Principles for the Distribution of Competences between Tbilisi and Sukhumi”, the Council supported the efforts of the Special Representative in this regard.<sup>312</sup>

**Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)**

By a statement of the President dated 16 March 2001, the Council commended the Special Representative of the Secretary-General and the commander of the Kosovo Force for their ongoing efforts, undertaken under difficult circumstances, to implement fully resolution 1244 (1999) and welcomed the priority areas of work identified by the Special Representative of the Secretary-General. The Council further welcomed the establishment of a working group under the authority of the Special Representative of the Secretary-General aimed at developing a legal framework for provisional institutions for democratic and autonomous self-government in Kosovo and stressed the need for all ethnic groups to be represented in the work of this group.<sup>313</sup>

By a statement of the President dated 9 November 2001, the Council welcomed the progress made in preparing the Kosovo-wide elections on 17 November 2001 and called on the Special Representative of the Secretary-General and all parties

concerned to continue to strive for full implementation of resolution 1244 (1999).<sup>314</sup>

By a statement of the President dated 13 February 2002, the Council expressed its full support for the Special Representative of the Secretary-General upon his assumption of the position as Head of the United Nations Interim Administration Mission in Kosovo, as well as its appreciation to all the personnel of UNMIK for their “untiring efforts” in ensuring the full implementation of resolution 1244 (1999).<sup>315</sup>

By a statement of the President dated 24 April 2002, the Council commended the efforts of the Special Representative and welcomed the priorities outlined in the Secretary-General’s report as well as his request to develop benchmarks to measure progress in Kosovo’s institutional development, consistent with resolution 1244 (1999) and the Constitutional Framework for Provisional Self-Government in Kosovo.<sup>316</sup>

By a statement dated 6 February 2003, the Council, welcoming the latest report of the Special Representative of the Secretary-General on the activities of UNMIK and recent developments in Kosovo,<sup>317</sup> reiterated its full support for the “standards before status” policy with postulated targets in the eight key areas: functioning of democratic institutions, the rule of law, freedom of movement, the return of refugees and internally displaced persons, the economy, property rights, dialogue with Belgrade, and the Kosovo Protection Corps. The Council welcomed the presentation of a detailed plan for its implementation that would provide the appropriate baseline against which progress could be measured, as discussed with the Special Representative of the Secretary-General during the Council’s mission in December 2002. The Council further welcomed the intention of the Special Representative of the Secretary-General to transfer remaining competencies to the provisional institutions of self-government by the end of the year, except those reserved for the Special Representative of the Secretary-General under resolution 1244 (1999). The Council concluded the statement by reiterating its full support for the Special Representative of the Secretary-General and by urging

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<sup>310</sup> Resolution 1339 (2001), para. 3.

<sup>311</sup> S/PRST/2001/12 and resolution 1364 (2001), para. 5.

<sup>312</sup> Resolution 1393 (2002), para. 3.

<sup>313</sup> S/PRST/2001/8. The Council reiterated its support to the Special Representative of the Secretary-General and the commander of KFOR for their ongoing efforts to implement fully resolution 1244 (1999) by several subsequent statements of the President. See, for example, S/PRST/2001/27, S/PRST/2002/11, S/PRST/2002/16 and S/PRST/2002/29.

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<sup>314</sup> S/PRST/2001/34.

<sup>315</sup> S/PRST/2002/4.

<sup>316</sup> S/PRST/2002/11.

<sup>317</sup> S/2003/113.

Kosovo's leaders to work in close cooperation with UNMIK and KFOR for a better future for Kosovo and stability in the region.<sup>318</sup>

## Middle East

### The situation in the Middle East, including the Palestinian question

By resolution 1397 (2002) of 12 March 2002, the Council welcomed and encouraged the diplomatic efforts of, inter alia, the United Nations Special Coordinator to bring about a comprehensive and lasting peace in the Middle East.<sup>319</sup> It also expressed its support for the efforts of the Secretary-General to assist the parties to halt the violence and resume the peace process.<sup>320</sup>

### The situation between Iraq and Kuwait

By resolution 1500 (2003) of 14 August 2003, the Security Council established the United Nations

Assistance Mission for Iraq (UNAMI) to support the Secretary-General in the fulfilment of his mandate under resolution 1483 (2003). The mandate included, inter alia, working intensively with the Authority, the people of Iraq and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative Government of Iraq.

## D. Decisions involving regional arrangements or agencies

During the period under review, the Security Council not only called upon the parties to the conflict to cooperate with regional arrangements, but also, in accordance with Article 52 of the Charter, frequently expressed its support and appreciation for the peace efforts undertaken by regional arrangements or requested the Secretary-General to undertake such efforts in conjunction with regional arrangements. Decisions of the Council regarding the joint or parallel efforts undertaken by the Council and regional agencies or arrangements in the pacific settlement of disputes during the period under review are covered in detail in chapter XII of this supplement.

<sup>318</sup> S/PRST/2003/1.

<sup>319</sup> Resolution 1397 (2002), sixth preambular paragraph.

The Council renewed its encouragement of the efforts of the United Nations Special Coordinator by resolution 1403 (2002) of 4 April 2002.

<sup>320</sup> Resolution 1397 (2002), para. 3. The Council renewed its support for the efforts of the Secretary-General by resolution 1402 (2002) of 30 March 2002.

## Part IV Constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter

### Note

This part of chapter X highlights the important arguments raised in the deliberations of the Council with regard to the interpretation of specific provisions of the Charter concerning the role of the Council in the peaceful settlement of disputes. It includes in particular discussions regarding the competence of the Council to consider a dispute or situation and its power to make appropriate recommendations within the framework of Chapter VI of the Charter.

During the course of thematic debates held in the Council, several speakers emphasized the potential of

new approaches to the role of the Security Council as defined under Chapter VI. The idea of early warning and conflict-prevention mechanisms, likely to enable the Council to take early action with respect to emerging disputes, was the most noteworthy example of the evolving interpretation of Chapter VI. In that regard, underscored many delegations the role that regional organizations could play.<sup>321</sup> Furthermore,

<sup>321</sup> See, for example, the 4753rd and the 4174th meetings on "The role of the Security Council in the pacific settlement of disputes" and the "Role of the Security Council in the prevention of armed conflicts", respectively.



during those debates, speakers addressed the potential and usefulness of instruments provided under Chapter VI of the Charter in comparison to those provided for under Chapter VII.

The text that follows is divided into eight subsections, focusing on the provisions of Chapter VI and on Article 99, which deals with the role of the Secretary-General in bringing to the attention of the Security Council matters that might threaten international peace and security as follows: (a) relevance of the provisions of Chapter VI in relation to the prevention of conflicts; (b) relevance of the provisions of Chapter VI in comparison to the provisions of Chapter VII; (c) obligation of Member States to settle their disputes by peaceful means in the light of Article 33 (1) and recommendations for the settlement of disputes by the Security Council in the light of Article 33 (2); (d) recourse to investigation by the Security Council in the light of Article 34; (e) referral of disputes to the Security Council in the light of Article 35; (f) referral of legal disputes in the light of Article 36 (3); (g) referrals by the Secretary-General in the light of Article 99; and (h) efforts of the Secretary-General for the peaceful settlement of disputes in the light of Article 33. Entries in each of the subsections correspond to items on the agenda of the Council. In some cases, it is difficult to establish a clear-cut distinction between the constitutional discussions relevant to Chapter VI and those relevant to Chapter VII.

## **Relevance of the provisions of Chapter VI in relation to the prevention of conflicts**

### **The role of the Security Council in the pacific settlement of disputes**

At its 4753rd meeting, on 13 May 2003, underscoring that Chapter VI of the Charter stood at the heart of the Organization's system of collective security, the Secretary-General outlined the lessons that could be learned from the experience in recent years and how improvements could be achieved. In particular, the Secretary-General recalled several recommendations from his June 2001 report on the prevention of armed conflict,<sup>322</sup> including the

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<sup>322</sup> S/2001/574.

following: (a) the use of regional prevention mechanisms; (b) more frequent resort to the International Court of Justice; and (c) increased reporting by the United Nations system to the Council about serious violations of international law and about human rights and potential conflict situations arising from ethnic, religious and territorial disputes, poverty or other factors. While recognizing that the primary responsibility for the pacific settlement of disputes rested with Governments and the parties to a dispute, the Secretary-General emphasized that the Council had many tools at its disposal and could play a key role in conflict prevention while pressing those directly involved to make peace, as the Council itself had recognized in resolution 1366 (2001). He added that the Council could help identify and address root causes early, when opportunities for constructive dialogue and other peaceful means were greatest, and ensure an integrated approach bringing together all factors and all actors, including civil society. Furthermore, he added, the Council could support the other United Nations organs in their efforts to resolve disputes or address volatile situations before they erupted into full-fledged threats to international peace and security.<sup>323</sup>

In their reactions to the remarks of the Secretary-General, several speakers recognized the primary role of the Security Council in the pacific settlement of disputes and voiced the need for the Council increasingly to explore and revert to the provisions of Chapter VI. Although recognizing that other actors had a role to play in the field of conflict prevention, several speakers particularly stressed the importance of the Council's role and hoped for a more active involvement of the Council in conflict prevention and preventive diplomacy efforts.<sup>324</sup> For instance, the representative of Germany underscored the need to shift "from a culture of reaction to a culture of prevention" and that it was important for the Security Council to revisit its role in the pacific settlement of disputes, an area in which, pursuant to Chapter VI of the Charter, the Security Council was vested with a primary, though not exclusive role.<sup>325</sup> The

<sup>323</sup> S/PV.4753, p. 3.

<sup>324</sup> *Ibid.*, pp. 10-11 (Mexico); p. 12 (Spain); pp. 12-13 (United Kingdom); pp. 14-15 (Germany); p. 18 (Chile); p. 21 (France); pp. 25-26 (Russian Federation); p. 27 (Cameroon); and p. 29 (Pakistan); S/PV.4753 (Resumption 1), p. 2 (Greece, on behalf of the European Union and associated countries); and p. 10 (Colombia).

<sup>325</sup> S/PV.4753, p. 14.

representative of Cameroon noted that the thrust of Chapter VI of the Charter meant, *inter alia*, that the Council should in all circumstances act in a “resolute and preventive” manner in order to “forestall the guns from sounding”.<sup>326</sup> The representative of Spain stated that it was not possible to speak of the pacific settlement of disputes without attaching equal importance to measures of preventive diplomacy.<sup>327</sup>

Against that background, many delegations also stressed that the responsibility to prevent and resolve conflicts and disputes rested first and foremost with the parties.<sup>328</sup> While recognizing the necessity of focusing on conflict prevention, the representative of the United Kingdom cautioned that “prevention is difficult” as early action could be taken as interference.<sup>329</sup>

With regard to the mechanisms and instruments for conflict prevention, several delegations suggested ways for the Council to improve its action with respect to the of prevention of conflict, including those related to early warning.<sup>330</sup> The representative of the United States noted that over the years, mechanisms have been developed to enable the Council to prevent some disputes from reaching the stage where Chapter VII action was required. He further noted that Chapter VI had stretched to accommodate the emergence of peacekeeping, a concept not mentioned in the Charter but one which had been a valuable tool in dispute settlement.<sup>331</sup>

A number of speakers expressed support for the efforts of the Secretary-General and his envoys to conduct “good offices” and mediation,<sup>332</sup> and underlined the importance of the Council’s coordination with regional organizations in the pacific

settlement of disputes.<sup>333</sup> The role of peacekeeping operations and observer missions in preventing the outbreak of further conflict and stabilizing a military situation was also cited during the discussion.<sup>334</sup> Finally, several delegations highlighted the importance of addressing the root causes of conflicts. The representative of Mexico noted that peacekeeping operations had proven to be very useful in preventing future conflicts, addressing underlying causes, creating confidence-building mechanisms and bringing parties to the negotiating table.<sup>335</sup> The representative of Germany noted that certain lessons from the experience of the United Nations in the field of post-conflict peacebuilding could well be suited to being applied also to pre-conflict situations or to situations of emerging conflict. Explaining that the management of pre- and post-conflict situations required some identical ingredients necessary to produce sustained peace and stability, he emphasized that the interrelationship of peace and security, the rule of law, human rights and the enhancement of the material well-being of people must be taken into account.<sup>336</sup>

At the same meeting, the President of the Council made a statement in which, the Council recognized that the United Nations and its organs could play an important role in preventing disputes from arising between parties, in preventing existing disputes from escalating into conflicts, and in containing and resolving the conflicts when they occurred.<sup>337</sup>

### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting of the Council, on 20 July 2000, opening the discussion, the Secretary-General noted that there was an emerging consensus that conflict prevention strategies must address the root causes of conflict, not simply their violent symptoms. He described prevention as multidimensional, stating that to be effective, it had to address the structural faults that predisposed a society to conflict. He stressed that the best form of long-term conflict prevention was

<sup>326</sup> *Ibid.*, p. 27.

<sup>327</sup> *Ibid.*, p. 12.

<sup>328</sup> *Ibid.*, p. 13 (United Kingdom); p. 19 (Bulgaria); p. 26 (Russian Federation); and p. 27 (Cameroon); S/PV.4753 (Resumption 1), p. 10 (Colombia).

<sup>329</sup> S/PV.4953, pp. 12-13.

<sup>330</sup> *Ibid.*, p. 11 (Mexico); p. 12 (Spain); pp. 12-13 (United Kingdom); p. 15 (Germany); p. 20 (Bulgaria); and p. 24 (Syrian Arab Republic); S/PV.4753 (Resumption 1), p. 3 (Greece) on behalf of the European Union and the associated countries.

<sup>331</sup> S/PV.4753, p. 17.

<sup>332</sup> *Ibid.*, p. 13 (United Kingdom); p. 15 (Germany); p. 17 (United States); pp. 19-20 (Bulgaria); p. 21 (France); and p. 29 (Pakistan); S/PV.4753 (Resumption 1), p. 3 (Greece, on behalf of the European Union and associated countries); and p. 14 (Ethiopia).

<sup>333</sup> For more details on the role of regional organizations in the pacific settlement of disputes, see chap. XII, part III, sect. B.

<sup>334</sup> S/PV.4753, p. 10 (Mexico); p. 14 (China); p. 17 (United States); p. 22 (France); and p. 25 (Russian Federation).

<sup>335</sup> *Ibid.*, p. 10.

<sup>336</sup> *Ibid.*, p. 15.

<sup>337</sup> S/PRST/2003/5.

healthy and balanced economic development. signalling the various initiatives that he had undertaken since taking office, the Secretary-General observed that any type of work in post-conflict peacebuilding constituted prevention, since it was designed to prevent the resurgence of conflict. Noting recent indications that the Council itself was also taking prevention more seriously, he suggested that the Council (a) hold periodic meetings at the Foreign Minister level to discuss thematic or actual prevention issues; (b) work more closely with the other principal organs; and (c) examine ways of interacting more closely with non-State actors with expertise and experience in prevention. While observing that prevention was costly, the Secretary-General pointed out that intervention, relief and rebuilding broken societies and lives was far more costly. He called for prevention to be made the cornerstone of collective security in the twenty-first century, a direction that would be achieved not by grand gestures or short-term thinking, but by changing deeply ingrained attitudes.<sup>338</sup>

In the ensuing discussion, the majority of speakers emphasized that the prevention of armed conflict was less costly than dealing with conflicts once they had erupted, from the human, political, economic and financial perspective. Several speakers therefore agreed with the Secretary-General on the importance of shifting from a “culture of reaction” to a “culture of prevention”.<sup>339</sup> To that end, many delegations indicated that it was important to focus on the resolution of the root causes if conflicts were to be prevented in the first place or prevented from re-emerging. The social and economic causes of conflicts that had been flagged by the Secretary-General, as well as conflict-prevention through economic development, were therefore stressed.<sup>340</sup> Other delegations remarked that the international community should address the issue of potential conflicts through a more

comprehensive, global and integrated strategy.<sup>341</sup> In that connection, a number of speakers emphasized the importance of post-conflict peacebuilding efforts aimed at preventing the recurrence of conflicts.<sup>342</sup>

The representative of the Russian Federation, supported by the representatives of China, Malaysia, Pakistan and Tunisia cautioned that preventive services to Member States should be granted on a voluntary basis with due regard to the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States.<sup>343</sup> In that regard, the representative of the Netherlands noted that while the Charter of the United Nations was geared towards inter-State conflict, the overwhelming majority of conflicts were of an internal nature. He was therefore of the opinion that the Council needed a more flexible interpretation of Article 2 (7) of the Charter to be able to take the necessary action in the face of conflicts.<sup>344</sup>

On the specific role of the Security Council in conflict prevention, many speakers pointed out that the Council had an important role to play in conflict prevention, given its responsibility to maintain international peace and security.<sup>345</sup> According to the representative of China, the Council should play a “leading role” in conflict prevention.<sup>346</sup> The representative of Argentina said that it was “incontestable” that the United Nations, and the Security Council in particular, had a “moral and legal obligation to prevent conflicts”.<sup>347</sup> The need to improve the tools and means to prevent conflict was also stressed by several delegations.<sup>348</sup> For instance, the representative of

<sup>338</sup> S/PV.4174, pp. 2-4.

<sup>339</sup> *Ibid.*, p. 10 (Argentina); p. 11 (Netherlands); pp. 19-21 (Canada); p. 22 (Ukraine); and p. 28 (France, on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), p. 10 (Senegal).

<sup>340</sup> S/PV.4174, p. 8 (Bangladesh); p. 9 (Argentina); p. 12 (Netherlands); p. 13 (China); p. 14 (Tunisia); p. 18 (Mali); and p. 25 (France, on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), p. 4 (Pakistan); p. 6 (Norway); p. 7 (Brazil); and p. 15 (Uganda).

<sup>341</sup> S/PV.4174, p. 10 (Russian Federation); pp. 14-15 (Tunisia); and p. 28 (Japan); S/PV.4174 (Resumption 1), p. 6 (Norway); pp. 7-8 (Brazil); p. 11 (Indonesia); and p. 12 (Republic of Korea).

<sup>342</sup> S/PV.4174, p. 12 (Netherlands); p. 15 (Tunisia); and p. 28 (Japan); S/PV.4174 (Resumption 1), p. 2 (Colombia); and p. 6 (Norway).

<sup>343</sup> S/PV.4174, p. 10 (Russian Federation); p. 13 (China); pp. 14-15 (Tunisia); and p. 16 (Malaysia); S/PV.4174 (Resumption 1), p. 4 (Pakistan).

<sup>344</sup> S/PV.4174, p. 11.

<sup>345</sup> *Ibid.*, p. 11 (Netherlands); p. 14 (Tunisia); p. 22 (Ukraine); p. 27 (France, on behalf of the European Union and associated countries); and p. 28 (Japan); S/PV.4174 (Resumption 1), p. 8 (Brazil).

<sup>346</sup> S/PV.4174, p. 13.

<sup>347</sup> *Ibid.*, p. 10.

<sup>348</sup> *Ibid.*, p. 11 (Russian Federation); p. 16 (Malaysia); and pp. 27-28 (France, on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), pp. 4-5 (Pakistan); and p. 10 (Senegal).

France, speaking on behalf of the European Union and associated countries,<sup>349</sup> urged that the necessary resources be provided to strengthen the Secretariat's early warning, reaction and analysis capabilities and urged the Council to avail itself as much as necessary of the range of resources at its disposal, including missions to conflict areas, not only once hostilities had occurred, but further upstream.<sup>350</sup> At the same meeting, the President of the Security Council made a statement,<sup>351</sup> in which the Council underlined the need for continued in-depth consideration of the issue of conflict prevention and invited the Secretary-General to submit to the Council, by May 2001, a report containing an analysis, and recommendations on initiatives within the United Nations, taking into account previous experience and the views and considerations expressed by Member States, on the prevention of armed conflict.

Pursuant to the presidential statement, the Secretary-General submitted a report dated 7 June 2001,<sup>352</sup> in which he observed that conflict prevention was one of the primary obligations of Member States set forth in the Charter of the United Nations. Adding that the United Nations efforts in conflict prevention must be in conformity with the purposes and principles of the Charter, he emphasized that conflict prevention was an activity best undertaken under Chapter VI of the Charter. However, the Secretary-General emphasized that the primary responsibility for conflict prevention rested with national Governments, with the United Nations and the international community supporting national efforts for conflict prevention and assisting in building national capacity in this regard. According to the Secretary-General, an effective preventive strategy required a comprehensive approach that encompassed both short-term and long-term political, diplomatic, humanitarian, human rights, developmental, institutional and other measures taken by the international community, in cooperation with national and regional actors. In particular, he stressed that one of the principal aims of preventive action should be to address the deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that often underlie the immediate political symptoms of conflicts, and that conflict

prevention and sustainable and equitable development were mutually reinforcing activities.

At the 4334th meeting, on 21 June 2001, the Council again considered the report of the Secretary-General, in which he offered the Council recommendations on how the efforts of the United Nations system in the field could be further enhanced a more specifically, the Secretary-General identified four possible ways to enhance his traditional preventive role, as follows: (a) increasing the use of fact-finding and confidence-building missions to volatile regions; (b) developing regional prevention strategies with regional partners and United Nations organs and agencies; (c) establishing an informal network of eminent persons for conflict prevention; and (d) improving the capacity and resource base for preventive action in the Secretariat.<sup>353</sup> Introducing the report, the Deputy Secretary-General reiterated the need to intensify efforts in order to move from a culture of "reaction" to one of "prevention". Highlighting that the "most useful" instruments of prevention were those described in Chapter VI, she highlighted 10 principles proposed by the Secretary-General, drawing on lessons learned, that should guide future approaches to conflict prevention. She also touched on proposals contained in the report for enhancing the role of the Security Council, the General Assembly, the Economic and Social Council and the Secretary-General. In particular, she drew attention to recommendations concerning regional organizations and the need for donor States to increase the flow of official development assistance, and noted that effective conflict prevention required both national and international political will. Stressing the high cost of conflict and of conflict intervention, both in human and material terms, she maintained that conflict prevention was the most desirable and cost-effective approach for maintaining peace.<sup>354</sup>

In the course of the discussion, the majority of speakers endorsed the Secretary-General's pledge to move the United Nations from a "culture of reaction" to a "culture of prevention", which should be the core of the Organization's mandate under the Charter.<sup>355</sup> A

<sup>349</sup> Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia; and Cyprus and Malta.

<sup>350</sup> S/PV.4174, pp. 27-28.

<sup>351</sup> S/PRST/2000/25. See part III, sect. A.

<sup>352</sup> S/2001/574 and Corr. 1.

<sup>353</sup> *Ibid.*, pp. 14-16.

<sup>354</sup> S/PV.4334, pp. 2-4.

<sup>355</sup> *Ibid.*, p. 9 (United Kingdom); p. 12 (Tunisia); p. 14 (Ireland); p. 17 (France); and pp. 25-26 (Mauritius); S/PV.4334 (Resumption 1), p. 4 (Republic of Korea); p. 9 (Japan); p. 17 (Malaysia); and p. 18 (Nigeria).

number of them also endorsed the Secretary-General's premise that the primary responsibility for conflict prevention rested with national Governments.<sup>356</sup> The representative of the Russian Federation remarked upon the need for the consent and support of each interested Government and its internal political actors with regard to efforts to prevent conflicts.<sup>357</sup> Similarly, the representative of China stated that, given the different social systems, ideologies, value systems and religious beliefs, it was necessary to abide by the basic principles of mutual respect for sovereign territorial integrity and non-interference in internal affairs of other States.<sup>358</sup> The representative of Pakistan noted that, while Member States and civil society alone may have some responsibility in cases of intra-State conflicts, this did not hold true for cases of inter-State conflicts, where the ultimate responsibility rested with the United Nations.<sup>359</sup>

Several speakers underscored the need for a multidimensional approach to conflict prevention, including the repatriation of refugees, restrictions on the proliferation of small arms, and both short- and long-term development assistance to affected States.<sup>360</sup> The need to address the root causes of conflicts and the premise that conflict prevention and sustainable and equitable development were mutually reinforcing activities were also pointed out during the discussion.<sup>361</sup> Therefore, during the discussion it was emphasized that the United Nations was not the only actor in prevention and might often not be the actor best suited to take the lead, and that of particular importance were United Nations efforts for enhancing the capacity of Member States for conflict prevention. In that connection, many delegations stressed the need for actors — be they the Council, the General Assembly, the Secretary-General, the Economic and Social Council other United Nations organs or regional organizations — to take the lead in coordinating

preventive responses to incipient conflicts.<sup>362</sup> The majority of speakers also underlined the importance of the role of regional organizations, non-governmental organizations, civil society and the business community in the field of conflict prevention. In addition, several representatives expressed support for the role of the Secretary-General in conflict prevention, under Article 99 of the Charter, as well as his intention to enhance that role.<sup>363</sup> In that connection, some speakers welcomed the Secretary-General's intention to initiate a practice of providing periodic regional or subregional reports to the Security Council on threats to international peace and security.

With regard to the instruments for conflict prevention, it was generally acknowledged that Chapter VI of the Charter provided important instruments for conflict prevention. According to the representative of South Africa, in addition to Article 1 of the Charter, Chapter VI placed a "moral and legal responsibility" on the Security Council to play a key role in the prevention of armed conflict.<sup>364</sup> While recognizing that conflict prevention was mostly viewed as "a Chapter VI issue", the representative of Argentina stressed that conflict prevention did not preclude, in some specific cases, the application of Chapter VII of the Charter. He added that in some conflicts currently on the agenda of the Council, the application of an arms embargo in an early stage of the conflict would have helped prevent its worsening.<sup>365</sup> A number of speakers supported the Secretary-General's recommendation urging the Council to support peacebuilding components within peacekeeping operations, as well as his recommendation that the Council include, as appropriate, a disarmament, demobilization and reintegration component in the mandates of United Nations peacekeeping and peacebuilding operations.<sup>366</sup> Other speakers expressed support for the Secretary-General's recommendation encouraging Member States and the Security Council to make more active use of preventive deployments

<sup>356</sup> S/PV.4334, p. 8 (United States); and p. 13 (Russian Federation); S/PV.4334 (Resumption 1), p. 8 (Costa Rica); and p. 18 (Nigeria).

<sup>357</sup> S/PV.4334, p. 13.

<sup>358</sup> *Ibid.*, p. 11.

<sup>359</sup> S/PV.4334 (Resumption 1), p. 23.

<sup>360</sup> S/PV.4334, p. 5 (Colombia); p. 12 (Tunisia); p. 18 (Norway); and p. 22 (Mali).

<sup>361</sup> *Ibid.*, p. 8 (Jamaica); p. 9 (United Kingdom); p. 11 (China); p. 14 (Ireland); p. 24 (Mauritius); and p. 26 (Bangladesh); S/PV.4334 (Resumption 1), p. 5 (Republic of Korea); p. 8 (Costa Rica); and p. 14 (Mexico).

<sup>362</sup> See chap. XII, part III, sect. B.

<sup>363</sup> S/PV.4334, p. 7 (Jamaica); p. 9 (United States); p. 17 (France); p. 20 (Ukraine); and p. 22 (Singapore); S/PV.4334 (Resumption 1), p. 10 (Japan); p. 17 (Malaysia); and p. 18 (Nigeria).

<sup>364</sup> S/PV.4334 (Resumption 1), p. 20.

<sup>365</sup> *Ibid.*, p. 6.

<sup>366</sup> S/PV.4334, p. 7 (Jamaica); p. 12 (Tunisia); and p. 27 (Canada); S/PV.4334 (Resumption 1), p. 3 (Sweden, on behalf of the European Union and associated countries).

before the onset of conflict, as appropriate.<sup>367</sup> More specifically, the representative of Japan, while noting that preventive deployments could make a crucial contribution to conflict prevention, expressed the view that it was essential for the Council to undertake a thorough appraisal and examination of its past efforts in this regard.<sup>368</sup> A number of speakers also expressed support for the undertaking of fact-finding missions as part of preventive diplomacy.<sup>369</sup>

### **Peacebuilding: towards a comprehensive approach**

At the 4272nd meeting, on 5 February 2001, the President of the Security Council, who in his capacity as the representative of Tunisia had submitted the working paper that provided the basis for the debate,<sup>370</sup> indicated in his opening remarks that the meeting was an extension of the discussions over the past 10 years on the report entitled “An agenda for peace” and its supplement,<sup>371</sup> the prevention of armed conflict and the issue of “exit strategies”, and was aimed at assessing the responsibilities of the United Nations for arriving at concrete proposals in the maintenance of international peace and security.<sup>372</sup>

In his statement, the Secretary-General observed that, while peacebuilding was viewed as taking place primarily in post-conflict settings, it could also be seen as a preventive instrument which could address the root causes of conflict. Pointing out that a major challenge to peacebuilding was the mobilization of sustained political will and resources by the international community, he suggested that the Council could incorporate a number of good ideas, including the implementation of peace agreements and the design of peacekeeping operations, into its future mandates. Adding that the Council had rightly recognized that peacebuilding could be a vital component of peacekeeping missions, and that it needed to include

such preventive tools as early warning, diplomacy, preventive deployment and disarmament, the Secretary-General emphasized that peacebuilding must not be seen as an add-on or an afterthought but rather as a central tool of proven worth. He appealed to Member States to do more politically to give the concept a higher profile and to develop, improve and use it in good time.<sup>373</sup>

In their statements, several speakers held that peacebuilding should be conceptualized as part of a continuum that recognized the relationship between poverty and conflict, peacekeeping, peacebuilding and development.<sup>374</sup> The representative of Jamaica, noted that, although it was often thought of in the context of post-conflict situations, peace-building could and must be employed in conflict prevention.<sup>375</sup> Similarly, pointing at the strong link between conflict prevention on the one hand and the maintenance of peace and peacebuilding on the other, the representative of Colombia advocated for those elements to be “considered together and addressed comprehensively”.<sup>376</sup> Several delegations underscored the need for an integrated strategy that addressed the underlying causes of conflict, so as to prevent its outbreak as well as its recurrence.<sup>377</sup> With a view to developing a comprehensive peacebuilding strategy, some members therefore noted that an integrated approach required addressing the issues of the eradication of poverty and the promotion of sustainable development as an integral part of long-term peacebuilding and conflict prevention.<sup>378</sup>

<sup>367</sup> S/PV.4334, p. 7 (Jamaica); p. 15 (Ireland); pp. 17-18 (France); p. 18 (Norway); p. 20 (Ukraine); and p. 24 (Mauritius); S/PV.4334 (Resumption 1), pp. 9-10 (Japan); and p. 28 (Nepal).

<sup>368</sup> S/PV.4334 (Resumption 1), p. 10.

<sup>369</sup> S/PV.4334, p. 5 (Colombia); p. 7 (Jamaica); p. 9 (United States); p. 13 (Russian Federation); p. 20 (Ukraine); and p. 25 (Mauritius); S/PV.4334 (Resumption 1), p. 10 (Japan); p. 17 (Malaysia); and p. 18 (Nigeria).

<sup>370</sup> S/2001/82, annex.

<sup>371</sup> S/24111 and S/1995/1, respectively.

<sup>372</sup> S/PV.4272, p. 2.

<sup>373</sup> *Ibid.*, pp. 2-4.

<sup>374</sup> *Ibid.*, p. 11 (United Kingdom); p. 21 (Norway); p. 23 (Ukraine); and p. 25 (Bangladesh); S/PV.4272 (Resumption 1), p. 2 (Sweden, on behalf of the European Union and associated countries); and p. 19 (Romania).

<sup>375</sup> S/PV.4272, p. 7.

<sup>376</sup> *Ibid.*, p. 15.

<sup>377</sup> *Ibid.*, p. 15 (Colombia); p. 21 (Norway); and p. 23 (Ukraine); S/PV.4272 (Resumption 1), p. 2 (Sweden, on behalf of the European Union and associated countries); p. 9 (Republic of Korea); p. 13 (Senegal); p. 19 (Romania); p. 20 (Mongolia); p. 24 (Argentina); and p. 33 (Tunisia).

<sup>378</sup> S/PV.4272, pp. 16-17 (China); p. 18 (Russian Federation); and p. 21 (Norway); S/PV.4272 (Resumption 1), p. 21 (Mongolia); p. 34 (Tunisia).

### No exit without strategy

At the 4223rd meeting of the Council, on 15 November 2000, the Council held an open debate on the Security Council's decision-making process with regard to the termination of peace operations. During the debate, several speakers pointed out that "exit" did not mean an end to the peace process but was rather part of a continuum from conflict prevention, peacemaking and peace enforcement to peacebuilding.<sup>379</sup> Recalling that peace missions should be seen as a multifold continuum of tasks in the light of the increasingly more complex peace processes, the representative of Germany stated that it was important to address the integrated tasks that stretched "from conflict prevention all the way to peacebuilding", although in practice such clear distinctions did not always occur.<sup>380</sup> The representative of the United States, echoed by the representatives of Ukraine and Thailand, noted that the term "exit strategy" should never be allowed to mean a "hasty or arbitrary departure from a strategically stated goal", but the implementation of a comprehensive strategy.<sup>381</sup> Against that background, the representative of Ukraine expressed this support for the development of a comprehensive United Nations strategy for conflict prevention on the basis of large-scale use of preventive diplomacy and peacebuilding.<sup>382</sup> The representative of Italy advocated the need for building a functional connection between the conflict prevention phase and the possible action to be undertaken if a crisis degenerated into a threat to international peace and security. Such a strategy, he added, must also include provisions for peacebuilding, a stage that was essential to achieving sustainable peace once an operation had ended, since well-planned peacebuilding could also have a preventive effect by stemming any potential relapses.<sup>383</sup> Other speakers placed more emphasis on the link between peace and development, stating that a more sustained commitment of the international community to reducing poverty and promoting sustainable development was both a step towards

conflict prevention and a contribution to peacebuilding.<sup>384</sup>

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

#### The role of the Security Council in the pacific settlement of disputes

At the 4753rd meeting of the Council on 13 May 2003, the Secretary-General, opening the debate, underscored that Chapter VI of the Charter "stood at the heart of the Organization's system of collective security" and highlighted various ways in which the Council had used Chapter VI in recent years. Among them, he mentioned that the Council had more frequently entered into dialogue with the parties to the conflict, had worked more closely with the Economic and Social Council and with regional and subregional organizations, had sent fact-finding missions to the field, had called on the Secretary-General to use his good offices and had encouraged him to appoint a growing number of special representatives and envoys. He concluded by adding that, although recourse to Chapter VII might have increased in the past decade, the importance of Chapter VI had not been lessened and remained as "relevant" as before.<sup>385</sup>

Taking the floor after the Secretary-General, Mr. Jamsheed Marker, former Personal Representative of the Secretary-General for East Timor, noted that while Chapter VII constituted the "iron fist" of the Council, its latent efficacy could be considerably enhanced through a timely and judicious application of the "velvet glove" of Chapter VI. Among several suggestions on how to promote the pacific settlement of disputes, Mr. Marker encouraged the Council to utilize its mandatory enforcement authority under Chapter VII to persuade parties to engage in the processes for pacific settlement envisaged under Chapter VI.<sup>386</sup>

During the ensuing debate, several speakers recognized the primary role of the Security Council in the pacific settlement of disputes and voiced the need for the Council increasingly to explore and revert to

<sup>379</sup> S/PV.4223, pp. 6-7 (France); p. 9 (Bangladesh); p. 19 (Ukraine); and p. 24 (United Kingdom); S/PV.4223 (Resumption 1), p. 3 (Germany); p. 9 (South Africa); pp. 13-14 (Italy); and p. 20 (Finland).

<sup>380</sup> S/PV.4223 (Resumption 1), p. 3.

<sup>381</sup> S/PV.4223, pp. 3-4 (United States); and p. 19 (Ukraine); S/PV.4223 (Resumption 1), p. 10 (Thailand).

<sup>382</sup> S/PV.4223, p. 19.

<sup>383</sup> S/PV.4223 (Resumption 1), pp. 13-14.

<sup>384</sup> S/PV.4223, p. 17 (Tunisia); S/PV.4223 (Resumption 1), pp. 17-18 (Denmark).

<sup>385</sup> S/PV.4753, pp. 2-3.

<sup>386</sup> *Ibid.*, pp. 5-7.

the provisions of Chapter VI.<sup>387</sup> While acknowledging the role of the Council, some speakers emphasized that the responsibility to prevent and resolve conflicts and disputes rested first and foremost with the parties to the dispute.<sup>388</sup> The representative of Germany, echoed by the representative of the United States, drew attention to the Council's ability to anticipate emerging disputes and conflicts, and commented that, to react to them in the most appropriate way, the Council was dependent to a significant extent on an "early and solid knowledge of the situation".<sup>389</sup> The representative of China, supported by the representatives of Germany and the United States, acknowledged that, unlike Chapter VII, Chapter VI provided more flexibility in the use of instruments to resolve disputes.<sup>390</sup> The representative of the United States added that, over the years, mechanisms had been developed to enable the Council to prevent some disputes from reaching the stage where Chapter VII action was required. Chapter VI had been stretched to accommodate the emergence of peacekeeping, a concept not mentioned in the Charter but one which had been a valuable tool in dispute settlement.<sup>391</sup> The representative of the Syrian Arab Republic, however, pointed out that there was not "a clear dividing line between the two chapters". In his opinion, the Council should take into consideration, when deciding its course of action, the "feelings and reactions of the peoples of the world", for whom the use of Chapter VII was "not in their interest". He therefore concurred with the opinion of many legal experts who favoured diplomatic instruments and solutions based on peaceful negotiations and the provisions of Article 33 and other articles of the Charter that referred to peaceful solutions.<sup>392</sup> The representative of Pakistan, echoing Mr. Marker's earlier statement, encouraged the Council to use its mandatory enforcement authority under Chapter VII to persuade parties to disputes to engage in the processes

for the peaceful settlement of disputes envisaged under Chapter VI.<sup>393</sup> Focusing on the various tools available to the Council under Chapter VI, the representative of Bulgaria expressed the view that although some diversification in the use of those instruments was necessary, "a spirit of pragmatism and common sense" should always prevail in the face of the very varied situations the Council dealt with.<sup>394</sup>

### **Obligation of Member States to settle their disputes by peaceful means in the light of Article 33 (1) and recommendations for the settlement of disputes by the Security Council, in the light of Article 33 (2)**

Article 33 stipulates the obligation of Member States to settle their disputes by peaceful means. Article 33 (1) gives primary responsibility in resolving a dispute to the parties concerned. Article 33 (2) gives the Security Council discretionary power to request the parties to settle their disputes by peaceful means, when it deems necessary. In the cases below, Article 33 was explicitly invoked by Council members mainly during debates on thematic issues related to conflict prevention and the pacific settlement of disputes. In one instance, an explicit reference to Article 33 was made by the representative of Pakistan in a letter dated 22 May 2002 addressed to the President of the Security Council in connection with the situation between India and Pakistan with respect to the Kashmir dispute.<sup>395</sup> Included with the case studies in this section is one relating to the Central African region and another that concerns the situation in the Great Lakes region, exemplifying the Council's, increasing focus on the regional and subregional dimension of the peaceful settlement of disputes.

<sup>387</sup> S/PV.4753, p. 10 (Mexico); p. 14 (China); p. 17 (United States); p. 18 (Chile); p. 21 (France); and p. 22 (Angola); S/PV.4753 (Resumption 1), p. 2 (Greece, on behalf of the European Union and associated countries); and p. 13 (Ethiopia).

<sup>388</sup> S/PV.4753, p. 10 (Mexico); p. 12 (United Kingdom); p. 19 (Bulgaria); and p. 21 (France); S/PV.4753 (Resumption 1), p. 5 (India).

<sup>389</sup> S/PV.4753, p. 15 (Germany); and p. 17 (United States).

<sup>390</sup> *Ibid.*, p. 14 (China); p. 14 (Germany); and p. 17 (United States).

<sup>391</sup> *Ibid.*, p. 17.

<sup>392</sup> *Ibid.*, pp. 24-25.

<sup>393</sup> *Ibid.*, p. 28.

<sup>394</sup> *Ibid.*, p. 19.

<sup>395</sup> S/2002/571. Similar letters bringing to the attention of the Security Council the situation between India and Pakistan in connection with the Jammu and Kashmir dispute were addressed to the President of the Security Council and the Secretary-General by the representative of Mali, as Chairman of the Organization of the Islamic Conference (OIC) Contact Group on Jammu and Kashmir (S/2002/657), and the representative of the Libyan Arab Jamahiriya (S/2002/13).



### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting of the Council, on 20 July 2000, a few speakers explicitly highlighted the significance of the provisions enshrined in Article 33, and how they could play an important role in settling many disputes and preventing armed conflicts. The representative of Namibia called for the existing tools of Article 33 to be “further strengthened and completed”.<sup>396</sup> The representative of Pakistan noted that, according to Article 33, parties to any dispute were required to use peaceful means for settlement and that the Security Council was empowered to call upon the parties to settle their disputes by such means. He also added that responsibility in that regard should not be evaded on the pretext that bilateral disputes should be resolved by the concerned parties alone, as all bilateral disputes, particularly those with implications for global peace and security, were by definition “international disputes”.<sup>397</sup>

### **The role of the Security Council in the pacific settlement of disputes**

At the Council’s 4753rd meeting, on 13 May 2003, several speakers, in their statements, drew attention to the provisions enshrined in Article 33 and to the importance of the available tools for the settlement of disputes, including negotiation, enquiry, mediation, conciliation, arbitration, resort to regional arrangements, judicial settlement and other peaceful means.<sup>398</sup> In that regard, the representative of India commented that the means provided for in Article 33 were not intended to be “exhaustive”, and that the reference to “other peaceful means of their choice” provided the parties with greater freedom of choice. He added that the Council was not to be bound by the list included in Article 33 (1) in its choice of procedures to assist parties in the settlement of disputes.<sup>399</sup> The representative of Spain highlighted that, in both Chapter VIII and Article 33 of the Charter, it was established that Member States should utilize existing regional organizations, among other means of peaceful

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<sup>396</sup> S/PV.4174, p. 19.

<sup>397</sup> S/PV.4174 (Resumption 1), p. 4.

<sup>398</sup> S/PV.4753, p. 12 (Spain); p. 18 (Chile); and p. 25 (Syrian Arab Republic); S/PV.4753 (Resumption 1), p. 2 (Greece, on behalf of the European Union and associated countries); and pp. 5-6 (India).

<sup>399</sup> S/PV.4753 (Resumption 1), p. 6.

settlement, and therefore encouraged the Security Council to promote measures undertaken at the regional level.<sup>400</sup>

### **Central African region**

At its 4871st meeting, on 24 November 2003, the Security Council discussed the interim report of the multidisciplinary assessment mission to the Central African subregion.<sup>401</sup> In its report, the mission pointed out a number of cross-border challenges, including ethnic tensions, refugee flows as well as cross-border movement of weapons, drugs and armed groups, which could be solved only through cooperation and an integrated, holistic subregional approach.

Introducing the report of the multidisciplinary assessment mission, the Assistant Secretary-General stressed, *inter alia*, the need for the United Nations to provide assistance to implement subregional policies to address the numerous cross-cutting challenges in the Central African region. Most speakers concurred with the report’s assessment concerning the primary challenges confronting the countries in Central Africa, and about the importance of a subregional approach to address the numerous cross-cutting challenges facing those countries. A number of speakers stressed the importance of strengthening existing subregional mechanisms and organizations, including the Economic Community of Central African States (ECCAS).<sup>402</sup> Moreover, several delegations welcomed the Secretary-General’s intention to appoint a Special Envoy for the region.<sup>403</sup> The representative of Cameroon deplored the omission from the report of a recommendation in line with the request, which he believed had been made by all, and not just most, Governments in Central Africa during the mission’s visit, for a permanent United Nations presence in the subregion.<sup>404</sup> The representative of France stated that the cross-border challenges confronting the countries in Central Africa made it necessary for the States of the region and the international community to coordinate appropriate

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<sup>400</sup> S/PV.4753, p.12.

<sup>401</sup> S/2003/1077.

<sup>402</sup> S/PV.4871, p. 4 (Cameron); p. 9 (Germany); p. 10 (Pakistan); p. 17 (Italy); and pp. 18-19 (Democratic Republic of the Congo).

<sup>403</sup> S/PV.4871, p. 7 (Guinea); p. 8 (China); p. 11 (Syrian Arab Republic); p. 14 (Russian Federation); and p. 25 (Chad).

<sup>404</sup> *Ibid.*, pp. 4-6.

responses. At the same time, France believed that the proposal to appoint a Special Envoy should be considered in the context of the international conference on the Great Lakes region.<sup>405</sup> The representative of Germany stated that it was difficult to see how a mandate for an additional special envoy for Central Africa could avoid overlapping with the mandate of the Special Representative for the Great Lakes Region. His delegation therefore preferred that the United Nations missions in the Central African subregion identify possible areas of cooperation aimed at effectively addressing cross-cutting issues.<sup>406</sup> The representative of Spain agreed with the report that it was preferable to make effective and coordinated use of existing structures in the region before considering the possibility of establishing new ones.<sup>407</sup> The representative of the United Kingdom recognized the need for a comprehensive and concerted approach to the issues of peace, security and development in Central Africa, and stressed the importance of making effective operational linkages across the United Nations system and, where relevant, across borders. He stated that an integrated and holistic subregional approach was required to complement national solutions, but cautioned against imposing templates on different kinds of problems.<sup>408</sup> The representative of the Russian Federation expressed concern that some African countries tended to appeal to the international community before fully exhausting national or regional possibilities. That applied to the “rather excessive approach for the establishment in Central Africa of a United Nations office”.<sup>409</sup> The representative of the United States, noting that the international conference on the Great Lakes region might incorporate a number of the elements laid out in the report of the multidisciplinary mission, recommended that the decision on naming a Special Envoy be deferred until after the issuance of the results and recommendations of that conference. Moreover, he expressed concern about adding yet another layer of bureaucracy to the United Nations structures in the Central African region.<sup>410</sup> The representative of Chile recommended heeding the concern of the Secretary-General regarding the proliferation of United Nations offices in the

region.<sup>411</sup> The representative of the Congo, speaking on behalf of the 11 member States of ECCAS, underlined that it was imperative to have a subregional, coordinated approach, and for the subregion to have a United Nations interlocutor with a regional perspective.<sup>412</sup> The representative of Equatorial Guinea stressed the special responsibility of the Council to address the crises in the region, and also expressed appreciation for the work of the United Nations Standing Advisory Committee on Security Questions in Central Africa. He underlined that despite recent positive developments, the countries of the region remained fragile, and he stressed the need for a permanent political United Nations presence with a subregional scope.<sup>413</sup> The Permanent Observer of the African Union, pointing to the abundance of subregional, regional and international organizations present in Central Africa, stressed the need to strengthen existing capacities, and hoped that a United Nations regional political presence could serve to enhance coordination among the various initiatives. As to what form the structure should take, he stated that the African Union relied on the flexibility shown by the countries in the subregion that were prepared to consider the issue further with the Special Envoy to be appointed by the Secretary-General. While supporting the request by the countries of the subregion, he emphasized that the form of coordination mattered less than its efficiency and effectiveness.<sup>414</sup> Finally, the Deputy Secretary-General for Political Affairs of ECCAS, noting the recent progress made towards consolidating peace and security in a number of countries in the region, argued that a new dynamic was under way in Central Africa and reiterated the call for a permanent United Nations regional office.<sup>415</sup>

#### **The situation in the Great Lakes region**

At the 4865th meeting, on 20 November 2003, the Security Council convened a meeting to discuss the preparations for an international conference on the Great Lakes region, following the presentation of a report of the Secretary-General.<sup>416</sup> In his report, the Secretary-General stressed that the Council’s call for

<sup>405</sup> Ibid., pp. 6-7.

<sup>406</sup> Ibid., p. 9.

<sup>407</sup> Ibid., p. 11.

<sup>408</sup> Ibid., pp. 12-13.

<sup>409</sup> Ibid., pp. 13-14.

<sup>410</sup> Ibid., p. 14.

<sup>411</sup> Ibid., p. 15.

<sup>412</sup> Ibid., pp. 18-21.

<sup>413</sup> Ibid., pp. 26-27.

<sup>414</sup> Ibid., pp. 27-28.

<sup>415</sup> Ibid., pp. 28-29.

<sup>416</sup> S/2003/1099.

an international conference on the Great Lakes region entailed the recognition of the fact that the internal problems in the region tended to spread because of the close social, economic and cultural links of the inhabitants of the entire region, which was why a regional approach was needed. The purpose of the conference, under United Nations and African Union partnership, was to begin a process to bring together the leaders of the countries of the Great Lakes region to reach an agreement on a set of principles and launch selected programmes to help end the cycle of conflict and ensure durable peace, democracy and development in the whole region. It would also establish a regional framework to facilitate the adoption of a stability, security and development pact. He noted that the conference was not a one-time event but a process consisting of several stages, and he urged the core countries to focus on the priorities of the conference in order to formulate concrete and feasible policies.<sup>417</sup>

At the meeting, most speakers strongly supported the conference, agreeing that a regional approach was essential to address the crisis affecting the Great Lakes region. They expressed hope that holding the conference would help consolidate the gains that had been made in the recent peace processes in the Democratic Republic of the Congo and Burundi. A number of speakers stressed that the conference would have to be judged on whether it produced concrete measures to ensure a safeguard against a future resurgence of violence, instability and criminality,<sup>418</sup> while others, emphasizing the need for sufficient financial support, called on donors to provide it in a timely manner.<sup>419</sup>

### **Recourse to investigation by the Security Council in the light of Article 34**

Article 34 of the Charter stipulates that the Security Council may investigate any dispute, or situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to

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<sup>417</sup> S/PV.4865, p. 3.

<sup>418</sup> *Ibid.*, p. 16 (France); p. 11 (Italy, on behalf of the European Union and associated countries); and p. 22 (Spain).

<sup>419</sup> *Ibid.*, p. 8 (United Republic of Tanzania); p. 17 (China); and p. 20 (Syrian Arab Republic).

endanger the maintenance of international peace and security. In the following instances, the Article was implicitly and/or explicitly invoked, mainly in connection with the prevention of armed conflict.

### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting of the Council, on 20 July 2000, the representative of China noted that the Security Council had taken some positive measures in regard to conflict prevention and peaceful resolution of conflicts, including the sending of fact-finding missions to areas of conflict. He further noted that setting up early warning systems or the sending of fact-finding or other special missions, which bear on the sovereignty of a State, should follow only after consent had been obtained from the countries or parties concerned.<sup>420</sup> The representative of Malaysia also called for more frequent use of fact-finding missions, either by the Secretary-General or by the Council itself.<sup>421</sup>

At the 4334th meeting, on 21 June 2001, the Council met to discuss the report of the Secretary-General on conflict prevention, which included a number of proposals to further enhance the capacity of the United Nations system for preventive action.<sup>422</sup> Introducing the report on behalf of the Secretary-General, the Deputy Secretary-General suggested that the Council could send fact-finding missions with multidisciplinary expert support to potential conflict areas, with the aim of working out comprehensive prevention strategies.<sup>423</sup> Several delegations supported the proposal of dispatching fact-finding missions to potential conflict areas.<sup>424</sup> The representative of the Russian Federation commented that such missions had already and repeatedly proven their necessity and “played an important role in the research for necessary solutions”.<sup>425</sup> The representative of Costa Rica, however, cautioned that the scope of such missions should not be exaggerated and that they would not be

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<sup>420</sup> S/PV.4174, p. 13.

<sup>421</sup> *Ibid.*, p. 16.

<sup>422</sup> S/2001/574.

<sup>423</sup> S/PV.4334, p. 3.

<sup>424</sup> S/PV.4334, p. 7 (Jamaica); p. 13 (Russian Federation); p. 20 (Ukraine); and p. 25 (Mauritius); S/PV.4334 (Resumption 1), p. 9 (Costa Rica); p. 10 (Japan); p. 17 (Malaysia); and p. 20 (South Africa).

<sup>425</sup> S/PV.4334, p. 13.

useful if they were “quick and superficial” and without expert members.<sup>426</sup> Similarly, the representative of Japan stressed that clear criteria for such missions must be established, that their terms of reference must be specified and their financing well clarified.<sup>427</sup> The representative of South Africa referred to the Secretary-General’s use of inter-agency task forces, and suggested that these could play a valuable role, complementary to that of the fact-finding missions of the Council. As a consequence, he added, consideration should be given to the harmonization of the two approaches.<sup>428</sup>

#### **Ensuring an effective role of the Security Council in the maintenance of international peace and security**

At the 4220th meeting of the Council, on 13 November 2000, the representative of Mali welcomed the Council’s initiative to more frequently deploy fact-finding missions to areas of tension as “a quick means of preventing crises”. At the same time, he acknowledged that conflict prevention measures should be taken in accordance with the principle of non-interference in the internal affairs of States.<sup>429</sup>

#### **The role of the Security Council in the pacific settlement of disputes**

At the 4753rd meeting of the Security Council, on 13 May 2003, the representative of Germany, referring to the different means available to the Council in addressing disputes, welcomed the Council’s practice of dispatching fact-finding missions to fragile situations and added that this instrument “could benefit from some intensification”. Furthermore, he emphasized that such “special missions” not only conveyed to the parties the clear message that a situation was under observation and a matter of concern to the Council, but also helped to “prepare for adequate solutions”.<sup>430</sup> The representative of Spain stated that the Council should make greater use of its prerogative under Article 34 and, in particular, of Council missions in conflict zones, which

would enable it to obtain “information first-hand while exerting pressure on the parties”.<sup>431</sup>

#### **Protection of civilians in armed conflict**

At the 4130th meeting of the Security Council, on 19 April 2000, the Secretary-General, in his remarks, referred to a number of recommendations contained in his first report to the Security Council on the protection of civilians in armed conflict.<sup>432</sup> Recalling the successful deployment of a mission to the Central African Republic, he welcomed the Security Council’s willingness to consider the future establishment of preventive missions, including the dispatch of monitors and fact-finding missions in cases when such deployments could make a difference between peaceful settlement of disputes and violent conflict.<sup>433</sup> The representative of Portugal, speaking on behalf of the European Union,<sup>434</sup> supported the views expressed by the Secretary-General and added that early deployment of preventive missions such as fact-finding missions should be considered whenever possible.<sup>435</sup> The representative of Egypt agreed that the Council could carry out certain actions, such as sending fact-finding missions to prevent conflicts and reach peaceful settlements, but noted that the consent of the State concerned was required, as those procedures “were in fact voluntary”.<sup>436</sup>

<sup>431</sup> *Ibid.*, p. 12.

<sup>432</sup> In his report dated 8 September 1999, the Secretary-General recommended that the Security Council consider the deployment, in certain cases, of a preventive peacekeeping operation, or of another preventive monitoring presence. He also recommended that the Council increase its use of relevant provisions in the Charter, such as Articles 34 to 36, by investigating disputes at an early stage, inviting Member States to bring disputes to the Security Council’s attention and recommending appropriate procedures for dealing with disputes, and strengthen the relevance of Article 99 of the Charter by taking concrete action in response to threats against peace and security as these were identified by the Secretariat (see S/1999/957, paras. 12 and 13).

<sup>433</sup> S/PV.4130 and Corr.1, p. 3.

<sup>434</sup> Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia; Cyprus and Malta; and Iceland, Liechtenstein and Norway.

<sup>435</sup> S/PV.4130 (Resumption 1) and Corr.1, p. 3.

<sup>436</sup> *Ibid.*, p. 13.

<sup>426</sup> S/PV.4334 (Resumption 1), p. 9.

<sup>427</sup> *Ibid.*, p. 10.

<sup>428</sup> *Ibid.*, p. 20.

<sup>429</sup> S/PV.4220, p. 16.

<sup>430</sup> S/PV.4753, p. 15.

At its 4312th meeting, on 23 April 2001, the Council met to discuss the second report of the Secretary-General on the above-mentioned topic.<sup>437</sup> In her statement, the Deputy Secretary-General advocated for more frequent use of fact-finding missions to conflict areas with a view to identifying the specific requirements for humanitarian assistance.<sup>438</sup> Subsequently, the United Nations High Commissioner for Human Rights commented that “establishing the facts” could play a crucial part in the protection of civilians in armed conflict.<sup>439</sup> Referring to a number of instances in which human rights fact-finding missions had taken place, including in relation to Afghanistan, East Timor, Sierra Leone and Kosovo, the Commissioner further added that the reports of those missions should be available to the Security Council.<sup>440</sup> Subsequently, in the debate, several speakers endorsed the Secretary-General’s recommendation regarding more frequent use of fact-finding missions to conflict areas with a focus on humanitarian assistance.<sup>441</sup> The representative of Ukraine stated that it was crucial for Council members to have a regular exchange of views with other organs of the United Nations system, such as the Economic and Social Council. He stated that there was “ample room” for the latter not only to participate in such missions, but also to lead them.<sup>442</sup> The representative of the United Kingdom commented that the Security Council should engage the parties in conflict and undertake fact-finding missions, and expressed the opinion that “in practice, these actions are those which are most likely to be taken up by actors that are represented in the field”. As a consequence, he “noted with interest” the proposal by Ukraine that the Economic and Social Council join in fact-finding missions, and called for clear arrangements for coordination with the other United Nations bodies.<sup>443</sup> The representative of Indonesia cautioned that the

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<sup>437</sup> S/PV.4312, pp. 3-4.

<sup>438</sup> S/2001/331, p. 6.

<sup>439</sup> S/PV.4312, p. 5.

<sup>440</sup> *Ibid.*

<sup>441</sup> S/PV.4312, p.10 (Ukraine); p. 11 (Tunisia); and p. 24 (Ireland); S/PV.4312 (Resumption 1) and Corr.1, p. 5 (Sweden, on behalf of the European Union and associated countries); and p. 21 (Pakistan).

<sup>442</sup> S/PV.4312, p. 10.

<sup>443</sup> *Ibid.*, p. 32.

deployment of fact-finding missions should be based on the consent of the countries concerned.<sup>444</sup>

### **Women and peace and security**

At the 4208th meeting of the Security Council, on 24 and 25 October 2000, the representative of the United States, supported by the representative of New Zealand, stated that the presence of women in all phases of peacekeeping and peacebuilding missions, including fact-finding missions, should be “visible and consistent”.<sup>445</sup> The representative of Indonesia suggested that the Council include gender issues in the terms of reference of fact-finding missions.<sup>446</sup> Similarly, the representative of Namibia suggested that fact-finding missions should include “a senior gender expert” so that the Council could gain a full appreciation of the gender dimension of ongoing or potential conflicts.<sup>447</sup>

### **Children and armed conflict**

At the 4684th meeting of the Security Council, on 14 January 2003, the representative of Costa Rica noted that there was a need for fact-finding missions in cases of accusations of serious violations of the rights of the child. Those missions, he added, could also offer early warning in the event of a situation that might potentially threaten the security of children.<sup>448</sup>

### **Referral of disputes to the Security Council in the light of Article 35**

Article 35 (1) and (2) grants Member States and non-member States the right to bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council. Explicit references to that prerogative were made in the following instance.<sup>449</sup>

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<sup>444</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 33.

<sup>445</sup> S/PV.4208, p. 13 (United States); S/PV.4208 (Resumption 1), p. 21 (New Zealand).

<sup>446</sup> S/PV.4208 (Resumption 1), p. 25.

<sup>447</sup> S/PV.4208 (Resumption 2), p. 13.

<sup>448</sup> S/PV.4684 (Resumption 1), p. 24.

<sup>449</sup> At the 4720th meeting of the Council, in connection with the agenda item “Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa”, the representative of Liberia referred to a formal complaint presented recently by his

### **The role of the Security Council in the pacific settlement of disputes**

At the 4753rd meeting of the Security Council, on 13 May 2003, in connection with the use of Article 35 by Member States, the representative of Greece, speaking on behalf of the European Union and associated countries, underlined the obligation of States to refer to the Council a dispute to which they were parties if they failed to reach an early solution by any of the means indicated in Article 33 of the Charter.<sup>450</sup> Recalling the importance of diversifying the tools at the Council's disposal under Chapter VI, the representative of Bulgaria emphasized the importance of Article 35 of the Charter, which enables States to have greater recourse to the Council.<sup>451</sup>

### **Referral of legal disputes in the light of Article 36 (3)**

Article 36 (3) of the Charter stipulates that the Council, in making recommendations under Article 36, "should take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court".

In the following instances, Member States debated the question of whether the Council could make more frequent recourse to the provisions of Article 36.

### **The role of the Security Council in the peaceful settlement of disputes**

At the 4753rd meeting of the Council, on 13 May 2003, speakers discussed, *inter alia*, the role of the International Court of Justice and the International Tribunal for the Law of the Sea in the context of the pacific settlement of disputes. During the debate, many delegations emphasized the importance of those judicial mechanisms in the prevention and resolution of legal disputes.

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country to the Security Council, in line with Article 35 (1) of the Charter, which documented "Guinea's involvement in fuelling the war in Liberia" (see S/PV.4720, p. 19).

<sup>450</sup> S/PV.4753 (Resumption 1), p. 2.

<sup>451</sup> S/PV.4753, p. 20.

With regard to the role of the International Court of Justice, the Secretary-General, in his statement, recalled the recommendations included in his report dated 7 June 2001,<sup>452</sup> including the one pertaining to earlier and more frequent resort to the Court by Member States to solve their disputes.<sup>453</sup> Similarly, Mr. Nabil Elaraby, judge of the Court, invited the Council to make a better use of the mechanisms provided by the Charter and involving the Court. Emphasizing that the Council could consider a "strict application" of the provisions of Article 36 (3), he recalled that the provision had been used only once, in the Corfu Channel case in 1947. He also added that the Council could consider requesting, whenever necessary, an advisory opinion from the Court to clarify legal questions, as occurred in 1970 with respect to Namibia. He further underlined the importance of increasing the acceptance by States of the compulsory jurisdiction of the Court, recalling that that recommendation was contained in the report entitled "Agenda for peace",<sup>454</sup> together with two other proposals aimed at enhancing the role of the Court: that when the submission of a dispute to the full Court was not practical, its Chambers could be used; and that authority should be conferred on the Secretary-General to request advisory opinions from the Court.<sup>455</sup>

During the debate, several speakers echoed the recommendations of the Secretary-General by drawing attention to Article 36 (3) in the Charter and encouraging the Council to make more use of the Article's provisions.<sup>456</sup> In that connection, the representative of Mexico commented that it was essential for States that had not yet done so to make a declaration recognizing the jurisdiction of the Court with respect to any other State accepting the same obligation.<sup>457</sup> The representative of Cameroon stated that, to preserve the credibility of the machinery established in the Charter, the Security Council and the United Nations should adopt measures to compel

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<sup>452</sup> S/2001/574 and Corr.1, para. 50.

<sup>453</sup> S/PV.4753, p. 3.

<sup>454</sup> S/24111.

<sup>455</sup> S/PV.4753, pp. 8-9.

<sup>456</sup> *Ibid.*, p. 10 (Mexico); p. 13 (United Kingdom); p. 16 (Germany); p. 18 (Chile); p. 21 (Guinea); pp. 24-25 (Syrian Arab Republic); and pp. 27-28 (Cameroon); S/PV.4753 (Resumption 1), p. 2 (Greece on behalf of the European Union and associated countries); and p. 4 (Honduras).

<sup>457</sup> S/PV.4753, p. 10.

States, if necessary and whenever circumstances so dictated, to implement forthwith and without equivocation the decisions established for peaceful procedures, especially decisions of the International Court of Justice.<sup>458</sup> Similarly, the representative of Honduras noted that it was also a responsibility of the Security Council to make sure that the sentences from the Court were carried out.<sup>459</sup> The representative of Pakistan underlined, *inter alia*, that particular consideration should be given to the suggestion of more frequently requesting advisory opinions of the Court.<sup>460</sup>

With regard to the International Tribunal for the Law of the Sea, during the debate, a few speakers mentioned the importance of such a judicial mechanism in the context of the pacific settlement of disputes.<sup>461</sup> More specifically, the representative of Mexico stated that the Tribunal was becoming increasingly important in the pacific settlement of conflicts pertaining to the United Nations Convention on the Law of the Sea, and in general in matters regarding ocean affairs.<sup>462</sup> The representative of Greece, speaking on behalf of the European Union and associated countries, expressed the view that early and more frequent resort to the International Tribunal for the Law of the Sea would greatly contribute to the maintenance of international peace and security and the promotion of the primacy of international law in international relations.<sup>463</sup>

#### **Role of the Security Council in the prevention of armed conflicts**

At its 4334th meeting, on 21 June 2001, the Council met to discuss the report of the Secretary-General on the prevention of armed conflict.<sup>464</sup> In his report, the Secretary-General made four recommendations regarding the role of the International Court of Justice, as follows: (a) Member States should resort to the Court earlier and more often to settle disputes; (b) Member States that had not yet done so should accept the general

jurisdiction of the Court; (c) Member States should adopt, when signing treaties, clauses providing for disputes to be referred to the Court; and (d) the General Assembly should authorize the Secretary-General and other United Nations organs to take advantage of the advisory competence of the Court, and other United Nations organs that already enjoyed such authorization should resort to the Court more frequently for advisory opinions.<sup>465</sup>

In the debate, several speakers supported the Secretary-General's call for a strengthening of the Court's role.<sup>466</sup> The representative of the United Kingdom supported the Secretary-General's first two recommendations and urged Members of the Organization that had not yet done so, to accept the compulsory jurisdiction of the Court.<sup>467</sup> The representative of the United States, supported by the representatives of Nigeria and Belarus, expressed the view that the United Nations system needed to improve cooperation and coordination, and that the Court had a contribution to make to this end.<sup>468</sup>

#### **Referrals by the Secretary-General in the light of Article 99**

Article 99 of the Charter empowers the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. In the discussions of the Council presented below, Member States generally welcomed the strengthening of the Secretary-General's prerogatives under Article 99, especially in connection with the prevention of armed conflicts and humanitarian crises, as well as the protection of civilians in armed conflict. In a number of instances, Article 99 was explicitly invoked by a Member State in communications addressed to the President of the Security Council and the Secretary-General. For example, in connection with the alleged enforcement of no-flight zones by United States and British aircraft, the representative of Iraq, by identical letters dated 2 December 2002 addressed to the

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<sup>458</sup> *Ibid.*, pp. 27-28.

<sup>459</sup> S/PV.4753 (Resumption 1), p. 4.

<sup>460</sup> S/PV.4753, p. 29.

<sup>461</sup> *Ibid.*, p. 11 (Mexico); and p. 16 (Germany); S/PV.4753 (Resumption 1), p. 2 (Greece, on behalf of the European Union and associated countries).

<sup>462</sup> S/PV.4753, p. 11.

<sup>463</sup> S/PV.4753 (Resumption 1), p. 2.

<sup>464</sup> S/2001/574 and Corr.1.

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<sup>465</sup> *Ibid.*, p. 14.

<sup>466</sup> S/PV.4334 (Resumption 1), p. 15 (Mexico); p. 19 (Nigeria); p. 22 (Iraq); and p. 28 (Permanent Observer of Palestine).

<sup>467</sup> S/PV.4334, p. 10.

<sup>468</sup> S/PV.4334, p. 8 (United States); S/PV.4334 (Resumption 1), p. 19 (Nigeria); and p. 25 (Belarus).

President of the Council and the Secretary-General, expressed his hope that, in accordance with the Secretary-General's responsibilities as specified in Article 99 of the Charter, the Secretary-General would draw the attention of the Security Council to that situation and request the Council to carry out its duties under Article 39 of the Charter.<sup>469</sup> Subsequently, in connection with the United States-led military action against Iraq, by two letters addressed to the Secretary-General dated 9 and 21 March 2003, respectively, the representative of Iraq appealed to the Secretary-General, under Article 99 of the Charter, to bring the new developments, posing a "threat to international peace and security", to the attention of the Security Council.<sup>470</sup>

#### **Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At the 4109th meeting of the Security Council, on 9 March 2000, speakers recognized the importance of timely consideration of humanitarian issues in preventing the escalation of conflicts and in maintaining international peace and security. In that regard, the representative of the Netherlands encouraged the Secretary-General to include humanitarian issues in his briefings to the Council and underlined that the Secretary-General's exercise of his prerogative under Article 99 was an indispensable means for ensuring that the Council could discharge its duties in cases where humanitarian crises endangered international peace and security.<sup>471</sup> The representative of Portugal, speaking on behalf of the European Union and associated countries, called upon the Secretary-General to resort more often to the prerogative given to him under Article 99. In that connection, he commented that it was indispensable to improve and use the capacity of the Secretariat to enable the Security Council to consider ways in which it might regularly monitor potential conflicts or massive violations of human rights and humanitarian law either through the use of existing mechanisms, such as the International Humanitarian Fact-Finding Commission,

<sup>469</sup> S/2002/1327. See also the following letters addressed to the Secretary-General in which the representative of Iraq explicitly invoked Article 99 of the Charter: S/2000/774, S/2000/776, S/2000/795, S/2000/820, S/2000/826, S/2000/848, and S/2001/559.

<sup>470</sup> S/2003/358 and S/2003/296.

<sup>471</sup> S/PV.4109, p. 17.

or by other means.<sup>472</sup> The representative of Norway supported previous speakers in urging the Secretary-General to make full use of Article 99 and also stated that such use would require the establishment of mechanisms for early warning to provide time and opportunity for effective preventive diplomacy and pre-emptive conflict mediation.<sup>473</sup>

#### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting of the Security Council, on 20 July 2000, many speakers underlined the critical role that the Secretary-General could play in making conflict prevention a more effective strategy.<sup>474</sup> In that respect, a number of representatives explicitly invoked Article 99 and emphasized the importance of the role of the Secretary-General in using this prerogative.<sup>475</sup> The representative of the United Kingdom, supported by the representative of Pakistan, commented that the Secretary-General needed to be given sufficient resources to make the early warning capacity of the Secretariat effective "in real life". He also noted that it was essential that the Secretariat be able to produce clear-sighted analysis, comprehensive and integrated planning and well-resourced implementation. Furthermore, he encouraged the Secretary-General to "act on his convictions" and when a situation merit the attention of the Council, to do so under his prerogatives under Article 99.<sup>476</sup> Similarly, the representative of France reminded the Council of the role of the Secretary-General in alerting the Security Council to certain situations in accordance with Article 99 of the Charter, and remarked that the Secretariat's early warning, reaction and analysis capabilities should be bolstered so that the Secretary-General could be able to better perform that task.<sup>477</sup> The representative of Pakistan stated that the Secretary-General should

<sup>472</sup> S/PV.4109 (Resumption 1), p. 3.

<sup>473</sup> *Ibid.* p. 6.

<sup>474</sup> S/PV.4174, p. 4 (United States); p. 6 (United Kingdom); p. 11 (the Netherlands); p. 14 (Tunisia); pp. 15-16 (Malaysia); and p. 27 (France, on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), pp. 7-8 (Brazil); and p. 11 (Indonesia).

<sup>475</sup> S/PV.4174, p. 13 (China); p. 14 (Tunisia); and p. 27 (France, on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), p. 5 (Pakistan); and p. 10 (Senegal).

<sup>476</sup> S/PV.4174, p. 6.

<sup>477</sup> *Ibid.*, p. 27.



play a more proactive role, as envisaged in Article 99, and not find himself inhibited by one party in a particular conflict situation.<sup>478</sup> Echoing that statement, the representative of Malaysia added that, in case of political sensitivities, it would be more appropriate for the Secretary-General to arrange informal exchanges of views. He added that the Council would benefit tremendously from timely and in-depth briefings by the Secretariat on potential conflict situations that would be brought to the attention of the Council by the Secretary-General by virtue of Article 99 of the Charter, which should be invoked more frequently than it had been in the past. Noting that the Secretary-General had been empowered to do so by the Charter, he pointed out that the latter should be encouraged to invoke this prerogative to give substance to the concept of conflict prevention.<sup>479</sup> Similarly, the representative of Ukraine believed that the Secretary-General played an essential role in conflict prevention in bringing to the attention of the Security Council any matter that might threaten international peace and security, in accordance with Article 99 of the Charter.<sup>480</sup> The representative of Tunisia stated that the role of the Secretary-General in conflict prevention was an essential one, which he should exercise in accordance with Article 99 of the Charter.<sup>481</sup> The representative of Brazil stated that, as a contribution to prevention, Article 99 of the Charter offered the Secretary-General a most valuable instrument for engaging the Council in preventive action and that the role played by the special representatives of the Secretary-General and by his good offices missions should also be underscored.<sup>482</sup>

At the 4334th meeting, on 21 June 2001, the Council met to consider the report of the Secretary-General dated 7 June 2001 on the prevention of armed conflicts.<sup>483</sup> In his report, the Secretary-General pointed out that he had had a role in the prevention of armed conflict since the earliest days of the Organization, through “quiet diplomacy” or “good offices of the Secretary-General”. The mandate for prevention was derived from Article 99 of the Charter of the United Nations, which provided that the

Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.<sup>484</sup> During the discussion, the representative of France reiterated that there was a need to strengthen the early warning, reaction and analysis capacities of the Secretariat so that the Secretary-General could be in a better position to perform his function according to Article 99.<sup>485</sup> The representative of Singapore and the representative of Sweden echoed that view, and the representative of France welcomed the Secretary-General’s intention to initiate a practice of providing periodic regional or subregional reports to the Security Council on threats to international peace and security.<sup>486</sup> The representative of Pakistan commented that, although under Article 99 the Secretary-General had a responsibility to bring to the notice of the Security Council any matter which might threaten international peace and security, this did not restrict the Secretary-General from using his good offices, fact-finding missions and personal envoys to prevent conflict.<sup>487</sup>

#### Protection of civilians in armed conflict

At its 4660th meeting, on 10 December 2002, the Council met to consider the latest report of the Secretary-General, dated 26 November 2002, on the protection of civilians in armed conflict.<sup>488</sup> In the report, the Secretary-General outlined a number of practical initiatives to heighten awareness of the need to protect civilians in the daily work of the United Nations,<sup>489</sup> inter alia, strengthening the relevance of Article 99 by taking concrete action in response to threats against peace and security identified by the Secretariat.<sup>490</sup> During the debate, the representative of Mexico referred to Article 99 and to the power conferred to the Secretary-General in assisting the Security Council in matters of protecting civilians in

<sup>478</sup> S/PV.4174 (Resumption 1), p. 5.

<sup>479</sup> S/PV.4174, p. 16.

<sup>480</sup> *Ibid.*, p.22.

<sup>481</sup> *Ibid.*, p. 14.

<sup>482</sup> S/PV.4174 (Resumption 1), p. 4.

<sup>483</sup> S/2001/574 and Corr.1.

<sup>484</sup> *Ibid.*, paras. 51-60.

<sup>485</sup> S/PV.4334, p. 17.

<sup>486</sup> *Ibid.*, p. 17 (France); and p. 22 (Singapore); S/PV.4334 (Resumption 1), p. 3 (Sweden, on behalf of the European Union and associated countries).

<sup>487</sup> *Ibid.*, p. 24.

<sup>488</sup> S/2002/1300.

<sup>489</sup> *Ibid.*, annex, “Roadmap for the protection of civilians”.

<sup>490</sup> This suggestion had already been made by the Secretary-General in his report dated 8 September 1999 on the protection of civilians in armed conflict (S/1999/957, para. 13; see also S/2002/1300, p.19).

armed conflict.<sup>491</sup> The representative of the United Kingdom, echoed by the representatives of Canada and Austria, encouraged the Secretary-General to make more use of his prerogative under Article 99 with the protection of civilians in mind.<sup>492</sup> Similarly, the representative of the Russian Federation remarked that the Secretary-General should act more promptly in conveying appropriate information to the Council about situations that could pose a threat to the maintenance of international peace and security, including instances of the deliberate denial of safe access by humanitarian personnel to civilians, as well as about other gross violations of the rights of civilians.<sup>493</sup>

#### **Children and armed conflict**

In his report of 19 July 2000 on children and armed conflict, the Secretary-General stated that it was his intention to pay particular attention to issues regarding the protection of children affected by armed conflict when preparing periodic reports on disputes that could threaten international peace and security, as mandated by Article 99.<sup>494</sup> On the basis of that recommendation, the Council, by resolution 1379 (2001) of 20 November 2001, requested the Secretary-General to attach to his reports to the Council a list of parties to armed conflicts that recruited or used children in violation of international obligations, in situations that could be brought to the attention of the Council in accordance with Article 99.<sup>495</sup> At the 4684th meeting of the Security Council, on 14 January 2003, the representative of Costa Rica remarked that it was essential for the Secretary-General to make full use of his powers under Article 99 by referring to the Council any situations of armed conflict in which young people under the age of 18 were recruited or used in fighting.<sup>496</sup>

<sup>491</sup> S/PV.4660, p. 12.

<sup>492</sup> S/PV.4660, p. 27 (United Kingdom); S/PV.4660 (Resumption 1), p. 9 (Canada); and p. 17 (Austria).

<sup>493</sup> *Ibid.*, p. 28.

<sup>494</sup> S/2000/712, p. 34.

<sup>495</sup> Resolution 1379 (2001), para. 16. For example, the Secretary-General provided the Security Council with a list of parties to armed conflicts recruiting or using children in violation of international obligations in his report of 26 November 2002 (S/2002/1299).

<sup>496</sup> S/PV.4684 (Resumption 1), p. 25.

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

At the 4515th meeting of the Council on 19 April 2002, the representative of Singapore, recalling the Secretary-General's call for the deployment of an impartial, robust and credible multinational force to the Middle East, remarked that the Secretary-General had fulfilled his Charter obligation under Article 99 by bringing the situation in the Middle East to the Council's attention.<sup>497</sup>

#### **Efforts of the Secretary-General for the peaceful settlement of disputes in the light of Article 33**

##### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting of the Security Council, on 20 July 2000, many speakers expressed appreciation for the analysis offered by the Secretary-General on conflict prevention strategies, and a number of delegations underlined the critical role that he had to play in order for prevention to be an effective strategy. They reiterated such previously identified conflict-prevention mechanisms as early warning systems and coordination within the United Nations system, and stressed that the Secretary-General, directly or through his special envoys, must enjoy both the authority and the resources to take action to prevent conflicts or their re-emergence.<sup>498</sup> The representative of the United States stated that a possible means of strengthening the United Nations conflict-prevention and early warning capacity was to consider reinforcing the roles of the Special Representatives of the Secretary-General, in particular their abilities to identify hot spots and intervene early.<sup>499</sup> In addition, the representative of the Russian Federation attached paramount importance to improving the means of preventing armed conflicts such as early warning systems, using *inter alia* the

<sup>497</sup> S/PV.4515 (Resumption 1), p. 14.

<sup>498</sup> S/PV.4174, p. 5 (United States); p. 6 (United Kingdom); p. 12 (the Netherlands); p. 14 (Tunisia); p. 16 (Malaysia); p. 18 (Namibia); p. 22 (Ukraine); and p. 27 (France, speaking on behalf of the European Union and associated countries); S/PV.4174 (Resumption 1), p. 4 (Brazil); p. 11 (Indonesia); and p. 14 (United Republic of Tanzania).

<sup>499</sup> S/PV.4174, p. 5.

potential of the Secretary-General.<sup>500</sup> The representative of Malaysia noted that truly preventive action or preventive diplomacy would involve the dispatch of a mission to a potential area of conflict that had not erupted and which resulted in averting the conflict. He added that such missions would more appropriately lie in the realm of preventive diplomacy, as opposed to preventive action, and might be best handled by the Secretary-General or his emissary in the context of his good offices or by individual Member States that were prepared to undertake such quiet and sensitive diplomacy.<sup>501</sup> The representative of Ukraine supported the Secretary-General's strategies for conflict prevention, involving the use of all available instruments, including confidence-building, early warning, fact-finding, good offices, mediation, citizen diplomacy measures, the naming of special representatives and the sending of envoys.<sup>502</sup> In addition, the representatives of Tunisia and Brazil underscored the role played by the special representatives of the Secretary-General and by his good offices missions in the prevention of armed conflicts.<sup>503</sup>

At the 4334th meeting of the Security Council, on 21 June 2001, the Council met to consider the report of the Secretary-General dated 7 June 2001 on the prevention of armed conflicts.<sup>504</sup> In his report, the Secretary-General stressed that preventive diplomacy was an important part of his responsibilities, pursued through persuasion, confidence-building and information-sharing to find solutions to difficult problems at a very early stage. He saw the increasing demand for his engagement in this type of preventive action as recognition that the Secretary-General could do much quietly and discreetly outside the limelight, even though the results might not always be visible or easily assessed. He therefore intended to enhance in four ways, with the support of Member States, his traditional preventive role: first, by increasing the use of United Nations interdisciplinary fact-finding and confidence-building missions to volatile regions; second, by developing regional prevention strategies with regional partners and appropriate United Nations

organs and agencies; third, by establishing an informal network of eminent persons for conflict prevention; and fourth, by improving the capacity and resource base for preventive action in the Secretariat.<sup>505</sup> Several speakers voiced their support for an enhancement of the role of the Secretary-General in conflict prevention, as proposed in the report.<sup>506</sup> The representative of Ukraine supported the proposals of the Secretary-General, and highlighted the idea of identifying eminent persons to serve as an informal network for advice and action in support of the Secretary-General's efforts to prevent and resolve armed conflicts.<sup>507</sup> The representative of Singapore commended the recent efforts of the Secretary-General to play a more active role in conflict prevention and underscored the need to strengthen the Secretariat's early warning analysis capacities. The Secretary-General's visit to the Middle East and active role in the Middle East process, he added, was the most recent contribution he had made to the ongoing efforts to achieve a just and lasting solution in the Middle East.<sup>508</sup> The representative of Iraq also supported the Secretary-General's recommendations, and encouraged the Council to support his initiatives and refrain from any action that could cause him to fail in his task.<sup>509</sup> The representative of Pakistan commented that, although under Article 99 the Secretary-General had a responsibility to bring to the notice of the Council any matter which may threaten international peace and security, this did not restrict the Secretary-General from using his good offices, fact-finding missions and personal envoys to prevent conflict.<sup>510</sup>

#### **The role of the Security Council in the pacific settlement of disputes**

At the 4753rd meeting of the Council, on 13 May 2003, the Secretary-General recalled that, in recent years, the Council had increasingly requested him to use his good offices and appoint special representatives and envoys, as well as to deploy fact-finding missions to the field.<sup>511</sup> Several speakers expressed support for

<sup>500</sup> Ibid., p. 11.

<sup>501</sup> Ibid., p. 16.

<sup>502</sup> Ibid., p. 22.

<sup>503</sup> S/PV.4174, p. 14 (Tunisia); S/PV.4174 (Resumption 1), p. 8 (Brazil).

<sup>504</sup> S/2001/574 and Corr.1.

<sup>505</sup> Ibid., pp. 14-16.

<sup>506</sup> S/PV.4334, p. 7 (Jamaica); p. 9 (United States); p. 17 (France); and p. 22 (Singapore); S/PV.4334 (Resumption 1), p. 10 (Japan); and p. 13 (Egypt).

<sup>507</sup> S/PV.4334., pp. 20-21.

<sup>508</sup> Ibid., p. 22.

<sup>509</sup> S/PV.4334 (Resumption 1), p. 21.

<sup>510</sup> Ibid., p. 24.

<sup>511</sup> S/PV.4753, pp. 2-3.

the efforts of the Secretary-General for the pacific settlement of disputes through his good offices and mediation.<sup>512</sup> The representative of Mexico stated that the post of representative of the Secretary-General had become an effective and very powerful tool in promoting the pacific settlement of disputes.<sup>513</sup> Echoing that statement, the representative of the United States noted that a very significant contribution

to the Secretary-General's good offices role had been through his appointment of special representatives, who remained on the ground to work with the involved parties to find and implement peaceful solutions. He added that "strong, capable and experienced" special representatives could provide an extremely important link between peacemaking, peacekeeping and peacebuilding as a country moved from conflict to ceasefire and, then, reconstruction.<sup>514</sup>

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<sup>512</sup> S/PV.4753, p. 13 (United Kingdom); p. 15 (Germany); p. 17 (United States); pp. 19-20 (Bulgaria); p. 21 (France); and p. 29 (Pakistan); S/PV.4753 (Resumption 1), p. 3 (Greece, on behalf of the European Union and associated countries); and p. 14 (Ethiopia).

<sup>513</sup> S/PV.4753, p. 11.

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<sup>514</sup> Ibid., p. 17.



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## **Chapter XI**

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

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## **Introductory note**

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

During the period under review, the Council invoked Chapter VII of the Charter in an increased number of its decisions. While most of the decisions related to Afghanistan, Iraq and Kuwait, and to acts of international terrorism, the Council also adopted measures under Chapter VII of the Charter in connection with Angola, Côte d'Ivoire, the Democratic Republic of the Congo, East Timor, Eritrea and Ethiopia, Liberia, Sierra Leone, Somalia and the former Yugoslav Republic of Macedonia.

The chapter is divided into nine parts, focusing 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. Given the increase in the Council's practice under Chapter VII during the period under review, and to give due focus to the key elements that arose in its decisions or deliberations, individual Articles of the Charter have been dealt with in separate parts of the chapter. Thus parts I to IV of this chapter focus on the practice of the Council in accordance with Articles 39 to 42, while part V focuses on Articles 43 to 47. Parts VI and VII address, respectively, the obligations of Member States under Articles 48 and 49, and parts VIII and IX deal, respectively, with the practice of the Council with respect to Articles 50 and 51. Further, each part contains a section that focuses on the decisions of the Council and a section that highlights relevant excerpts of the Council's deliberations, illustrating the Council's practice with respect to the Article(s) considered. Each section treats the different aspects of the Council's consideration of the Article concerned, under different subheadings.

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## Part I

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

#### Article 39

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

#### Note

During the period under review, the Council did not explicitly invoke Article 39 in any of its decisions. The Council, however, did adopt several resolutions determining, or expressing concern, at the “existence of threats to regional and/or international peace and security” in connection with Afghanistan, Eritrea and Ethiopia, Iraq and Kuwait, and Somalia and with acts of international terrorism. The “continuance of a threat to international peace and security” was determined in connection with the situation in Bosnia and Herzegovina. In all of the above-mentioned cases, the Council adopted measures under Chapter VII of the Charter. In several other instances, in connection with Angola, Côte d’Ivoire, the Democratic Republic of the Congo, Liberia, Sierra Leone and the former Yugoslav Republic of Macedonia, the Council determined “new or continuing threats to international peace and security in the region”.

In connection with its consideration of thematic issues, the Council also identified generic threats to peace and security. In a number of decisions, the Council recognized and expressed concern at a wide range of non-traditional threats that might constitute a threat to international peace and security, such as the deliberate targeting of civilian populations, including children, in armed conflicts; the widespread violations of international humanitarian and human rights law in situations of armed conflict; and the HIV/AIDS pandemic. The Council also expressed its concern over the threat posed by the proliferation of small arms, light weapons and mercenary activities in areas of conflict.

Several issues regarding the interpretation of Article 39 and the determination of threats to the peace

arose during the Council’s debates, mainly focusing on the threats constituted by the situations in Afghanistan and Iraq. Substantial discussion also emerged over non-traditional concepts of threats to the peace.

Section A outlines the decisions of the Council in which determinations were made regarding the existence or continuance of a threat to the peace. Section B reflects the constitutional discussion in the meetings of the Council arising in connection with the adoption of some of these resolutions.

#### A. Decisions of the Security Council relating to Article 39

##### Africa

###### The situation in Angola

By resolution 1295 (2000) of 18 April 2000, the Council determined that the continuing conflict in Angola constituted “a threat to international peace and security in the region”.<sup>1</sup>

###### The situation in Côte d’Ivoire

By resolution 1464 (2003) of 4 February 2003, the Council noted the existence of a challenge to the stability of Côte d’Ivoire and determined that threats to stability in Côte d’Ivoire constituted “a threat to international peace and security in the region”.<sup>2</sup>

###### The situation concerning the Democratic Republic of the Congo

By resolution 1291 (2000) of 24 February 2000, the Council noted with concern the illegal exploitation

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<sup>1</sup> Resolution 1295 (2000), sect. A., first preambular paragraph. The Council reaffirmed that the situation in Angola constituted a threat to international peace and security in the region by resolutions 1336 (2001), 1348 (2001), 1374 (2001) and 1404 (2002).

<sup>2</sup> Resolution 1464 (2003), seventh preambular paragraph. By subsequent resolutions, the Council reiterated that the situation in Côte d’Ivoire constituted a threat to international peace and security in the region. See resolutions 1479 (2003), ninth preambular paragraph, and 1514 (2003), eleventh preambular paragraph.

of natural resources in the Democratic Republic of the Congo and the potential consequences of those actions on the conflict, and reiterated its call for the withdrawal of foreign forces. It therefore determined that the situation in the Democratic Republic of the Congo constituted “a threat to international peace and security in the region”.<sup>3</sup> By resolution 1304 (2000) of 15 June 2000, the Council expressed its deep concern and outrage at renewed fighting between Ugandan and Rwandan forces in the Democratic Republic of the Congo.<sup>4</sup> By that and a number of subsequent resolutions, the Council determined that the situation in the Democratic Republic of the Congo continued to constitute a threat to international peace and security in the region.<sup>5</sup>

By resolution 1484 (2003) of 30 May 2003, the Council determined that the situation in the Ituri region and in Bunia in particular constituted a threat to the peace process in the Democratic Republic of the Congo and “to peace and security in the Great Lakes region”.<sup>6</sup>

#### **The situation between Eritrea and Ethiopia**

By resolution 1297 (2000) of 12 May 2000, following the outbreak of renewed fighting between Eritrea and Ethiopia, the Council noted that the situation between the two countries constituted “a threat to peace and security” and stressed that renewed hostilities constituted “an even greater threat to the stability, security and economic development of the subregion”.<sup>7</sup>

By resolution 1298 (2000) of 17 May 2000, following the continuation of fighting between Eritrea and Ethiopia, the Council deplored the loss of human lives and regretted the diversion of resources to the conflict and its effects on the regional food crisis and

general humanitarian situation of the civilian populations of the two States. It stressed that the hostilities constituted “an increasing threat to the stability, security and economic development of the subregion”, and determined that the situation constituted “a threat to regional peace and security”.<sup>8</sup>

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

In a statement by the President dated 13 December 2002, the Council expressed its concern at the situation in Liberia and the threat it constituted to “international peace and security in the region”, as a result of the activities of the Government of Liberia and the continuing internal conflict in the country. The Council noted that the failure of the Government of Liberia, other States and other non-State actors to respect the Council’s measures threatened the peace process in Sierra Leone and the stability of the entire West African region.<sup>9</sup>

By resolution 1478 (2003) of 6 May 2003, the Council expressed its serious concern at the evidence that the Government of Liberia continued to breach the measures imposed by the Council, particularly through the acquisition of arms. The Council determined that the active support provided by the Government of Liberia to armed rebel groups in the region, including to rebels in Côte d’Ivoire and former combatants of the Revolutionary United Front (RUF) who continued to destabilize the region, constituted “a threat to international peace and security in the region”.<sup>10</sup>

By resolutions 1497 (2003) of 1 August 2003 and 1509 (2003) of 19 September 2003, the Council determined that the situation in Liberia constituted “a threat to international peace and security”, to “stability in West Africa” and “to the peace process for Liberia”.<sup>11</sup>

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<sup>3</sup> Resolution 1291 (2000), nineteenth preambular paragraph.

<sup>4</sup> Resolution 1304 (2000), seventeenth preambular paragraph.

<sup>5</sup> Resolutions 1332 (2000), 1341 (2001), 1355 (2001), 1376 (2001), 1399 (2002), 1417 (2002), 1457 (2003) and 1468 (2003).

<sup>6</sup> Resolution 1484 (2003), eighth preambular paragraph. By its subsequent resolutions 1493 (2003) and 1501 (2003), the Council reiterated that the situation in the Democratic Republic of the Congo continued to constitute “a threat to international peace and security in the region”.

<sup>7</sup> Resolution 1297 (2000), ninth and tenth preambular paragraphs.

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<sup>8</sup> Resolution 1298 (2000), twelfth and thirteenth preambular paragraphs. In a subsequent statement by the President dated 15 May 2001 (S/PRST/2001/14), Council members expressed their intent to take appropriate measures if the situation again threatened regional peace and security, and urged the parties to work to achieve stability in the Horn of Africa.

<sup>9</sup> S/PRST/2002/36, second paragraph.

<sup>10</sup> Resolution 1478 (2003), thirteenth preambular paragraph.

<sup>11</sup> Resolutions 1497 (2003), eighth preambular paragraph, and 1509 (2003), twenty-first preambular paragraph.

By resolution 1521 (2003) of 22 December 2003, the Council determined that the proliferation of arms and armed non-State actors, including mercenaries, in the subregion continued to constitute “a threat to international peace and security in West Africa, in particular to the peace process in Liberia”.<sup>12</sup>

#### **The situation in Sierra Leone**

By resolution 1289 (2000) of 7 February 2000, although noting the progress being made towards settling the conflict in Sierra Leone, the Council determined that the situation in the country continued to constitute “a threat to international peace and security in the region”.<sup>13</sup>

By resolution 1343 (2001) of 7 March 2001, the Council determined that the active support provided by the Government of Liberia to armed rebel groups in neighbouring countries, in particular its support for RUF in Sierra Leone, constituted “a threat to international peace and security in the region”.<sup>14</sup>

By resolution 1446 (2002) of 4 December 2002, the Council noted with concern that the situation in Liberia remained “a threat to security in Sierra Leone, especially the diamond-mining areas, and to other countries in the region” and reaffirmed that “the situation in the region continued to constitute a threat to international peace and security in the region”.<sup>15</sup>

<sup>12</sup> Resolution 1521 (2003), eighth preambular paragraph.

<sup>13</sup> Resolution 1289 (2000), seventh preambular paragraph. By a number of subsequent resolutions, the Council reaffirmed its determination that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region. See resolutions 1306 (2000), 1315 (2000), 1385 (2001), 1389 (2002), and 1400 (2002). In a statement by the President dated 3 November 2000 (S/PRST/2000/31), Council members expressed their concern at the fragile situation in Sierra Leone and the related instability in the wider subregion. They condemned the continued cross-border attacks along the border area of Guinea, Liberia and Sierra Leone, and stressed that only through a comprehensive regional approach could security and stability be restored.

<sup>14</sup> Resolution 1343 (2001), ninth preambular paragraph. The Council reaffirmed this determination in resolution 1408 (2002), eleventh preambular paragraph.

<sup>15</sup> Resolution 1446 (2002), ninth preambular paragraph. In a statement by the President dated 13 December 2002, in connection with the situation in Liberia (S/PRST/2002/836, second paragraph), the Council

#### **The situation in Somalia**

By resolution 1474 (2003) of 8 April 2003, noting with serious concern that the continued flow of weapons and ammunition supplies to Somalia from other countries was “undermining peace and security and the political efforts for national reconciliation in Somalia”, the Council determined that the situation in the country constituted “a threat to international peace and security in the region”.<sup>16</sup>

#### **Asia**

##### **The situation in Afghanistan**

By a statement of the President dated 7 April 2000,<sup>17</sup> Council members reiterated their grave concern at the continuing Afghan conflict as “a serious and growing threat to regional and international peace and security”.<sup>18</sup> They condemned the use of the Afghan territory for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed their conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>19</sup> They further condemned attacks and planned attacks by terrorists affiliated with Osama bin Laden, which constituted “a continuing threat to the international community”.<sup>20</sup>

By resolution 1333 (2000) of 19 December 2000, the Council reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.<sup>21</sup> It determined that the failure of the Taliban authorities in Afghanistan to respond to the demands of the Council constituted “a threat to international peace and security”.<sup>22</sup>

reiterated that the failure of the Government of Liberia, other States and other non-State actors to respect the Council’s measures threatened the peace process in Sierra Leone and the stability of the entire West African region.

<sup>16</sup> Resolution 1474 (2003), fifth and seventh preambular paragraphs. This determination was reiterated by resolution 1519 (2003).

<sup>17</sup> S/PRST/2000/12.

<sup>18</sup> *Ibid.*, second paragraph.

<sup>19</sup> *Ibid.*, thirteenth paragraph.

<sup>20</sup> *Ibid.*, fourteenth paragraph.

<sup>21</sup> Resolution 1333 (2000), eighth preambular paragraph.

<sup>22</sup> Resolution 1333 (2000), fifteenth preambular paragraph. By a number of subsequent resolutions, the Council reaffirmed its determination that the situation in

### **The situation in Timor-Leste<sup>23</sup>**

By resolution 1410 (2002) of 17 May 2002, the Council reaffirmed “its previous resolutions on the situation in East Timor, in particular resolution 1272 (1999) of 25 October 1999”, by which it determined that the continuing situation in East Timor constituted a threat to peace and security.<sup>24</sup> The Council also noted the “existence of challenges to the short- and long-term security and stability of an independent East Timor” and determined that ensuring the security of the boundaries of East Timor and preserving its internal and external stability were necessary “for the maintenance of peace and security in the region”.<sup>25</sup>

## **Europe**

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

By resolution 1305 (2000) of 21 June 2000, while reaffirming its commitment to the political settlement of the conflicts in the former Yugoslavia and the Peace Agreement, the Council determined that the situation in the region continued to constitute “a threat to international peace and security”.<sup>26</sup>

### **Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council**

By two consecutive statements by the President dated 7 and 16 March 2001, respectively, Council members condemned the continuing extremist violence in the former Yugoslav Republic of Macedonia and stated that those acts constituted “a threat to the

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Afghanistan continued to constitute a threat to international peace and security. See resolutions 1363 (2001), 1386 (2001), 1413 (2002), 1444 (2002) and 1510 (2003).

<sup>23</sup> As from the 4646th meeting, held on 14 November 2002, the item “The situation in East Timor” was revised to read “The situation in Timor-Leste”.

<sup>24</sup> Resolution 1410 (2002), first preambular paragraph.

<sup>25</sup> Resolution 1410 (2002), fifteenth preambular paragraph.

<sup>26</sup> Resolution 1305 (2000), eleventh preambular paragraph. By a number of subsequent resolutions, the Council reiterated its determination that the situation in the region continued to constitute a threat to international peace and security. See resolutions 1357 (2001), 1423 (2002) and 1491 (2003).

stability and security of the entire region”.<sup>27</sup> By resolution 1345 (2001) of 21 March 2001, the Council condemned extremist violence, including terrorist activities, in certain parts of the former Yugoslav Republic of Macedonia and certain municipalities in southern Serbia, Federal Republic of Yugoslavia. It noted that such violence had support from ethnic Albanian extremists outside those areas and constituted “a threat to the stability and security of the wider region”.<sup>28</sup>

## **Middle East**

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

By resolution 1441 (2002) of 8 November 2002, the Council recognized the threat that non-compliance by Iraq with Council resolutions and the proliferation of weapons of mass destruction and long-range missiles posed to “international peace and security”.<sup>29</sup> It deplored the fact that Iraq had not provided an accurate, full, final and complete disclosure of all aspects of its weapons programmes.<sup>30</sup> It also deplored the fact that Iraq repeatedly obstructed access to sites designated by the United Nations Special Commission and the International Atomic Energy Agency (IAEA), and the absence of international monitoring, inspection and verification of weapons of mass destruction and ballistic missiles. It also deplored the failure of the Government of Iraq to comply with its commitments with regard to terrorism and to end repression of its civilian population.<sup>31</sup> By resolution 1483 (2003) of 22 May 2003, the Council determined that the situation in Iraq, although improved, continued to constitute “a threat to international peace and security”.<sup>32</sup> That determination was reiterated by the Council in two subsequent resolutions adopted on 16 October 2003 and 24 November 2003, respectively.<sup>33</sup>

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<sup>27</sup> S/PRST/2001/7, third paragraph, and S/PRST/2001/8, eighth paragraph.

<sup>28</sup> Resolution 1345 (2001), para. 1.

<sup>29</sup> Resolution 1441 (2002), third preambular paragraph.

<sup>30</sup> *Ibid.*, sixth preambular paragraph.

<sup>31</sup> *Ibid.*, ninth preambular paragraph.

<sup>32</sup> Resolution 1483 (2003), seventeenth preambular paragraph.

<sup>33</sup> Resolutions 1511 (2003) and 1518 (2003).

## **Thematic**

### **Children and armed conflict**

By resolution 1314 (2000) of 11 August 2000, the Council noted that the deliberate targeting of civilian populations or other protected persons, including children, and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict might “constitute a threat to international peace and security”, and in that regard reaffirmed its readiness to consider such situations and, where necessary, to adopt appropriate steps.<sup>34</sup>

### **Protection of civilians in armed conflict**

By resolution 1296 (2000) of 19 April 2000, the Council noted that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict might constitute “a threat to international peace and security”, and reaffirmed its readiness to consider such situations and, where necessary, to adopt appropriate steps.<sup>35</sup>

### **Role of the Security Council in the prevention of armed conflicts**

By resolution 1366 (2001) of 30 August 2001, the Council expressed serious concern over the “threat to peace and security caused by the illicit trade in and the excessive and destabilizing accumulation of small arms and light weapons in areas of conflict and their potential to exacerbate and prolong armed conflict”.<sup>36</sup>

### **Threats to international peace and security caused by terrorist acts**

By resolution 1368 (2001) of 12 September 2001, the Council condemned the terrorist attacks of 11 September 2001 in New York, Washington, D.C. and Pennsylvania, and regarded such attacks, like any act of international terrorism, as “a threat to

international peace and security”.<sup>37</sup> By its subsequent resolution 1373 (2001) of 28 September 2001, the Council reaffirmed that such acts constituted a “threat to international peace and security”.<sup>38</sup>

By resolution 1377 (2001) of 12 November 2001, the Council declared that acts of international terrorism constituted “one of the most serious threats to international peace and security in the twenty-first century” and “a challenge to all States and to all of humanity”.<sup>39</sup> It stressed that acts of and the financing, planning, preparation and support for international terrorism were contrary to the purposes and principles of the Charter of the United Nations.<sup>40</sup> It also underlined that acts of terrorism threatened “the social and economic development of all States” and undermined “global stability and prosperity”.<sup>41</sup>

In subsequent resolutions, the Council condemned the bomb attacks in Bali, Indonesia, on 12 October 2002; the taking of hostages in Moscow on 23 October 2002, the terrorist bomb attack at the Paradise Hotel in Kikambala, Kenya, on 28 November 2002; the bomb attack in Bogota on 7 February 2003; the terrorist acts in Iraq between August and October 2003; the bomb attacks in Istanbul on 15 and 20 November 2003; and other terrorist attacks in a number of countries, and regarded such acts, “like any act of international terrorism”, as “a threat to international peace and security”.<sup>42</sup>

### **The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations**

By resolution 1308 (2000) of 17 July 2000, the Council expressed its concern at the extent of the HIV/AIDS pandemic worldwide and, in particular, at the severity of the crisis in Africa. It recognized that

<sup>37</sup> Resolution 1368 (2001), para. 1.

<sup>38</sup> Resolution 1373 (2001), third preambular paragraph.

<sup>39</sup> Resolution 1377 (2001), third and fourth preambular paragraphs.

<sup>40</sup> Resolution 1377 (2001), sixth preambular paragraph.

<sup>41</sup> Resolution 1377 (2001), seventh preambular paragraph. By resolutions 1390 (2002), 1455 (2003) and 1456 (2003), the Council reaffirmed that acts of international terrorism constituted a threat to international peace and security.

<sup>42</sup> See, for example, resolutions 1438 (2002), 1440 (2002), 1450 (2002), 1465 (2003), 1511 (2003) and 1516 (2003).

<sup>34</sup> Resolution 1314 (2000), para. 9.

<sup>35</sup> Resolution 1296 (2000), para. 5.

<sup>36</sup> Resolution 1366 (2001), fourteenth preambular paragraph.

the spread of HIV/AIDS could have a uniquely devastating impact on all sectors and levels of society and stressed that, if unchecked, the pandemic might “pose a risk to stability and security”.<sup>43</sup>

## B. Discussion relating to Article 39

### The situation in Afghanistan

At its 4251st meeting, on 19 December 2000, the Council adopted resolution 1333 (2000) by which it reaffirmed that the suppression of international terrorism was essential for the maintenance of international peace and security and determined that the failure of the Taliban authorities to respond to the demands of the Council constituted “a threat to international peace and security”.<sup>44</sup> During the debate, several speakers expressed their condemnation of the Taliban’s refusal to abide by Council decisions and their continuing harbouring of terrorists and support for terrorist activities.<sup>45</sup> The representative of the United States stated that the continuing support for terrorists by the Taliban, and in particular for Osama bin Laden, remained “a threat to international peace and security”.<sup>46</sup> The representative of Afghanistan argued that the resolution did not adequately deal with the threat of terrorism emanating from Afghanistan and that the Council needed to address the problem of Afghanistan in its entirety. He claimed that even though the draft clearly showed that outside elements were responsible for terrorist activities, it did not deal with “Pakistan’s well-known aggression in Afghanistan” which posed a “threat to regional security” and hampered “development and cooperation in the region”. He concluded that such acts constituted flagrant violations of the Charter and should be considered by the Council “under Chapter VII, Articles 39 to 42”.<sup>47</sup>

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<sup>43</sup> Resolution 1308 (2000), eighth and eleventh preambular paragraphs.

<sup>44</sup> Resolution 1333 (2000), fourteenth preambular paragraph.

<sup>45</sup> S/PV.4251, p. 5 (Netherlands); p. 6 (United Kingdom); p.6 (France); pp. 6-7 (Ukraine); pp. 7-8 (United States); p. 9 (Canada); and p. 9 (Russian Federation).

<sup>46</sup> *Ibid.*, p. 7.

<sup>47</sup> *Ibid.*, pp. 2-3. At the 4325<sup>th</sup> meeting, on 5 June 2001, the representative of Afghanistan reiterated his conviction that “Pakistan’s direct involvement in Afghanistan and its aggressive policies in the region” posed a threat to

international peace and security, which the Council had failed to address “properly”. See S/PV.4325, p. 16. By identical letters dated 14 September 2001 addressed to the Secretary-General and to the President of the Security Council (S/2001/870), the representative of Afghanistan proposed “the convening of a special meeting of the Security Council to address the presence of foreign military and armed personnel in Afghanistan” and its “threat to regional and international peace and security”.

At the 4774th meeting, on 17 June 2003, the representative of France invited the Council to “do its share” in tackling the drug production and trafficking from Afghanistan, which posed “a serious threat to international peace and security”, among the ranks of terrorism, arms proliferation and organized crime.<sup>50</sup> The representative of Angola concurred that the illicit traffic in drugs posed “a security threat to the whole region”.<sup>51</sup>

### The situation in Bosnia and Herzegovina

At its 4568th meeting, on 10 July 2002, the Council discussed the legal responsibility of peacekeepers to be prosecuted for crimes committed during peacekeeping operations. During the debate, the representative of the United States expressed his Government’s concern over the legal exposure of its peacekeepers under the Rome Statute of the International Criminal Court, which had come into force on 1 July 2002. He urged the Council, based on Article 16 of the Rome Statute, to address the concerns of some Member States about the implications of the Rome Statute for countries that were not parties to it, but which wanted to continue to contribute peacekeepers to United Nations missions. He further

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international peace and security, which the Council had failed to address “properly”. See S/PV.4325, p. 16. By identical letters dated 14 September 2001 addressed to the Secretary-General and to the President of the Security Council (S/2001/870), the representative of Afghanistan proposed “the convening of a special meeting of the Security Council to address the presence of foreign military and armed personnel in Afghanistan” and its “threat to regional and international peace and security”.

<sup>48</sup> S/PV.4414 (Resumption 1), pp. 8-9.

<sup>49</sup> *Ibid.*, p. 16.

<sup>50</sup> S/PV.4774, p. 9.

<sup>51</sup> *Ibid.*, p. 23.

emphasized that Article 16 of the Rome Statute enabled the Security Council to “make a renewable request to the Court not to commence or proceed with investigations or prosecutions for a 12-month period on the basis of a Chapter VII resolution”.<sup>52</sup> Several speakers objected to this proposition by arguing that this was not a viable course of action since the Court’s activities did not constitute a threat to international peace and security, and hence there was no basis for a resolution under Chapter VII, such an invocation of Chapter VII being *ultra vires*.<sup>53</sup>

### The situation between Iraq and Kuwait

Discussions in connection with the situation between Iraq and Kuwait mainly focused on two issues with regard to the determination of threats to the peace: whether the non-compliance by Iraq with Council decisions posed a threat to the peace, and whether the United States-led military action against Iraq constituted a threat to the peace.

#### *Non-compliance by Iraq with Security Council decisions*

By a letter dated 9 August 2000 addressed to the Secretary-General,<sup>54</sup> the representative of Kuwait requested the Council to urge the Government of Iraq to desist from its maintenance of an aggressive attitude that posed a “threat to security and stability in Kuwait and the region”.<sup>55</sup>

By a letter dated 24 September 2002 addressed to the President of the Security Council,<sup>56</sup> the representative of the United Kingdom highlighted the “violent and aggressive” nature of the Iraqi regime and conveyed his Government’s concern over Iraq’s possession of weapons of mass destruction. He asserted that the existing Iraqi regime posed a “unique danger” and that there was an urgent need for a further

concentrated international effort under the auspices of the United Nations to ensure that Iraq’s weapons of mass destruction could no longer pose an “international threat”.<sup>57</sup>

At its 4625th meeting, on 16 October 2002, the Council discussed the situation between Iraq and Kuwait in the light of Iraq’s non-compliance with the Council’s resolutions. During the debate, while discussing the possibility of adopting a new resolution that would clearly set out the functions and powers of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) for a new round of inspections of Iraq, several speakers expressed their concern at the potential or existing threat to international peace and security posed by Iraq’s non-compliance with its disarmament obligations.<sup>58</sup>

At its 4644th meeting, on 8 November 2002, the Council unanimously adopted resolution 1441 (2002) by which it recognized the threat to international peace and security posed by the non-compliance of Iraq with Council resolutions and the proliferation of weapons of mass destruction and long-range missiles.<sup>59</sup> In the ensuing debate, the representative of Mexico stated that the resolution reflected the concerns of Member States in the Council about the need for Iraq to comply with its disarmament obligations and to renounce to weapons of mass destruction. He added that, should Iraq fail to comply, the Council’s response should be defined on the basis of its own determination as to the existence of a threat to international peace and security and proposed that that response be based on two clearly differentiated stages. The first stage would entail a credible process to evaluate the true military capability of Iraq and its intention to use its weapons or the ability of terrorist groups to have access to them. The second stage would entail the agreement of the Council and other States involved on the measures to be adopted, if the evaluation process detected a threat to international peace and security.<sup>60</sup>

<sup>52</sup> S/PV.4568, p. 10.

<sup>53</sup> S/PV.4568, p. 3 (Canada); p. 5 (New Zealand); p. 16 (Jordan); and p. 20 (Liechtenstein); S/PV.4568 (Resumption 1) and Corr.1, p. 2 (Fiji); p. 7 (Samoa); and p. 9 (Germany).

<sup>54</sup> S/2000/791.

<sup>55</sup> The representative of Kuwait reiterated his demand by subsequent letters dated 17 January 2001 (S/2001/53) and 1 October 2001 (S/2001/925), respectively, addressed to the President of the Security Council and the Secretary-General.

<sup>56</sup> S/2002/1067.

<sup>57</sup> *Ibid.*, p. 1.

<sup>58</sup> S/PV.4625 (Resumption 1), pp. 9-11 (Australia); pp. 11-13 (Chile); and pp. 20-21 (Nigeria); S/PV.4625 (Resumption 2), pp. 19-20 (Albania); S/PV.4625 (Resumption 3) and Corr.1, pp. 4-5 (Mexico); pp. 7-9 (United Kingdom); pp. 10-12 (United States); pp. 12-14 (France); and pp. 25-28 (Mauritius).

<sup>59</sup> Resolution 1441 (2002), third preambular paragraph.

<sup>60</sup> S/PV.4644 and Corr.1, p. 6.



By a letter dated 25 November 2002 addressed to the Secretary-General,<sup>61</sup> the Minister for Foreign Affairs of Iraq referred to resolution 1441 (2002) and defined it as an attempt to “impose a forced interpretation of the concept of a threat to international peace and security, as referred to in Article 39 of the Charter of the United Nations, in order to justify United States aggression against Iraq”. He went on to argue that the non-compliance was “unsupported by any evidence” and that the Council was attempting to construct a “broad new interpretation of international peace and security” by considering that any interference by Iraq with inspection activities constituted such a threat. He declared that this interpretation ran counter to the principles set out in Article 39 of the Charter.<sup>62</sup>

At its 4701st meeting, on 5 February 2003, the Council reviewed the progress of Iraq in fulfilling its disarmament obligations under Security Council resolution 1441 (2002). The Council also discussed the information presented by the United States regarding Iraq’s possession of weapons of mass destruction, as well as Iraq’s involvement in terrorism.<sup>63</sup> During the debate, several speakers expressed the view that the situation in Iraq and the country’s non-compliance with Council resolutions regarding disarmament posed “a threat to international peace and security”.<sup>64</sup> Others noted that, while Iraq might be in violation of Council resolutions, more evidence and inspections were required before further judgments and decisions could be made.<sup>65</sup> By contrast, the representative of Iraq maintained that his country posed no threat to regional or international peace and security since it had disarmed.<sup>66</sup>

At its 4707th meeting, on 14 February 2003, the Council heard reports from the Executive Chairman of UNMOVIC and the Director-General of IAEA. Several representatives asserted that the situation in Iraq continued to pose a threat to international peace and security and that Iraq was in “material breach” of its Council obligations to disarm.<sup>67</sup> A number of speakers reaffirmed that, given the progress made by inspections and an increased degree of cooperation by Iraq, the inspections should be pursued further.<sup>68</sup> The representatives of France and the Russian Federation observed that since the 4701st meeting, held on 5 February 2003, the situation had ameliorated as a result of the greater effectiveness of inspections.<sup>69</sup> Given the absence of evidence of any forbidden activity, the representative of Iraq declared that some members of the Council were merely alleging, without any proof, the threat posed by Iraq to international peace and security.<sup>70</sup>

At the 4709th meeting, on 18 February 2003, several speakers reiterated the view that Iraq’s possession of weapons of mass destruction and non-compliance with its obligations posed a threat to international peace and security.<sup>71</sup> A number of representatives expressed the view that the links between States who possessed weapons of mass destruction and terrorists constituted a threat to international peace and security.<sup>72</sup> The representative of Jordan insisted that the Security Council should find a peaceful solution to the crisis, and that the sanctions regime had proven to be of “unprecedented effectiveness”. He called for the sanctions regime to continue and, “if necessary, be enhanced, as its failure would constitute a threat to international peace and

<sup>61</sup> S/2002/1294.

<sup>62</sup> *Ibid.*, pp. 2-11.

<sup>63</sup> By a letter dated 19 February 2003 addressed to the Secretary-General (S/2003/203), the representative of Iraq deemed that the assessment given by the United States at the 4701st meeting of the Council was an attempt to mislead the Security Council and the United Nations by producing “false allegations and proof to serve as a cover for the American aggression” that was planned against Iraq.

<sup>64</sup> S/PV.4701, pp. 2-17 (United States); pp. 18-20 (United Kingdom); pp. 28-29 (Spain); and pp. 31-32 (Angola).

<sup>65</sup> *Ibid.*, pp. 17-18 (China); pp. 20-22 (Russian Federation); pp. 23-25 (France); pp. 30-31 (Chile); pp. 34-36 (Guinea); and pp. 36-37 (Germany).

<sup>66</sup> *Ibid.*, pp. 37-39.

<sup>67</sup> S/PV.4707, pp. 16-17 (Spain); pp. 17-18 (United Kingdom); pp. 18-21 (United States); and pp. 28-29 (Bulgaria).

<sup>68</sup> *Ibid.*, pp. 9-11 (Syrian Arab Republic); pp. 13-15 (Chile); pp. 22-23 (Mexico); pp. 24-25 (Pakistan); pp. 25-27 (Cameroon); and pp. 27-28 (Angola).

<sup>69</sup> *Ibid.*, pp. 11-13 (France); and pp. 21-22 (Russian Federation).

<sup>70</sup> *Ibid.*, pp. 30-32.

<sup>71</sup> S/PV.4709, p. 24 (Japan); S/PV.4709 (Resumption 1) and Corr.1, p. 7 (Republic of Korea); pp. 18-19 (Singapore); p. 20 (Nicaragua); p. 21 (Albania); pp. 27-28 (Iceland); pp. 28-29 (Canada); pp. 29-30 (Georgia); pp. 31-32 (Serbia and Montenegro); and p. 32 (Latvia).

<sup>72</sup> S/PV.4709, pp. 31-32 (Argentina); S/PV.4709 (Resumption 1) and Corr.1, pp. 17-18 (the former Yugoslav Republic of Macedonia); and p. 21 (Albania).

security”.<sup>73</sup> By contrast, other speakers stated that there was no evidence that the situation in Iraq constituted such a threat.<sup>74</sup>

By a letter dated 24 February 2003 addressed to the President of the Security Council,<sup>75</sup> the representatives of France, Germany and the Russian Federation stated that while suspicions remained, no evidence had been given that Iraq still possessed weapons of mass destruction or capabilities in that field.<sup>76</sup>

At its 4714th meeting, on 7 March 2003, the Council debated the latest reports presented by the Executive Chairman of UNMOVIC and the Director-General of IAEA. Following the presentation, several speakers maintained that Iraq was not fully and unconditionally cooperating with the inspections regime and therefore remained in breach of its obligations.<sup>77</sup> Several representatives expressed the belief that, as a result of the progress made in the inspections regime, the inspections process needed to be continued and strengthened.<sup>78</sup> The representatives of the Syrian Arab Republic and Iraq noted that the latter had extensively cooperated with the inspectors and that there was no evidence of its non-compliance.<sup>79</sup> Similarly, the representative of Pakistan contended that the situation posed “no imminent threat to international peace and security”.<sup>80</sup>

At its 4717th meeting, on 11 March 2003, the Council continued its debate on the compliance and implementation by Iraq of relevant Security Council resolutions. A number of speakers reiterated that Iraq was in material breach of its obligations and that the inspections could not continue indefinitely.<sup>81</sup> The

representative of Australia noted that the Security Council should recognize that threats to international security had changed and had to deal with the threat caused by the borderless scourge of international terrorism and the risk of illicit trade in prohibited and dual use items. He therefore added that it was urgent that the Council confronted this risk by disarming nations that built those weapons and defied international non-proliferation norms. He concluded that failure to do so would “both increase the immediate threat and set a precedent that we will all come to regret”.<sup>82</sup> Other speakers reaffirmed that, given the progress achieved, the inspection regime needed to be maintained and provided with more time and resources to fulfill its mandate.<sup>83</sup> The representative of South Africa stressed that the Council’s reaction in the case of Iraq would define “a new international order” that would determine how the international community addressed conflict situations in the future.<sup>84</sup>

By a letter dated 18 March 2003 addressed to the President of the Security Council,<sup>85</sup> the representatives of Portugal, Spain, the United Kingdom and the United States underlined that Saddam Hussein’s “brutal regime” still posed “a grave threat to the security of its region and the world”. They noted that Saddam Hussein had defied the resolutions of the Security Council and demanded the disarmament of his weapons of mass destruction.<sup>86</sup>

At its 4721st meeting, on 19 March 2003, the Council heard briefings from the Executive Chairman of UNMOVIC and the Director-General of IAEA. During the discussion, the representative of Spain recalled that resolution 1441 (2002) recognized that the non-compliance of Iraq with the Council’s resolutions constituted a threat to international peace and security and decided that Iraq had failed to comply with the demands imposed by the international community. He further noted that, despite the Council having met

<sup>73</sup> Ibid., p. 16.

<sup>74</sup> Ibid., pp. 5-7 (Iraq); and pp. 25-26 (League of Arab States).

<sup>75</sup> S/2003/214.

<sup>76</sup> Ibid., pp. 2-3.

<sup>77</sup> S/PV.4714, pp. 14-17 (United States); pp. 23-25 (Spain); pp. 25-27 (United Kingdom); and pp. 30-31 (Bulgaria).

<sup>78</sup> Ibid., pp. 9-10 (Germany); pp. 17-18 (Russian Federation); pp. 18-21 (France); pp. 21-22 (China); pp. 22-23 (Chile); and pp. 27-28 (Angola).

<sup>79</sup> Ibid., pp. 10-12 (Syrian Arab Republic); and pp. 34-36 (Iraq).

<sup>80</sup> Ibid., pp. 32-33.

<sup>81</sup> S/PV.4717, pp. 27-28 (Singapore); pp. 28-29 (Republic of Korea); and pp. 30-31 (Albania); S/PV.4717 (Resumption 1), p. 2 (Japan); p. 4 (Philippines); pp. 9-10 (El Salvador); pp. 10-11 (Georgia); pp. 11-12 (Bolivia);

pp. 16-17 (the former Yugoslav Republic of Macedonia); p. 22 (Peru); and pp. 22-23 (Colombia).

<sup>82</sup> S/PV.4717, p. 18.

<sup>83</sup> Ibid., pp. 6-8 (Malaysia); pp. 9-10 (League of Arab States); pp. 11-13 (Algeria); pp. 13-14 (Egypt); pp. 14-15 (India); pp. 16-17 (Islamic Republic of Iran); pp. 19-21 (Canada); pp. 21-22 (Switzerland); pp. 24-25 (New Zealand); and pp. 29-30 (Indonesia).

<sup>84</sup> Ibid., pp. 8-9.

<sup>85</sup> S/2003/335.

<sup>86</sup> Ibid., pp. 2-3.

several times to examine successive reports of the inspectors, Iraq had still not complied with the will of the international community, and, therefore, “peace and international security continue[d] unassured”.<sup>87</sup> By contrast, the representative of the Russian Federation argued that there was no evidence that Iraq posed such a threat. He stated that the Council, as the body bearing primary responsibility for the maintenance of international peace and security, fully shouldered its obligations by ensuring the deployment of international inspectors to Iraq and by establishing the conditions necessary for their activities. He added that if there were indisputable facts demonstrating that there was a direct threat from the territory of Iraq to the security of the United States, his country would be prepared to use “the entire arsenal of measures provided under the United Nations Charter to eliminate such a threat”. However, he concluded, the Council was not currently in possession of such evidence.<sup>88</sup>

At its 4726th meeting, on 26 and 27 March 2003, the Council discussed the humanitarian situation in Iraq following the United States-led military action against Iraq. Several speakers maintained that Iraq had been in material breach of Council resolutions,<sup>89</sup> while others explicitly referred to this non-compliance as a threat to international peace and security.<sup>90</sup> In the view of a number of representatives, however, Iraq did not pose a threat to international peace and security.<sup>91</sup> Several speakers pointed out that “pre-emptive” strikes had no foundation in international law.<sup>92</sup>

*United States-led military action against Iraq*

<sup>87</sup> S/PV.4721, p. 16.

<sup>88</sup> *Ibid.*, pp. 7-8.

<sup>89</sup> S/PV.4726, pp. 14-16 (Kuwait); pp. 24-25 (Poland); pp. 25-26 (Singapore); pp. 36-37 (Argentina); pp. 38-39 (Japan); pp. 39-40 (the former Yugoslav Republic of Macedonia); p. 41 (Uzbekistan); p. 46 (Iceland); and pp. 47-48 (Mongolia); S/PV.4726 (Resumption 1), pp. 6-7 (El Salvador); pp. 8-9 (Micronesia); pp. 11-12 (East Timor); p. 15 (Ethiopia); pp. 25-26 (United States); pp. 29-30 (Spain); and pp. 31-32 (Bulgaria).

<sup>90</sup> S/PV.4726, pp. 26-27 (Australia); and pp. 42-43 (Nicaragua); S/PV.4726 (Resumption 1), pp. 13-14 (Uganda); and pp. 22-24 (United Kingdom).

<sup>91</sup> S/PV.4726, pp. 21-23 (Cuba); and pp. 33-34 (Islamic Republic of Iran); S/PV.4726 (Resumption 1), pp. 26-28 (Russian Federation).

<sup>92</sup> S/PV.4726, pp. 6-8 (Malaysia); pp. 13-14 (Yemen); pp. 31-32 (Viet Nam); and pp. 33-34 (Islamic Republic of Iran).

By identical letters dated 10 July 2000 addressed to the Secretary-General and to the President of the Security Council,<sup>93</sup> the representative of Iraq informed the Council that the United States supported and financed “terrorist activities aimed at overthrowing the national regime and fomenting civil war in Iraq”, which constituted “a threat to the security and stability of a sovereign State and could also undermine security and stability in the region”.

By a series of letters addressed to the Secretary-General and the President of the Security Council between November 2000 and October 2001,<sup>94</sup> the representative of Iraq declared that the acts of “piracy” by the United States naval forces stationed in the Arabian Gulf region represented “a serious threat to regional and international peace and security”. By another series of letters addressed to the Secretary-General and the President of the Security Council between November 2000 and October 2001,<sup>95</sup> the representative of Iraq renewed his call to the countries participating in the “aggression” against Iraq to desist forthwith from internationally prohibited acts that violated Iraq’s sovereignty, placed its security and integrity in grave danger and posed a direct and serious threat to international peace and security.

At its 4625th meeting, on 16 October 2002, the Council convened in response to the request by South Africa to hold an emergency meeting to voice concern regarding the possibility that the United Nations was at that time being asked to consider proposals that opened up the “possibility of a war against a Member State”.<sup>96</sup> The representative of Yemen expressed his Government’s “grave concern” over the approach to “invade Iraq” and insisted that it constituted a “direct threat to the security and stability of the region”.<sup>97</sup> The representative of Lebanon declared that the Arab leaders expressed their total rejection of an attack on

<sup>93</sup> S/2000/687.

<sup>94</sup> S/2000/1110, S/2001/32, S/2001/776 and S/2001/929.

<sup>95</sup> S/2000/1128, S/2000/1155, S/2000/1165, S/2000/1208, S/2000/1229, S/2000/1248, S/2001/18, S/2001/37, S/2001/79, S/2001/116, S/2001/122, S/2001/141, S/2001/161, S/2001/168, S/2001/227, S/2001/248, S/2001/297, S/2001/316, S/2001/369, S/2001/536, S/2001/554, S/2001/620, S/2001/638, S/2001/650, S/2001/692, S/2001/726, S/2001/756, S/2001/773, S/2001/807, S/2001/816, S/2001/846, S/2001/850, S/2001/878, S/2001/927, S/2001/954 and S/2001/995.

<sup>96</sup> See S/2002/1132 and S/PV.4625, p. 4.

<sup>97</sup> *Ibid.*, pp. 13-15.

Iraq and noted that a threat to the peace and security of “any Arab State” constituted “a threat to the national security of all Arab States”.<sup>98</sup>

By identical letters dated 2 December 2002 addressed to the Secretary-General and to the President of the Security Council,<sup>99</sup> the representative of Iraq stated that the “imposition and enforcement of the two illegal no-flight zones” was a “tyrannical act and a flagrant breach of the Charter of the United Nations and the established principles of international law” and constituted “a serious threat to regional and international peace and security”. He also expressed the hope that the Secretary-General would “draw the attention of the Security Council” to the nature of the aggression and to the danger it posed “to peace and security in the region and throughout the world”.<sup>100</sup>

At its 4709th meeting, on 18 February 2003, the Council debated Iraq’s compliance with the inspections regime regulated by resolution 1441 (2001). During the discussion, the representative of Iraq declared that the United States and the United Kingdom were continuing “their feverish efforts to launch an aggressive war” against Iraq. He held the belief that this would constitute “a dangerous precedent in international relations”, threatening the credibility of the United Nations and exposing international and regional peace and security to “grave dangers”.<sup>101</sup> The representative of the League of Arab States indicated that the Arab Summit “categorically rejected any attack against Iraq or any threat against the peace and security of any Arab State” and that such “an attack was considered a threat to collective Arab national security”.<sup>102</sup> The representative of Yemen concurred that the inspection and monitoring regime should continue and that a military “invasion” would lead to “the further destruction of Iraq and the further destabilization of the region”, which in turn would “constitute a threat to peace and security throughout the world”.<sup>103</sup>

At the 4717th meeting, on 12 March 2003, the representative of Nigeria expressed his Government’s “deep concern over the consequences that the escalating situation regarding Iraq could have on

international peace and security, in particular the adverse effects its mishandling could have on Africa”. He appealed to the international community not to take any “precipitate action” against Iraq which would be “detrimental to international peace and security”.<sup>104</sup>

By two letters dated 9 and 14 March 2003, respectively, addressed to the Secretary-General,<sup>105</sup> the representative of Iraq noted that the military action by joint American-British forces against Iraq posed a “threat to international peace and security”. By a subsequent letter dated 21 March 2003 addressed to the Secretary-General,<sup>106</sup> the representative of Iraq qualified as “regrettable and reprehensible” that the Secretary-General had not condemned or denounced the aggression against Iraq and had not addressed any letter to the Council, under Article 99 of the Charter, to bring to its attention that such an aggression constituted “the gravest threat to international peace and security” and threatened “the fate and future of the United Nations in its very core”.<sup>107</sup>

By a letter dated 24 March 2003 addressed to the President of the Security Council,<sup>108</sup> the Permanent Observer of the League of Arab States, following the commencement of the United States-led military action against Iraq, transmitted a resolution of the League of Arab States which described the “aggression” against Iraq to be “a violation of the Charter of the United Nations and the principles of international law, a departure from international legitimacy, a threat to international peace and security and an act of defiance against the international community and world public opinion”.<sup>109</sup>

At its 4726th meeting, on 26 March 2003, the Council debated the situation in Iraq following the United States-led military action. During the debate, several representatives deplored the negative impact the joint American-British military intervention in Iraq would have on various aspects of regional and international peace, security and stability.<sup>110</sup> The

<sup>98</sup> S/PV.4625 (Resumption 2), p. 9.

<sup>99</sup> S/2002/1327.

<sup>100</sup> *Ibid.*, p. 2. See also S/2002/1439, S/2003/14 and S/2003/107.

<sup>101</sup> S/PV.4709, p. 5.

<sup>102</sup> *Ibid.*, p. 26.

<sup>103</sup> *Ibid.*, p. 30.

<sup>104</sup> S/PV.4717 (Resumption 1), p. 6.

<sup>105</sup> S/2003/296 and S/2003/319.

<sup>106</sup> S/2003/358.

<sup>107</sup> *Ibid.*, p. 3. See also S/2003/389.

<sup>108</sup> S/2003/365.

<sup>109</sup> *Ibid.*, p. 3.

<sup>110</sup> S/PV.4726, pp. 4-6 (Iraq); pp. 6-8 (Malaysia); pp. 8-9 (League of Arab States); pp. 10-11 (Algeria); pp. 12-13 (Egypt); pp. 13-14 (Yemen); pp. 16-18 (Libyan Arab Jamahiriya); pp. 19-20 (Indonesia); pp. 31-32 (Viet

representative of the United Republic of Tanzania underlined that, according to Article 39 of the Charter, only the Council could determine the existence of a breach of the peace or aggression and decide on an action. He warned that the “decision to go to war without the authority of the Council” would not only weaken the United Nations, but also had “the potential to endanger international peace and security”.<sup>111</sup>

**The situation in the Middle East, including the Palestinian question**

Between 2001 and 2003, at a number of meetings of the Council, Member States characterized unfolding developments in the Middle East as threats to peace and security.

At its 4438th meeting, on 14 December 2001, the Council discussed the situation in the Middle East in the light of the announcement by the Government of Israel that it would sever all contact with the Palestinian Authority and its elected leader, President Yasser Arafat. In their statements, a number of representatives characterized the situation in the Middle East as “a threat to international peace and security”.<sup>112</sup> The representative of Israel, however, objected to a draft resolution sponsored by Egypt and Tunisia,<sup>113</sup> on the grounds that it failed to recognize “terror as the primary obstacle to peace and security in the region”.<sup>114</sup>

At its 4506th meeting, on 3 April 2002, the Council discussed the situation in the Middle East after a military action taken by Israeli forces in the Palestinian territory. During the debate, the representative of Tunisia declared that Israel’s “excessive recourse to military force” did not guarantee its security and could lead to “further deterioration and to a flare-up in the region as a whole, thereby creating a clear threat to international peace and

security”.<sup>115</sup> The representative of Chile condemned “both the horrific suicide attacks against the civilian population of Israel” and the military actions taken against Palestinian cities, labeling these events as “an affront to the civilized conscience of mankind and a threat to international peace and security”.<sup>116</sup> The representative of Malaysia, speaking on behalf of the Organization of the Islamic Conference (OIC), pointed out that “Israeli terrorist actions and aggressive practices” posed “a threat to international peace and security” and urged the Council to take action under Chapter VII of the Charter.<sup>117</sup> The representative of Morocco indicated that Israel had carried out the “collective murder of Palestinians” and that the situation had reached a level of danger that was “threatening international peace and security”.<sup>118</sup> Similarly, the representative of Oman appealed to the Security Council “to fully shoulder its responsibilities” and “face up to the situation as a threat to international peace and security”.<sup>119</sup> The representative of Bahrain warned that if “the Israeli occupation of the Palestinian and other occupied territories” did not end, international peace and security would be “constantly threatened”.<sup>120</sup> The representative of the Sudan concurred, indicating that Israel’s “real intentions” were to “push the region towards a total conflagration whose consequences, though as yet unknown, would definitely threaten international peace and security”.<sup>121</sup> Along the same lines, the representative of Mauritius expressed his fear that an “Arab world in turmoil would have dire consequences for international peace and security, with eventual disastrous effects on the global economy”.<sup>122</sup>

At its 4510th meeting, on 8 April 2002, the Council convened to discuss the situation in the Middle East after the Israeli occupation of Ramallah. The representative of Mauritius pointed out that Israel’s refusal to withdraw from the city constituted “a clear threat to international peace and security” and should not be tolerated by the Council.<sup>123</sup> Similarly, the representative of Tunisia declared that the “appalling

Nam); pp. 33-34 (Islamic Republic of Iran); pp. 35-36 (Lebanon); p. 36 (Tunisia); and pp. 46-47 (Lao People’s Democratic Republic); S/PV.4726 (Resumption 1), pp. 7-8 (Saudi Arabia); pp. 14-15 (Sri Lanka); pp. 26-28 (Russian Federation); p. 28 (China); and pp. 32-33 (Syrian Arab Republic).

<sup>111</sup> S/PV.4726 (Resumption 1), pp. 9-10.

<sup>112</sup> S/PV.4438, p. 11 (Jamaica); p. 12 (Singapore); p. 14 (Colombia); and p. 21 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People).

<sup>113</sup> S/2001/1199.

<sup>114</sup> S/PV.4438, p. 20.

<sup>115</sup> S/PV.4506 and Corr.1, pp. 6-7.

<sup>116</sup> Ibid., p. 15.

<sup>117</sup> Ibid., p. 23.

<sup>118</sup> S/PV.4506 (Resumption 1) and Corr.1, p. 9.

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

<sup>120</sup> Ibid., pp. 15-16.

<sup>121</sup> Ibid., pp. 16-17.

<sup>122</sup> Ibid., p. 36.

<sup>123</sup> S/PV.4510, p. 10.

Israeli conduct” amounted to a clear threat to international peace and security.<sup>124</sup>

At its 4515th meeting, on 18 April 2002, the Council discussed the situation in the Middle East in connection with a number of Israeli military actions in the Palestinian territory. The representative of Brazil urged the Council to assert its legitimate authority in dealing with the “grave threat to international peace and security”.<sup>125</sup> The representative of the Sudan called for “the dispatch of a multinational force to Palestine”, in the hope that it would “receive support and be implemented rapidly by the Council in its quest to maintain international peace and security”.<sup>126</sup>

At its 4552nd meeting, on 13 June 2002, the Council discussed the situation in the Palestinian territories after Israel reoccupied Ramallah on 10 June 2002. During the debate, the representative of Ireland noted that “injustice, instability, insecurity”, and “a frozen political landscape” posed an “unacceptable and continuous threat to the region and to international peace and security” and stressed the international community’s “clear responsibility and duty to move beyond rhetoric and language”.<sup>127</sup>

At its 4588th meeting, on 24 July 2002, the Council debated the situation in the Middle East in the light of the latest Israeli attacks in the northern part of Gaza City. During the discussion, the representative of Saudi Arabia called upon the international community “to shoulder its responsibility” with regard to that grave situation, which “threatened international peace and security”, and “to move immediately and resolutely to confront Israel with its responsibilities in conformity with relevant Security Council resolutions and international conventions”.<sup>128</sup> The representatives of the League of Arab States and Iraq concurred that the Israeli military actions represented “a threat to international peace and security”.<sup>129</sup>

At its 4614th meeting, on 23 September 2003, the Council was briefed by the Secretary-General on the developments in respect of the road map to achieve a permanent settlement of the Israeli-Palestinian conflict. During the debate, the representative of Saudi Arabia

emphasized that the Security Council had a responsibility to face the “injustice, denial of rights and threats to international peace and security stemming from Israeli practices”.<sup>130</sup>

### **The situation in Africa**

#### *The impact of AIDS on peace and security in Africa*

At its 4087th meeting, on 10 January 2000, the Council discussed the impact of HIV/AIDS on peace and security in Africa. The President of the Security Council (United States) pointed out that this was the first time the Council was discussing a health issue as a “security threat” which constituted a step away from the Council’s classic security agenda. He added that when a single disease threatened “everything, from economic strength to peacekeeping”, a security threat of the greatest magnitude was clearly to be faced.<sup>131</sup> Taking the floor in his national capacity, the representative of the United States asserted that HIV/AIDS was “a global aggressor”, “one of the most devastating threats ever to confront the world community”.<sup>132</sup> Following these opening remarks, in the ensuing debate, the majority of speakers acknowledged that HIV/AIDS posed a threat to security, economic, social, and political development in Africa and elsewhere. They highlighted that human security encompassed not only traditional threats to security but also humanitarian concerns.<sup>133</sup>

<sup>130</sup> S/PV.4614 (Resumption 1), p. 17.

<sup>131</sup> S/PV.4087, pp. 2-4.

<sup>132</sup> *Ibid.*, pp. 5-8.

<sup>133</sup> *Ibid.*, pp. 13-15 (Namibia); pp. 15-17 (Bangladesh); and pp. 19-21 (Uganda); S/PV.4087 (Resumption 1), p. 2 (Netherlands); pp. 2-4 (Argentina); pp. 4-5 (Canada); pp. 5-6 (Malaysia); pp. 7-8 (United Kingdom); pp. 8-9 (Tunisia); pp. 9-10 (Ukraine); pp. 10-12 (Mali); pp. 12-13 (Jamaica); pp. 14-15 (Algeria); pp. 15-16 (Portugal); pp. 17-18 (Cape Verde); pp. 18-19 (Norway); pp. 19-20 (South Africa); pp. 20-21 (Japan); pp. 23-24 (Brazil); pp. 24-25 (Republic of Korea); pp. 26-27 (Djibouti); pp. 27-28 (Mongolia); pp. 28-29 (Indonesia); p. 32 (Italy); pp. 32-33 (New Zealand); pp. 33-34 (Zambia); pp. 34-35 (Cyprus); pp. 35-36 (Nigeria); pp. 36-38 (Australia); pp. 38-39 (Ethiopia); pp. 39-40 (Democratic Republic of the Congo); and pp. 40-41 (Senegal).

<sup>124</sup> *Ibid.*, p. 19.

<sup>125</sup> S/PV.4515, p. 21.

<sup>126</sup> *Ibid.*, p. 29.

<sup>127</sup> S/PV.4552 (Resumption 1), p. 2.

<sup>128</sup> S/PV.4588, p. 8.

<sup>129</sup> *Ibid.*, p. 27 (League of Arab States); and p. 27 (Iraq).

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

At its 4652nd meeting, on 3 December 2002, the Council was briefed by the Executive Director of the World Food Programme (WFP) on the food crisis in Africa. During the ensuing debate, the representative of Ireland pointed out that the humanitarian situation in Southern Africa and the Horn of Africa was not only "intolerable from a moral and humanitarian perspective" but also posed "a threat to international peace and security of the most fundamental nature".<sup>134</sup>

At its 4736th meeting, on 7 April 2003, the Council heard another report by the Executive Director of WFP. During the debate, the representative of Cameroon declared that the food crisis in Africa was a difficult and relevant issue which posed "a threat to international peace and security".<sup>135</sup>

### **Children and armed conflict**

At its 4176th meeting, on 26 July 2000, the Council considered the latest report of the Secretary-General on children and armed conflict.<sup>136</sup> During the debate, several speakers expressed the view that the threat posed by armed conflict to children was a serious one that had consequences for the maintenance of international peace and security and its humanitarian aspects.<sup>137</sup> By contrast, the representative of India stated that, while this was a serious matter, there was no evidence that the plight of children in armed conflict represented a threat to international peace and security, and that the violation of the Convention on the Rights of the Child could not automatically be construed as a threat to international peace and security.<sup>138</sup>

At its 4422nd meeting, on 20 November 2001, the Council discussed another report by the Secretary-General on ways to alleviate the plight of children in war situations.<sup>139</sup> In his statement, the representative of France emphasized that finding a way to improve the situation of children in armed conflicts posed a moral responsibility for

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<sup>134</sup> S/PV.4652, p. 9.

<sup>135</sup> S/PV.4736, p. 6.

<sup>136</sup> S/2000/712.

<sup>137</sup> S/PV.4176, pp. 9-10 (Argentina); pp. 15-16 (Malaysia); pp. 20-22 (Ukraine); pp. 22-23 (Tunisia); and pp. 26-27 (Jamaica); S/PV.4176 (Resumption 1), pp. 9-11 (Mozambique); pp. 16-18 (United Republic of Tanzania); and pp. 34-35 (Sierra Leone).

<sup>138</sup> S/PV.4176 (Resumption 1), pp. 18-20.

<sup>139</sup> S/2001/852.

the Council to take up a challenge that, under the Charter, constituted "a threat to peace and security".<sup>140</sup>

### **Justice and the rule of law: the United Nations role**

At its 4833rd and 4835th meetings, on 24 and 30 September 2003 respectively, the Council discussed its responsibility to promote justice and the rule of law in its effort to maintain international peace and security. During the debate, a number of speakers recognized the relationship between the maintenance of peace and security and the promotion of the rule of law at both national and international levels.<sup>141</sup>

### **The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations**

At its 4172nd meeting, on 17 July 2000, the Council heard a statement by the Executive Director of the Joint United Nations Programme on HIV/AIDS and adopted resolution 1308 (2000) by which it expressed its concern at the extent of the HIV/AIDS pandemic worldwide, and in Africa in particular. By the same resolution, the Council also recognized that the HIV/AIDS pandemic was exacerbated by conditions of violence and instability and, if unchecked, could pose a risk to stability and security.<sup>142</sup> During the debate, the majority of speakers acknowledged that the HIV/AIDS pandemic was a global threat which had a security dimension and saluted the fact that the Council was addressing peacekeeping in the context of the HIV/AIDS issue, under the mantle of maintaining international peace and security.<sup>143</sup>

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<sup>140</sup> S/PV.4422 (Resumption 1), p. 7.

<sup>141</sup> S/PV.4833, pp. 4-5 (Pakistan); pp. 9-10 (Mexico); pp. 11-12 (Bulgaria); pp. 12-13 (Guinea); pp. 14-15 (Spain); pp. 18-19 (Cameroon); pp. 20-21 (United States); and pp. 21-23 (Chile); S/PV.4835, pp. 22-23 (Philippines); pp. 23-24 (Australia); pp. 24-25 (Sierra Leone); and pp. 29-31 (Trinidad and Tobago).

<sup>142</sup> Resolution 1308 (2000), tenth and eleventh preambular paragraphs.

<sup>143</sup> S/PV.4172, pp. 4-7 (United States); pp. 7-8 (Namibia); p. 8 (Argentina); pp. 8-9 (Tunisia); pp. 9-10 (United Kingdom); pp. 10-11 (Canada); pp. 11-13 (Malaysia); pp. 13-14 (Ukraine); pp. 14-15 (Mali); pp. 15-16 (Netherlands); pp. 16-17 (Bangladesh); pp. 17-18 (Jamaica); pp. 18-19 (France); pp. 19-21 (Zimbabwe); pp. 21-22 (Indonesia); pp. 22-24 (Malawi); and pp. 24-25 (Uganda).

At its 4259th meeting, on 19 January 2001, the Council continued its discussion of the threat posed by HIV/AIDS to international peace and security. During the debate, several representatives commended the Council for acknowledging the importance of the HIV/AIDS epidemic for peace and security, particularly in Africa.<sup>144</sup> The representative of Sweden emphasized that the spread of HIV/AIDS was not just a health issue, but also “a human development issue, an equity and equality issue and a significant threat to international peace and security” and therefore required the coordinated response of United Nations bodies, including the Council.<sup>145</sup> The representative of India pointed out that if the Council believed HIV/AIDS was a threat to international peace and security, it had “not only the right but also the duty, bearing in mind its primary responsibility for the maintenance of international peace and security”, to rule that Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) must be invoked to urgently provide affordable medicines that help in the treatment of the epidemic.<sup>146</sup>

At its 4859th meeting, on 17 November 2003, the Council reviewed the implementation of resolution 1308 (2000). During the debate, several speakers reiterated the threat posed by the HIV/AIDS pandemic to international peace and security.<sup>147</sup>

#### **Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At its 4109th meeting, on 9 March 2000, the Council discussed the humanitarian consequences of conflict and the threat posed by humanitarian crises for peace and security. During the debate, several speakers emphasized that violations of international humanitarian law and human rights could pose a threat to international peace and security.<sup>148</sup> Other representatives acknowledged the connection between the humanitarian aspects of the issues before the Council and the

maintenance of international peace and security.<sup>149</sup> The representative of the Russian Federation warned that, while the prevention and settlement of humanitarian crises had a direct bearing on the maintenance of regional and international stability, such violations could not be ended by taking actions that violated the Charter.<sup>150</sup> The representative of Belarus acknowledged the “human factor” as a central link in all activities to establish international peace and security, but stated that the concept of “humanitarian intervention”, which entailed ending war with war or stopping human rights violations with anti-humanitarian actions, was “illogical”.<sup>151</sup> The representative of Norway endorsed the view that international law violations could threaten international peace and security and necessitated “the attention and action of the Security Council”, but insisted that the threat or use of force in international relations should have a legal basis in the Charter. He pointed out that, while a difficult humanitarian situation could be part of the Council’s assessment of whether a situation was a threat to international peace and security, it was not “in itself a sufficient legal basis for the threat or use of force”.<sup>152</sup> The representative of Pakistan cautioned that such instances had to be assessed on a case-by-case basis and that the Council had to “be clear and certain about the purpose, scope and legitimacy” of international preventive actions in all humanitarian emergencies. He elaborated that for the humanitarian action to have general acceptance, it had to have legitimacy under international law and had to be taken in conformity with the Charter, after a breach or threat to international peace and security had been established. He also noted that a clear distinction had to be made between humanitarian crises as a result of wars, conflicts or disputes which, “by their very nature”, constituted threats to international peace and security, and other human rights issues.<sup>153</sup> The representatives of Brazil and the Islamic Republic of Iran urged the Council to take

<sup>144</sup> S/PV.4259, pp. 15-16 (Norway); and pp. 20-22 (Jamaica); S/PV.4259 (Resumption 1), pp. 3-4 (Ireland); and pp. 12-14 (India).

<sup>145</sup> S/PV.4259, p. 20.

<sup>146</sup> S/PV.4259 (Resumption 1), p. 14.

<sup>147</sup> S/PV.4859, pp. 10-12 (United States); pp. 16-17 (Bulgaria); and pp. 17-18 (France).

<sup>148</sup> S/PV.4109, pp. 6-7 (France); and pp. 8-10 (Jamaica); S/PV.4109 (Resumption 1), pp. 2-5 (Portugal); pp. 6-7 (Norway); and pp. 16-18 (Brazil).

<sup>149</sup> S/PV.4109, pp. 4-6 (Canada); pp. 7-8 (United States); pp. 10-11 (Malaysia); pp. 11-12 (Mali); pp. 12-13 (Tunisia); pp. 17-18 (Ukraine); pp. 18-19 (United Kingdom); and pp. 19-20 (Argentina); S/PV.4109 (Resumption 1), pp. 5-6 (South Africa); pp. 10-11 (Austria); pp. 15-16 (Bulgaria); and pp. 18-19 (Islamic Republic of Iran).

<sup>150</sup> S/PV.4109, p. 15.

<sup>151</sup> *Ibid.*, pp. 22-23.

<sup>152</sup> S/PV.4109 (Resumption 1), p. 6.

<sup>153</sup> *Ibid.*, p. 9.



action only in the cases that posed real threats to international peace and security.<sup>154</sup>

**Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa**

At its 4720th meeting, on 18 March 2003, the Council unanimously adopted resolution 1467 (2003) by which it expressed its concern at the impact of the proliferation of small arms and light weapons on peace and security in West Africa.<sup>155</sup> During the debate, several speakers remarked that the proliferation of small arms, light weapons and mercenaries was a contributing factor to the conflicts and instability in West Africa. Other representatives stated that the proliferation of light weapons and the use of mercenaries in West Africa posed either a threat to international peace and security,<sup>156</sup> or a threat to peace and security in the subregion as a whole.<sup>157</sup> The representative of Cameroon asserted that the proliferation of such weapons in numerous regions of the world, particularly in West Africa, constituted “a grave threat to peace, security, stability, reconciliation and sustainable development at the individual, local, national, regional and international levels”.<sup>158</sup> The representative of the Syrian Arab Republic added that this issue posed a threat to peace and security not only in West Africa, but also in other parts of the world.<sup>159</sup>

**Protection of civilians in armed conflict**

At its 4130th meeting, on 19 April 2000, the Council unanimously adopted resolution 1296 (2000) by which it noted that the deliberate targeting of civilian populations or other protected persons as well as the systematic, flagrant, and widespread violations

of international humanitarian and human rights law in situations of armed conflict “may constitute a threat to international peace and security” and reaffirmed its readiness to consider such situations and, where necessary, “to adopt appropriate steps”.<sup>160</sup> During the debate preceding the adoption of the resolution, several representatives were in agreement that violence against civilians could pose a threat to international peace and security, and that in such cases the Council would have to act.<sup>161</sup> The representative of China warned that attempts to “politicize humanitarian concerns” and interfere in other countries’ internal affairs would run counter to the principles of the Charter, and that the Council should treat the issue of civilians in armed conflict on a “case-by-case basis”.<sup>162</sup>

At its 4312th meeting, on 23 April 2001, the Council heard a briefing by the Deputy Secretary-General who introduced the most recent report of the Secretary-General on the protection of civilians in armed conflict.<sup>163</sup> During the ensuing debate, the representative of the Russian Federation urged States to report “more quickly” to the Council any information on situations that could create a threat to international peace and security, including cases of deliberate refusal to provide safe and unhindered access for humanitarian personnel to civilians in need and gross violations of human rights, “where they may constitute a threat to international peace and security”.<sup>164</sup> The representative of Colombia urged the Council to consider the protection of civilians as one of the matters for which it was responsible when dealing with a situation that threatened international peace and security.<sup>165</sup> The representative of Yemen pointed out that the humanitarian dimension of conflicts had acquired special significance because of its potential “human tragedy and danger” at the national, regional and international levels, and its impact on international peace and security.<sup>166</sup>

At its 4492nd meeting, on 15 March 2002, the Council continued its discussion on the protection of civilians in situations of armed conflict. In his statement, the representative of China noted that apart

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<sup>154</sup> *Ibid.*, p. 17 (Brazil); and pp. 18-19 (Islamic Republic of Iran).

<sup>155</sup> S/PV.4720, pp. 12-15 (Gambia); pp. 15-16 (Angola); pp. 18-19 (Liberia); pp. 19-20 (Spain); pp. 20-21 (United Kingdom); pp. 22-24 (Senegal); pp. 24-26 (United States); and pp. 26-27 (Germany); S/PV.4720 (Resumption 1), pp. 5-6 (Russian Federation); pp. 6-7 (Mexico); pp. 11-13 (France); pp. 14-15 (Chile); pp. 16-17 (Mali); pp. 18-19 (Bulgaria); pp. 20-21 (China); pp. 23-24 (Pakistan); pp. 24-25 (Nigeria); and pp. 27-29 (Guinea).

<sup>156</sup> S/PV.4720 (Resumption 1), p. 4 (Togo); and p. 10 (Burkina Faso).

<sup>157</sup> *Ibid.*, p. 22 (Sierra Leone).

<sup>158</sup> S/PV.4720, p. 17.

<sup>159</sup> S/PV.4720 (Resumption 1), p. 16.

<sup>160</sup> Resolution 1296 (2000), para. 5.

<sup>161</sup> S/PV.4130 and Corr.1, pp. 10-11 (France); and pp. 15-16 (United Kingdom); S/PV.4130 (Resumption 1) and Corr.1, p. 5 (Republic of Korea).

<sup>162</sup> S/PV.4130 and Corr.1, p. 14.

<sup>163</sup> S/2001/331.

<sup>164</sup> S/PV.4312, p. 22.

<sup>165</sup> *Ibid.*, p. 25.

<sup>166</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 10.

from the Palestinian-Israeli conflict, many armed conflicts around the world continued “to endanger the safety and security of innocent civilians and thus threaten regional and international peace and security”.<sup>167</sup>

At its 4660th meeting, on 10 December 2002, the Council discussed the most recent report of the Secretary-General on the protection of civilians.<sup>168</sup> During the discussion, the representative of the Russian Federation reiterated his call to Member States to “act more promptly in conveying appropriate information to the Council” about situations that might pose a threat to the maintenance of international peace and security, including gross violations of the rights of civilians, if these posed a threat to international peace and security.<sup>169</sup> The representative of Chile stressed that the “adverse humanitarian consequences” generated by armed conflicts constituted a threat to international peace and security.<sup>170</sup>

#### **Role of the Security Council in the prevention of armed conflicts**

At its 4174th meeting, on 20 July 2000, the Council discussed its role in the prevention of armed conflicts. The representative of the United States reiterated his Government’s concerns about the “illicit trafficking of small arms and light weapons and the threat their uncontrolled proliferation and destabilizing accumulations” continued to pose to international peace and security.<sup>171</sup> The representative of the Netherlands pointed out that, while “the overwhelming majority of present-day conflicts” on the Council’s agenda were of an internal and domestic nature, at the same time, they threatened international peace and security.<sup>172</sup> The representative of Pakistan noted that an effective early-warning system should be developed with a view to identifying prospective conflict areas “without any discrimination” and that the international community must exercise “great care, caution and circumspection” in labeling situations as being threats to international peace and security.<sup>173</sup>

At its 4334th meeting, on 21 June 2001, the Council considered the latest report of the Secretary-General on the prevention of armed conflict.<sup>174</sup> During the debate, the representative of Jamaica noted that the world was being constantly challenged by an increasing number of “deadly conflicts”, which threatened international peace and security as well as the social, political and economic well-being of the global community.<sup>175</sup>

#### **Small arms**

By a letter dated 25 July 2001 addressed to the President of the Security Council,<sup>176</sup> the representative of Colombia noted that it had been generally recognized in the international community that the excessive accumulation and circulation of, and the illicit trade in, small arms and light weapons posed “a global threat to peace and security”, contributed to the intensification of conflict and violence, and constituted an obstacle to peace efforts.<sup>177</sup>

At its 4355th meeting, on 2 August 2001, the Council discussed the impact of the proliferation of small arms on international peace and security. During the debate, several speakers emphasized that the issue of small arms and light weapons could not be viewed in isolation from its peace and security perspective.<sup>178</sup> The representative of the Russian Federation expressed his concern with regard to the fact that the uncontrolled spread of small arms and light weapons could “pose a threat to regional peace and security”.<sup>179</sup> The representative of Mauritius reminded the Council that, in Africa, the “heavily armed negative forces” had been undermining peace and security for decades.<sup>180</sup> That point was reinforced by the representative of the Sudan who declared that Africa was the continent most affected by the threat of the proliferation of small arms and light weapons in the hands of rebel groups, thereby

<sup>167</sup> S/PV.4492, pp. 11-12.

<sup>168</sup> S/2002/1300.

<sup>169</sup> S/PV.4660, p. 28.

<sup>170</sup> S/PV.4660 (Resumption 1), p. 11.

<sup>171</sup> S/PV.4174, p. 5.

<sup>172</sup> *Ibid.*, p. 11.

<sup>173</sup> S/PV.4174 (Resumption 1), pp. 4-5.

<sup>174</sup> S/2001/574.

<sup>175</sup> S/PV.4334, p. 8.

<sup>176</sup> S/2001/732.

<sup>177</sup> *Ibid.*, p. 2.

<sup>178</sup> S/PV.4355, pp. 8-10 (Bangladesh); pp. 12-14 (Russian Federation); pp. 16-18 (Mauritius); and pp. 19-20 (Mali); S/PV.4355 (Resumption 1) and Corr.1, pp. 2-3 (Mexico); pp. 10-12 (South Africa); pp. 16-18 (the Sudan); pp. 22-24 (Pakistan); pp. 27-29 (Costa Rica); pp. 29-30 (Belarus); and pp. 32-34 (Bulgaria).

<sup>179</sup> S/PV.4355, p. 12.

<sup>180</sup> *Ibid.*, p. 18.

“threatening peace and security in the continent”.<sup>181</sup> The representative of Costa Rica drew attention to the fact that, in the hands of national armies, small arms were “a threat to international peace and security” and, in the hands of extremist groups or despotic regimes, light weapons became “a threat to internal peace and security”.<sup>182</sup> The representative of Thailand emphasized that what made the problem of small arms an even greater threat to “international and national peace and stability” was its linkage with other problems of national and international concern, such as drug trafficking, money-laundering and cross-border terrorism. He further pointed out that when small arms were in the hands of these groups of people the threat to international and regional peace and stability increased manifold.<sup>183</sup>

At its 4623rd meeting, on 11 October 2002, the Council was briefed by the Under-Secretary-General for Disarmament Affairs on the illicit proliferation and trade of arms and light weapons and their effects on international peace and security. During the debate, a number of representatives commented on the fact that the proliferation and illicit trade of small arms posed a threat to international peace and security.<sup>184</sup> Other speakers emphasized that, while the issue affected every region in the world, small arms were particularly prevalent in Africa.<sup>185</sup>

#### **United Nations peacekeeping**

At its 4772nd meeting, on 12 June 2003, the Council discussed the jurisdiction of the International Criminal Court to investigate or prosecute cases involving current or former peacekeeping personnel over acts or omissions relating to a United Nations operation. During the debate, several speakers voiced their concern with respect to resolution 1422 (2002), by which the Council had asked the Court not to commence any investigation or prosecution against peacekeeping personnel from a State not a party to the Rome Statute, unless the Council decided otherwise. They pointed out that a new resolution under

Chapter VII was about to be passed, despite the absence of any apparent threat to international peace and security, the fundamental precondition for action under Chapter VII of the Charter.<sup>186</sup>

#### **Women and peace and security**

At its 4208th meeting, on 24 October 2000, the Council discussed the importance of integrating a gender perspective into the context of maintaining peace and security, as well as of considering the role of women in promoting peace and security. In his statement, the Executive Director of the United Nations Development Fund for Women (UNIFEM) stated that the topic of women and peace and security was a salient one especially considering that the “intertwining forces of conflict and gender inequality” threatened international peace and security.<sup>187</sup> The representative of Egypt noted that discussing “the conditions of women under occupation” would “prove the Council’s seriousness” when tackling humanitarian matters that might threaten international peace and security.<sup>188</sup> The representative of Australia felt that such a thematic debate contributed to “new ways of thinking about what constituted threats to international peace and security” and how to deal with them.<sup>189</sup>

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

*Conflicts in Africa: Security Council missions and United Nations mechanisms to promote peace and security*

At its 4766th meeting, on 30 May 2003, the Council held a wrap-up meeting to discuss Security Council missions and United Nations mechanisms to promote peace and security in Africa. During the debate, the representative of the Russian Federation pointed out that armed groups were frequently manipulated from abroad and became “an extension of the interests of neighbouring countries”. He declared that this phenomenon had become “regional in nature”, and posed a threat to international peace and security.<sup>190</sup>

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<sup>181</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 16.

<sup>182</sup> *Ibid.*, p. 27.

<sup>183</sup> *Ibid.*, p. 36.

<sup>184</sup> S/PV.4623 (Resumption 1), p. 2 (Cameroon); and p. 9 (Philippines).

<sup>185</sup> S/PV.4623, pp. 5-7 (Mauritius); pp. 9-11 (Mexico); pp. 11-12 (Guinea); pp. 12-13 (United States); and pp. 18-19 (France); S/PV.4623 (Resumption 1), pp. 2-3 (Cameroon); pp. 4-5 (Egypt); and pp. 29-30 (Namibia).

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<sup>186</sup> S/PV.4772, pp. 3-5 (Canada); pp. 7-8 (Liechtenstein); pp. 14-15 (Trinidad and Tobago); and p. 20 (Netherlands).

<sup>187</sup> S/PV.4208, p. 7.

<sup>188</sup> S/PV.4208 (Resumption 1), p. 5.

<sup>189</sup> *Ibid.*, p. 26.

<sup>190</sup> S/PV.4766 (Resumption 1), p. 18.

## 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 did not adopt any resolution explicitly invoking Article 40. In a number of resolutions adopted under Chapter VII, the Council, without expressly referring to Article 40, called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation concerned. During the period 2000 to 2003, types of measures that could be assumed as falling under Article 40 included the following: (a) the withdrawal of armed forces; (b) the cessation of hostilities; (c) the conclusion or observance of a ceasefire; (d) the negotiation of differences and disputes; (e) compliance with obligations under international humanitarian law; (f) the creation of the conditions necessary for unimpeded delivery of humanitarian assistance; and (g) cooperation with peacekeeping efforts and humanitarian assistance. Some of the specific measures that the Council called upon the parties concerned to take are outlined in section A. A number of Council resolutions contained the warning that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. Those warnings, which might be considered as falling under Article 40, were expressed in various ways. In a number of instances, the Council warned that it would consider taking further measures if its calls were not heeded.<sup>191</sup>

<sup>191</sup> See, for example, resolution 1355 (2001), para. 28.

During the Council's deliberations in the period under review there was no significant constitutional discussion regarding Article 40, but only occasional references by Member States in their statements.

#### A. Decisions of the Security Council relating to Article 40

##### Africa

##### The situation in Côte d'Ivoire

By resolution 1479 (2003) of 13 May 2003, noting the existence of challenges to the stability of Côte d'Ivoire and determining that the situation in the country constituted a threat to international peace and security in the region, the Council appealed to all Ivorian political forces to implement fully and without delay the Linas-Marcoussis Agreement.<sup>192</sup> The Council also requested all Ivorian parties to cooperate with the United Nations Mission in Côte d'Ivoire in the execution of its mandate as well as to ensure the freedom of movement of its personnel throughout the country and the unimpeded and safe movement of the personnel of humanitarian agencies.<sup>193</sup>

By a statement of the President dated 13 November 2003,<sup>194</sup> Council members urged all Ivorian political forces to implement fully, without delay or precondition all the provisions of the Linas-Marcoussis Agreement, as well as those of the agreement reached in Accra on 8 March 2003 with a view to open, free and transparent elections being held in Côte d'Ivoire in 2005. In a subsequent statement by the President dated 4 December 2003,<sup>195</sup> the Council members strongly underscored to all the Ivorian parties their fundamental responsibility to respect the ceasefire in accordance with the Linas-Marcoussis Agreement, and called on all the parties to refrain from any act, as well as any incitement to such acts, that could compromise respect of the ceasefire. The Council also

<sup>192</sup> Resolution 1479 (2003), para. 6.

<sup>193</sup> Resolution 1479 (2003), para. 10.

<sup>194</sup> S/PRST/2003/20.

<sup>195</sup> S/PRST/2003/25.

reiterated its call upon all parties in Côte d'Ivoire and countries of the region to guarantee the safety and full access of humanitarian agency personnel working in the field during the consolidation of the peace process.

#### **The situation concerning the Democratic Republic of the Congo**

By resolution 1291 (2000) of 24 February 2000, the Council called upon all parties in the Democratic Republic of the Congo to ensure the safe and unhindered access of relief personnel to all those in need, and recalled that the parties should also provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel. The Council also called upon all parties to cooperate with the International Committee of the Red Cross to enable it to carry out its mandates as well as the tasks entrusted to it under the Ceasefire Agreement. Additionally, the Council called upon all parties to the conflict in the Democratic Republic of the Congo to protect human rights and respect international humanitarian law.<sup>196</sup>

By resolution 1304 (2000) of 16 June 2000, expressing its serious concern at the humanitarian situation and the continuation of hostilities in the country, the Council demanded, *inter alia*, (a) that Ugandan and Rwandan forces, as well as forces of the Congolese armed opposition and other armed groups, immediately and completely withdraw from Kisangani, and called upon all parties to the Ceasefire Agreement to respect the demilitarization of the city and its environs; (b) that Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the Kampala Disengagement Plan; (c) that each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties in conformity with the same timetable; (d) that all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end, in conformity with the provisions of the Ceasefire Agreement; and (e) that all parties abstain from any offensive action during the process of disengagement and withdrawal of foreign forces. By

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<sup>196</sup> Resolution 1291 (2000), paras. 12, 13 and 15.

the same resolution, the Council also demanded that the parties to the Ceasefire Agreement cooperate with the deployment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) to the areas of operation deemed necessary by the Special Representative of the Secretary-General, including by lifting restrictions on the freedom of movement of MONUC personnel and by ensuring their security. It further demanded that all parties comply in particular with the provisions of the Ceasefire Agreement relating to the normalization of the security situation along the borders of the Democratic Republic of the Congo with its neighbours.<sup>197</sup>

By resolution 1341 (2001) of 22 February 2001, the Council demanded that the Ugandan and Rwandan forces, as well as all other foreign forces, withdraw from the territory of the Democratic Republic of the Congo in compliance with resolution 1304 (2000) and the Ceasefire Agreement, and urged those forces to take urgent steps to accelerate that withdrawal. The Council further demanded that all parties refrain from any offensive military action during the process of disengagement and withdrawal of foreign forces and that all armed forces and groups concerned bring an effective end to the recruitment, training and use of children in their armed forces. The Council also called upon the parties to extend full cooperation to MONUC, the United Nations Children's Fund and humanitarian organizations for the speedy demobilization, return and rehabilitation of such children.<sup>198</sup>

By resolution 1355 (2001) of 15 June 2001, the Council reiterated its demand to the Ugandan and Rwandan forces and all other foreign forces to withdraw from the territory of the Democratic Republic of the Congo in compliance with previous Council's resolutions and the Ceasefire Agreement. Expressing concern at recent reports of military operations in North Kivu and South Kivu, the Council called upon all parties to refrain from any offensive action during the process of disengagement and withdrawal of foreign forces.<sup>199</sup> The Council also demanded that the *Rassemblement congolais pour la démocratie* demilitarize Kisangani in accordance with resolution 1304 (2000), and that all parties respect the

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<sup>197</sup> Resolution 1304 (2000), paras. 3, 4, 5, 8 and 12.

<sup>198</sup> Resolution 1341 (2001), paras. 2, 7 and 10.

<sup>199</sup> Resolution 1355 (2001), paras. 2 and 4.

demilitarization of the city and its environs.<sup>200</sup> Finally, it demanded that all parties, including the Government of the Democratic Republic of the Congo, cease immediately all forms of assistance and cooperation with all armed groups as referred to in the Ceasefire Agreement. The Council also expressed its readiness to consider possible measures which could be imposed, in accordance with its responsibilities and obligations under the Charter, in case of failure by parties to comply fully with the present resolution and other relevant resolutions.<sup>201</sup>

By resolution 1399 (2002) of 19 March 2002, while condemning the resumption of fighting in the Moliro area and stressing that this constituted a major violation of the ceasefire, the Council demanded the immediate withdrawal of the *Rassemblement congolais pour la démocratie*-Goma troops from the areas of Moliro and Pweto, and further demanded that all parties withdraw to the defensive positions called for in the Harare disengagement sub-plans.<sup>202</sup>

Welcoming the signature by the Democratic Republic of the Congo and Rwanda of the Peace Agreement at Pretoria on 30 July 2002, as well as the signature by the Democratic Republic of the Congo and Uganda of the Luanda Agreement, by resolution 1445 (2002) of 4 December 2002, the Council called for a full cessation of hostilities involving regular forces and armed groups throughout the territory of the Democratic Republic of the Congo, in particular in South Kiwu and in Ituri, and also called for the cessation of all support to the armed groups as referred to in the Ceasefire Agreement. The Council also called upon all parties to provide full access to MONUC and the Third Party Verification Mechanism throughout the territory of the Democratic Republic of the Congo, including inside all ports, airports, airfields, military bases and border crossings. By the same resolution, the Council reiterated its demand for Kisangani to be demilitarized without further delay and demanded that all parties work to the immediate full restoration of freedom of movement on the Congo river.<sup>203</sup>

By resolution 1468 (2003) of 20 March 2003, the Council demanded that all parties to the conflict in the Democratic Republic of the Congo, and in particular in Ituri, ensure the security of civilian population and grant to MONUC and to humanitarian organizations full and unimpeded access to the populations in need.<sup>204</sup>

By resolution 1484 (2003) of 30 May 2003, while deploying an Interim Emergency Multinational Force in Bunia, the Council demanded that all parties to the conflict in Ituri, in particular in Bunia, cease hostilities immediately, and reiterated that international humanitarian law must be respected. It also demanded that all Congolese parties and all States in the Great Lakes region respect human rights, cooperate with the Multinational Force and with MONUC in the stabilization of the situation in Bunia. The Council further demanded that the parties provide full freedom of movement to the Multinational Force and refrain from any military activity or from any activity that could further destabilize the situation in Ituri. In that regard, the Council demanded also the cessation of all support, in particular weapons and any other military materiel, to the armed groups and militias, and further demanded that all Congolese parties and all States in the region actively prevent the supply of such support.<sup>205</sup>

By resolution 1493 (2003) of 28 July 2003, the Council demanded that all the parties desist from any interference with the freedom of movement of United Nations personnel, and recalled that all the parties had the obligation to provide full and unhindered access to MONUC to allow it to carry out its mandate. The Council further demanded that all parties provide full access to military observers from MONUC, including in ports, airports, airfields, military bases and border crossings.<sup>206</sup>

#### **The situation between Eritrea and Ethiopia**

By resolution 1297 (2000) of 12 May 2000, while stressing that the situation between Eritrea and Ethiopia constituted a threat to peace and security, the Council demanded that both parties cease immediately all military action and refrain from the further use of force and further demanded the earliest possible

<sup>200</sup> Resolution 1355 (2001), para. 5. By resolution 1376 (2001) of 9 November 2001, the Council reiterated its demand that Kisangani be demilitarized rapidly and unconditionally in accordance with resolution 1304 (2000). See resolution 1376 (2001), para. 3.

<sup>201</sup> Resolution 1355 (2001), paras. 6 and 28.

<sup>202</sup> Resolution 1399 (2002), paras. 3 and 4.

<sup>203</sup> Resolution 1445 (2002), para. 13.

<sup>204</sup> Resolution 1468 (2003), para. 14.

<sup>205</sup> Resolution 1484 (2003), paras. 5 and 7.

<sup>206</sup> Resolution 1493 (2003), paras. 15 and 19.

reconvening, without preconditions, of substantive peace talks. The Council also called upon both parties to ensure the safety of civilian populations and to fully respect human rights and international humanitarian law.<sup>207</sup>

By resolution 1298 (2000) of 17 May 2000, the Security Council demanded that both parties immediately cease all military action and refrain from the further use of force as well as to withdraw their forces from military engagement and take no action that would aggravate tensions. The Council also reiterated its demand to reconvene as soon as possible, without preconditions, substantive peace talks, which would conclude a peaceful definitive settlement of the conflict.<sup>208</sup>

### **The situation in Liberia**

By resolution 1497 (2003) of 1 August 2003, while authorizing the establishment of a Multinational Force in Liberia, the Council called upon all Liberian parties and Member States to cooperate fully with the Multinational Force in the execution of its mandate and to respect the security and freedom of movement of the Multinational Force, as well as to ensure the safe and unimpeded access of international humanitarian personnel to populations in need in Liberia.<sup>209</sup>

By a statement of the President dated 27 August 2003,<sup>210</sup> the Council expressed its concern at the humanitarian situation in Liberia and called upon all parties to allow full, secure and unimpeded access for humanitarian agencies and personnel. It further urged all parties to respect fully the ceasefire and to implement fully all their commitments under the Comprehensive Peace Agreement signed in Accra on 18 August 2003.

By resolution 1509 (2003) of 19 September 2003, the Council demanded that the Liberian parties cease hostilities throughout Liberia and fulfill their obligations under the Comprehensive Peace Agreement and the ceasefire agreement, including cooperation in the formation of the Joint Monitoring Committee. The Council also called upon all parties to cooperate fully in the deployment and operations of the United Nations Mission in Liberia (UNMIL), including by ensuring the

safety, security and freedom of movement of United Nations personnel, together with associated personnel, throughout Liberia. By the same resolution, the Council further called upon all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to all those in need and the delivery of humanitarian assistance, in particular to internally displaced persons and refugees.<sup>211</sup>

By resolution 1521 (2003) of 22 December 2003, the Council urged all parties to the Comprehensive Peace Agreement to implement fully their commitments and fulfill their responsibilities in the National Transitional Government of Liberia, and not to hinder the restoration of the Government's authority throughout the country, particularly over natural resources.<sup>212</sup>

### **The situation in Sierra Leone**

By resolution 1289 (2000) of 7 February 2000, determining that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region, the Council reiterated its call upon the parties to fulfill all their commitments under the Peace Agreement to facilitate the restoration of peace, stability, national reconciliation and development in Sierra Leone.<sup>213</sup>

By a statement of the President dated 13 March 2000,<sup>214</sup> the members of the Council demanded that the Revolutionary United Front end its hostile actions, release immediately and unharmed all detained United Nations and other international personnel, cooperate in establishing the whereabouts of those unaccounted for, and comply fully with the terms of the Peace Agreement signed in Lomé on 7 July 1999.

## **Asia**

### **The situation in Afghanistan**

By a statement of the President dated 7 April 2000,<sup>215</sup> while reiterating that the continued Afghan conflict was a serious and growing threat to regional

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<sup>207</sup> Resolution 1297 (2000), paras. 2, 3 and 8.

<sup>208</sup> Resolution 1298 (2000), paras. 2-4.

<sup>209</sup> Resolution 1497 (2003), para. 11.

<sup>210</sup> S/PRST/2003/14.

<sup>211</sup> Resolution 1509 (2003), paras. 4, 5 and 8.

<sup>212</sup> Resolution 1521 (2003), para. 14.

<sup>213</sup> Resolution 1289 (2000), para. 3.

<sup>214</sup> S/PRST/2000/14.

<sup>215</sup> S/PRST/2000/12.

and international peace and security, the members of the Council called upon all Afghan parties to comply with their obligations under international humanitarian law and to ensure full and unhindered access of international humanitarian assistance and personnel to all those in need.

By resolution 1333 (2000) of 19 December 2000, the Council demanded that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations. The Council also demanded that the Taliban comply without further delay with its demand in paragraph 2 of resolution 1267 (1999) that required the Taliban to turn over Osama bin Laden to appropriate authorities. Further, it demanded that the Taliban act swiftly to close all camps training terrorists within the territory under its control. In addition, the Council called upon the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and underlined that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel.<sup>216</sup>

## Europe

### The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, determining that the situation in the region continued to constitute a threat to international peace and security, the Council demanded that the parties respect the security and freedom of movement of the Stabilization Force and of other international personnel.<sup>217</sup>

<sup>216</sup> Resolution 1333 (2000), paras. 1-3 and 13.

<sup>217</sup> Resolution 1305 (2000), para. 15. The Council reiterated its demand that the parties respect the security and freedom of movement of the Force and other international personnel by its subsequent resolutions 1357 (2001), para. 15; 1423 (2002), para. 15; and 1491 (2003), para. 15.

## Middle East

### The situation between Iraq and Kuwait

By resolution 1472 (2003) of 28 March 2003, the Council urged all parties concerned to allow full, unimpeded access by international humanitarian organizations to all people of Iraq in need of assistance, to make available all necessary facilities for their operations and to promote the safety, security and freedom of movement of United Nations and associated personnel and their assets, as well as personnel of humanitarian organizations in Iraq.<sup>218</sup>

### B. Discussion relating to Article 40

During the Council's deliberations in the period under review, there was no significant constitutional discussion regarding Article 40. However, there were occasional references made to it or its language in order to support a specific demand relating to the question under consideration. For instance, at the 4515th meeting, held on 18 April 2002 in connection with the situation in the Middle East, including the Palestinian question, the representative of Morocco referred to Article 40 as a basis for the Council to adopt "provisional measures" to prevent the aggravation of the situation in the occupied Arab territories.<sup>219</sup>

<sup>218</sup> Resolution 1472 (2003), para. 8.

<sup>219</sup> S/PV.4515, p. 16.



### Part III

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

#### Article 41

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

#### Note

During the period under review, the Security Council imposed or modified measures under Chapter VII, of the type provided for in Article 41, in connection with Afghanistan, the Democratic Republic of the Congo, Eritrea and Ethiopia, Iraq, Liberia, Sierra Leone and Somalia, after having determined, in each case, the existence of a breach of the peace or a threat to the peace. During the period under consideration, the Council terminated measures imposed under Article 41 against Angola, the Libyan Arab Jamahiriya, the Sudan and the former Yugoslav Republic of Macedonia.

In this part, section A outlines the decisions of the Security Council imposing, modifying or terminating measures under Article 41 of the Charter.<sup>220</sup> Section B reflects the constitutional discussion in the meetings of the Council arising in connection with the adoption of some of those resolutions. It also includes salient issues raised in the Council's deliberations with reference to general matters relating to sanctions.

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<sup>220</sup> See Chapter V, part I, section B.

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

##### The situation in Afghanistan

##### *Strengthening of measures imposed against Al-Qaida and the Taliban*

By resolution 1333 (2000) of 19 December 2000, the Council reaffirmed its previous resolution 1267 (1999) which had imposed limited air embargo and financial sanctions on the Taliban, and imposed a wider range of measures that would come into force after one month for a period of 12 months. More specifically, the Council decided that States should freeze the funds of Osama bin Laden and individuals and entities associated with him. The Council also imposed an arms embargo over the territory of Afghanistan under control by the Taliban.<sup>221</sup> By the same resolution, the Committee established pursuant to resolution 1267 (1999) was requested to fulfil its mandate, in addition to those set out in resolution 1267 (1999), by undertaking the following tasks: (a) to establish and maintain updated lists based on information provided by States, and by regional and international organizations, of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists; (b) to establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Osama bin Laden; (c) to give consideration to, and decide upon, requests for the exceptions set out in the resolution; (d) to establish and maintain an updated list of approved organizations and governmental relief agencies which were providing humanitarian assistance to Afghanistan; (e) to make relevant information regarding implementation of those measures publicly available through appropriate media; (f) to consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as might be required to enhance the full and effective implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000), with a view

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<sup>221</sup> Resolution 1333 (2000), paras. 5, 8 and 11.

to urging States to comply with relevant Council resolutions; and (g) to make periodic reports to the Council on information submitted to it regarding resolutions 1267 (1999) and 1333 (2000), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of those measures.<sup>222</sup> Finally, the Council requested the Secretary-General to appoint a committee of experts to make recommendations on how the arms embargo and the closure of terrorist camps could be monitored and to review the humanitarian implications of the measures imposed by resolutions 1267 (1999) and by resolution 1333 (2000).<sup>223</sup>

By resolution 1363 (2001) of 30 July 2001, the Council requested the Secretary-General to establish, in consultations with the Committee, a mechanism, comprised of a Monitoring Group, for a period of twelve months (a) to monitor the implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000); (b) to offer assistance to States bordering the territory of Afghanistan under Taliban control and other States in order to increase their capacity regarding the implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000); and (c) to collate, assess, verify wherever possible, report and make recommendations on information regarding violations of the measures imposed by resolutions 1267 (1999) and 1333 (2000).<sup>224</sup>

#### *Termination of aviation sanctions*

By resolution 1388 (2002) of 15 January 2002, the Council noted that Ariana Afghan Airlines was no longer owned, leased or operated by or on behalf of the Taliban, nor were its funds and other financial resources owned or controlled by the Taliban. It thus decided that the aviation-related and financial measures of resolution 1267 (1999) did not apply to Ariana Afghan Airlines aircraft or its funds and other financial resources. The Council also decided to terminate the measures calling for the closure of the airline's foreign offices in resolution 1333 (2000).<sup>225</sup>

By resolution 1390 (2002) of 16 January 2002, the Council decided to terminate the aviation sanctions imposed by resolution 1267 (1999).<sup>226</sup>

#### *Modification of financial, travel and arms sanctions imposed against Al-Qaida and the Taliban*

By resolution 1390 (2002) of 16 January 2002, the Council determined that the Taliban had failed to respond to the demands contained in resolutions 1214 (1998), 1267 (1999) and 1333 (2000). By the same resolution, the Council modified the sanctions regime originally imposed by resolutions 1267 (1999) and 1333 (2000) by further expanding the financial measures to include individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban as designated by the Committee. It decided that all States would ban the entry into or transit through their territories of those individuals, and decided also to review the travel ban in 12 months. The Council also requested the Secretary-General to assign the Monitoring Group to monitor, for a period of 12 months, the implementation of the measures, including the freezing of assets, the travel ban and the arms embargo, imposed and strengthened by the same resolution.<sup>227</sup>

By resolution 1452 (2002) of 20 December 2002, the Council decided that the financial measures imposed by resolutions 1267 (1999) and 1390 (2002) against the Taliban, Osama bin Laden, Al-Qaida and entities associated with them, did not apply to funds and other financial assets or economic resources that were determined by the relevant State(s) to be necessary for basic and extraordinary expenses.<sup>228</sup>

By resolution 1455 (2003) of 17 January 2003, the Council decided to improve the implementation of the freezing of assets, the travel ban and the arms embargo targeting Osama bin Laden, the Al-Qaida organization and the Taliban, as well as individuals and entities associated with them, as contained in the list maintained by the Committee, pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002). In addition, the Council called for an updated report from Member States on the implementation of the measures

<sup>222</sup> Resolution 1333 (2000), paras. 6, 8, 11, 12 and 16.

<sup>223</sup> Resolution 1333 (2000), para. 15.

<sup>224</sup> Resolution 1363 (2001), para. 3.

<sup>225</sup> Resolution 1388 (2002), second preambular paragraph and paras. 1 and 2.

<sup>226</sup> Resolution 1390 (2002), para. 1.

<sup>227</sup> Resolution 1390 (2002), sixth preambular paragraph and para. 9.

<sup>228</sup> Resolution 1452 (2002), paras. 1 and 2.

referred to above and reappointed the Monitoring Group to monitor for a further period of 12 months the implementation of the measures and to follow up on relevant leads relating to any incomplete implementation of those measures<sup>229</sup>.

### **The situation in Angola**

#### *Modification of measures imposed in connection with the União Nacional para a Independência Total de Angola*

By resolution 1295 (2000) of 18 April 2000, the Council expressed its concern at violations of the measures relating to arms, petroleum, diamonds, finance, travel and aviation, imposed against the União Nacional para a Independência Total de Angola (UNITA) by resolutions 864 (1993), 1127 (1997) and 1173 (1998), at the reports of the supplying to UNITA of military assistance and of the presence of foreign mercenaries. The Council therefore requested the Secretary-General to establish a monitoring mechanism.<sup>230</sup> By a number of subsequent resolutions the mandate of the monitoring mechanism was extended until 19 October 2002.<sup>231</sup>

By resolution 1412 (2002) of 17 May 2002, welcoming the signing of a peace agreement by the Government of Angola and UNITA, the Council decided to suspend for 90 days the travel sanctions imposed against UNITA by resolution 1127 (1997).<sup>232</sup> The suspension was renewed by resolution 1432 (2002) of 15 August 2002 for an additional period of 90 days, with a view to encouraging further the peace process and national reconciliation in Angola.<sup>233</sup>

#### *Termination of measures imposed against the União Nacional para a Independência Total de Angola*

By resolution 1439 (2002) of 18 October 2002, the Council decided to lift the travel sanctions imposed against UNITA from 14 November 2002 onwards and

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<sup>229</sup> Resolution 1455 (2003), paras. 1, 6 and 8.

<sup>230</sup> Resolution 1295 (2000), sixth preambular paragraph and para. 3.

<sup>231</sup> Resolutions 1336 (2001), 1348 (2001), 1374 (2001) and 1404 (2002).

<sup>232</sup> Resolution 1412 (2002), para. 1.

<sup>233</sup> Resolution 1432 (2002), para. 1.

to extend the mandate of the Monitoring Mechanism until 19 December 2002.<sup>234</sup>

By resolution 1448 (2002) of 9 December 2002, the Council decided to terminate with immediate effect the arms and petroleum embargo imposed by resolution 864 (1993), the travel and aviation-related measures imposed by resolution 1127 (1997) and the financial, diplomatic and commodity measures imposed by resolution 1173 (1998). It also decided to dissolve the Security Council Committee established pursuant to resolution 864 (1993) concerning Angola.<sup>235</sup>

### **The situation concerning the Democratic Republic of the Congo**

#### *Embargo on arms deliveries to the Democratic Republic of the Congo*

By resolution 1493 (2003) of 28 July 2003, the Council decided that all States, for an initial period of 12 months, were to take the necessary measures to prevent the supply, sale or transfer of arms and any related materiel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive Agreement on the Transition in the Democratic Republic of the Congo. The Council also decided that exceptions to those measures were to be considered, including supplies to the United Nations Mission in the Democratic Republic of the Congo, the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police forces, as well as supplies of non-lethal military equipment intended solely for humanitarian or protective use and related technical assistance and training.<sup>236</sup>

### **The situation between Eritrea and Ethiopia**

#### *Embargo on arms deliveries to Eritrea and Ethiopia*

By resolution 1298 (2000) of 17 May 2000, the Council, “deeply disturbed by the continuation of fighting between Eritrea and Ethiopia”, decided that all States were to prevent the sale or supply to Eritrea and

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<sup>234</sup> Resolution 1439 (2002), paras. 2, 8, and 9.

<sup>235</sup> Resolution 1448 (2002), paras. 2 and 3.

<sup>236</sup> Resolution 1493 (2003), paras. 20 and 21.

Ethiopia of arms and related materiel, and the provision of any related technical assistance or training. The Council further decided that the above measures should not apply to supplies of non-lethal military equipment intended solely for humanitarian use. By the same resolution, the Council established a committee to monitor the implementation and violations of these measures and decided that the measures imposed were established for 12 months, at the end of which the Council would decide whether the Governments of Eritrea and Ethiopia had complied with demands to cease all military action, withdraw from military engagement and convene peace talks, and, accordingly, whether to extend those measures.<sup>237</sup> By resolutions 1312 (2000) of 31 July 2000 and 1320 (2000) of 15 September 2000, the Council decided that the measures imposed by resolution 1298 (2000) would not apply to the sale or supply of equipment for the use of the United Nations Mine Action Service and the United Nations in general.<sup>238</sup>

*Termination of the embargo on arms deliveries to Eritrea and Ethiopia*

By a statement of the President dated 15 May 2001,<sup>239</sup> Council members noted that the arms embargo imposed on the parties by resolution 1298 (2000) would expire on 16 May 2001. The Council recognized that the Algiers Agreements were consistent with the demands of the Council in that resolution, and therefore decided that the measures imposed were not to be extended beyond 16 May 2001. The Council also expressed its intention to take appropriate measures if the situation between Eritrea and Ethiopia again threatened regional peace and security.

**The situation between Iraq and Kuwait**

*Modification of measures imposed against Iraq*

By resolution 1293 (2000) of 31 March 2000, the Council decided that up to a total of \$600 million from the escrow account established pursuant to resolutions 1242 (1999) and 1281 (1999) could be used to meet any reasonable expenses, other than expenses payable

in Iraq, pursuant to the provisions of paragraphs 28 and 29 of resolution 1284 (1999).<sup>240</sup>

By resolution 1302 (2000) of 8 June 2000, the Council, convinced of the need, as a temporary measure, to continue to provide for the humanitarian needs of the Iraqi people, decided that the oil-for-food provisions of resolution 986 (1995) would be extended for a further period of six months.<sup>241</sup> That provision was renewed by several subsequent resolutions.<sup>242</sup>

By resolution 1352 (2001) of 1 June 2001, the Council expressed its intention to consider new arrangements for the sale or supply of commodities and products to Iraq and for the facilitation of civilian trade and economic cooperation with Iraq in civilian sectors, so that such new arrangements would improve significantly the flow of commodities and products to Iraq and improve the controls to prevent the sale or supply of prohibited or unauthorized items.<sup>243</sup>

By resolution 1382 (2001) of 29 November 2001, the Council noted the proposed Goods Review List and the procedures for its application, and decided to adopt the List and the procedures, subject to further modification, for implementation beginning on 30 May 2002.<sup>244</sup>

By resolution 1409 (2002) of 14 May 2002, the Council significantly changed the modalities of the oil-for-food programme, easing the supply of humanitarian goods to Iraq, while strengthening control over dual-use items. It decided to adopt, beginning on 30 May 2002, the proposed Goods Review List annexed to resolution 1382 (2001) and the revised procedures for its application attached to resolution 1409 (2002) as a basis for the humanitarian programme in Iraq.<sup>245</sup> The Council, therefore, authorized States to permit the sale or supply of any commodities or products, other than those related to military products and subject to the procedures of the Goods Review List, and authorized the use of the funds in the escrow account to finance the sale or supply to Iraq of such goods.<sup>246</sup>

<sup>237</sup> Resolution 1298 (2000), paras. 6, 7, 8 and 16.

<sup>238</sup> Resolutions 1312 (2000), para. 5, and 1320 (2000), para. 10.

<sup>239</sup> S/PRST/2001/14.

<sup>240</sup> Resolution 1293 (2000), para. 1.

<sup>241</sup> Resolution 1302 (2000), para. 1.

<sup>242</sup> Resolutions 1330 (2000), 1352 (2001), 1360 (2001), 1382 (2001), 1409 (2002), 1443 (2002) and 1447 (2002).

<sup>243</sup> Resolution 1352 (2001), para. 2.

<sup>244</sup> Resolution 1382 (2001), para. 2.

<sup>245</sup> Resolution 1409 (2002), para. 2.

<sup>246</sup> Resolution 1409 (2002), paras. 3 and 4. By resolution 1443 (2002), the Council decided to renew those

By resolution 1472 (2003) of 28 March 2003, the Council, following the commencement of military action in Iraq, recognized that in view of the exceptional circumstances prevailing in Iraq, technical and temporary adjustments should be made to the oil-for-food programme so as to ensure the implementation of the approved funded and non-funded contracts concluded by the Government of Iraq for the humanitarian relief of the people of Iraq. The Council therefore authorized the Secretary-General to undertake various steps to establish those measures, and expressed its readiness to consider making additional funds available to meet the humanitarian needs of the people of Iraq. It further decided that all applications outside the oil-for-food programme for distribution or use in Iraq of emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs, would be reviewed by the Committee.<sup>247</sup> Those measures were extended by resolutions 1476 (2003) of 24 April 2003 and 1483 (2003) of 22 May 2003.

*Termination and replacement of measures imposed against Iraq*

By resolution 1483 (2003) of 22 May 2003, the Council decided (a) with the exception of the arms embargo, to lift the civilian sanctions imposed on Iraq following its invasion of Kuwait in 1990; and (b) to request the Secretary-General to terminate the oil-for-food programme within six months of the adoption of the resolution. By the same resolution, the Council further reduced the level of proceeds of all export sales of Iraqi petroleum, petroleum products and natural gas to be deposited into the Compensation Fund to 5 per cent. The Council also decided that all Member States in which there were financial assets or funds of the previous Government of Iraq, Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled indirectly or directly by them, should freeze those financial assets or funds or economic resources and immediately transfer them to the

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provisions until 4 December 2002; by its subsequent resolution, 1447 (2002), the Council decided to consider necessary adjustments to the Goods Review List for adoption within 30 days; and by resolution 1454 (2002), the Council approved the implementation of the adjustments to the Goods Review List specified in annex A to the resolution.

<sup>247</sup> Resolution 1472 (2003), paras. 3, 4, 6 and 9.

Development Fund for Iraq. Finally, the Council decided that the Security Council Committee established pursuant to resolution 661 (1990) should be terminated within six months of the adoption of the resolution.<sup>248</sup>

By resolution 1518 (2003) of 24 November 2003, the Council established a committee to continue to identify, in accordance with paragraphs 19 and 23 of resolution 1483 (2003), individuals and entities referred to in paragraph 19 of that resolution, including by updating the list of individuals and entities identified by the Security Council Committee established by resolution 661 (1990), and to report on its work to the Council.<sup>249</sup>

**The situation in Liberia**

*Termination of measures imposed against Liberia*

By resolution 1343 (2001) of 7 March 2001, noting that the conflict in Liberia had been resolved, the Council decided to terminate the arms embargo imposed by resolution 788 (1992) and to dissolve the committee established under resolution 985 (1995).<sup>250</sup>

*Imposition of arms, diamond and travel sanctions against Liberia*

By resolution 1343 (2001) of 7 March 2001, after demanding that the Government of Liberia cease its support for the Revolutionary United Front in Sierra Leone and for other armed rebel groups in the region, the Council decided to establish a new set of sanctions measures. It decided that all States, for a period of 14 months, with a few exemptions, were to take the necessary measures to prevent the sale or supply to Liberia of arms and related materiel, technical training or assistance.<sup>251</sup> The Council also decided that all

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<sup>248</sup> Resolution 1483 (2003), paras. 19, 21 and 23.

<sup>249</sup> Resolution 1518 (2003), para. 1.

<sup>250</sup> Resolution 1343 (2001), para. 1.

<sup>251</sup> Resolution 1343 (2001), para. 5; the measures would not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, or to protective clothing, including flak jackets and military helmets, temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only. Subsequently, by resolution 1509 (2003), the Council decided that the arms embargo imposed by resolution 1343 (2001) would not apply to

States were to take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia and that this measure would come into force after two months for a period of 12 months unless the Council determined before that date that Liberia had complied with its demands.<sup>252</sup> The Council further decided that, unless otherwise decided by the Committee on a case-by-case basis, all States were to take the necessary measures to prevent the entry into or transit through their territories of senior members of the Government of Liberia and its armed forces and their spouses and any other individuals providing financial and military support to armed rebel groups in countries neighbouring Liberia, in particular RUF in Sierra Leone.<sup>253</sup> The Council requested the Secretary-General to establish a Committee of the Security Council to monitor the implementation of the above measures as well as a Panel of Experts to investigate any violations of the measures imposed.<sup>254</sup>

By resolution 1408 (2002) of May 2002, the Council decided that the measures imposed by resolution 1343 (2001) would remain in force for a further period of 12 months. By the same resolution, the Council requested the Secretary-General to re-establish the Panel of Experts for a further period of three months to conduct a follow-up assessment mission to Liberia and neighbouring States, in order to investigate and compile a report (a) on the Government of Liberia's compliance with the Council's demand in resolution 1343 (2001) concerning cessation of the Government's support for RUF in Sierra Leone and other armed rebel groups in the region; (b) on the potential economic, humanitarian and social impact on the Liberian population of the measures imposed by

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supplies of arms and related materiel and technical training and assistance intended solely for support of or use by UNMIL.

<sup>252</sup> Resolution 1343 (2001), paras. 6 and 8.

<sup>253</sup> Resolution 1343 (2001), para. 7. By the same resolution, the Council decided that the Committee could determine that such travel was justified on the grounds of humanitarian need, including religious obligation, or where the exemption would promote Liberian compliance or assist in the peaceful resolution of the conflict in the subregion.

<sup>254</sup> Resolution 1343 (2001), paras. 14 and 19. The Panel of Experts was subsequently re-established by resolution 1395 (2002).

resolution 1343 (2001); and (c) on any violations thereof.<sup>255</sup>

#### *Imposition of timber sanctions against Liberia*

By resolution 1478 (2003) of 6 May 2003, the Council decided that the Government of Liberia had not complied fully with the demands in resolution 1343 (2001). The Council therefore decided that the measures imposed by resolution 1343 (2001), namely the arms embargo, the ban on the import of rough diamonds and the travel restrictions, would remain in force for an additional period of 12 months. In addition, it decided that all States were to take the necessary measures to prevent the import into their territories of all round logs and timber products originating in Liberia, to come into force on 7 July 2003 for a period of ten months. By the same resolution, the Council requested the Secretary-General to re-establish the Panel of Experts, for a period of five months, to conduct a follow-up assessment mission to Liberia and neighbouring States.<sup>256</sup>

#### *Modification of measures imposed against Liberia*

By resolution 1521 (2003) of 22 December 2003, noting the changed circumstances in Liberia, in particular, the departure of former President Charles Taylor, the formation of the National Transitional Government of Liberia and progress with the peace process in Sierra Leone, the Council dissolved the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia and terminated the measures imposed by resolutions 1343 (2001) and 1478 (2003). By the same resolution, the Council decided to establish a new set of measures for a period of 12 months, and a new Committee to oversee the implementation of the newly imposed measures.<sup>257</sup> The Council decided that, with a few exemptions, all States should take the necessary measures to prevent the sale or supply to Liberia of arms and related materiel of all types and related technical training or assistance.<sup>258</sup> The Council also

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<sup>255</sup> Resolution 1408 (2002), paras. 5 and 16.

<sup>256</sup> Resolution 1478 (2003), paras. 1, 17 and 25.

<sup>257</sup> Resolution 1521 (2003), paras. 1 and 21.

<sup>258</sup> Resolution 1521 (2003), para. 2. By the same resolution, the Council also decided that these measures would not apply to the following: (a) supplies of arms and related materiel and technical training and assistance intended solely for support of or use by UNMIL; (b) supplies of

decided that all States were to take the necessary measures to prevent the entry into or transit through their territories of individuals who constituted a threat to the peace process in Liberia or who were undermining peace and stability in Liberia and the subregion.<sup>259</sup> In addition, the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamonds, round logs and timber products from Liberia to their territory. By the same resolution, the Council requested the Secretary-General to establish a five-member Panel of Experts, for a period of five months, (a) to conduct a follow-up assessment mission to Liberia and neighbouring States; (b) to report on the implementation of the sanctions measures, and to assess progress made towards the goals set out by the Council for the lifting of sanctions; and (c) to report to the Council through the Committee no later than 30 May 2004 with observations and recommendations, including, inter alia, how to minimize any humanitarian and socio-economic impact of the measures imposed by the same resolution.<sup>260</sup>

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arms and related materiel and technical training and assistance intended solely for support of or use in an international training and reform programme for the Liberian armed forces and police; (c) supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; and (d) protective clothing, including flak jackets and military helmets, temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only.

<sup>259</sup> Resolution 1521 (2003), para. 4. By the same resolution, the Council further specified that these measures would be applicable (a) to those senior members of former President Charles Taylor's Government and their spouses and members of Liberia's former armed forces who retained links to former President Charles Taylor; (b) to those individuals determined to be in violation of the arms embargo; and (c) to any other individuals, or individuals associated with entities providing financial or military support to armed rebel groups in Liberia or in countries in the region. The Council decided that these measures would not apply where the Committee determined that such travel was justified on the grounds of humanitarian need or where the Committee concluded that an exemption would otherwise further the objectives of peace, stability and democracy in Liberia and lasting peace in the subregion.

<sup>260</sup> Resolution 1521 (2003), paras. 6, 10 and 22.

### **The situation in Sierra Leone**

#### *Exemptions to the embargo on arms deliveries to Sierra Leone*

By resolution 1299 (2000) of 19 May 2000, the Council decided that the arms embargo imposed by resolution 1171 (1998) did not apply to the sale or supply of arms and related materiel for the sole use in Sierra Leone of those Member States cooperating with the United Nations Mission in Sierra Leone (UNAMSIL) and the Government of Sierra Leone.<sup>261</sup>

#### *Embargo on diamond imports from Sierra Leone*

By resolution 1306 (2000) of 5 July 2000, the Council expressed its concern at the role played by the illicit trade in diamonds in fuelling the conflict in Sierra Leone and at reports that such diamonds transited through neighbouring countries. The Council therefore decided that all States were to take the necessary measures to prohibit the import of all rough diamonds from Sierra Leone. It further decided that rough diamonds controlled by the Government of Sierra Leone through the certificate of origin regime would be exempt from these measures once the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone had reported that an effective regime was in operation. The Council decided to establish the measures for a period of 18 months, at the end of which the Council would review the situation in Sierra Leone, including the extent of the Government's authority over the diamond-producing areas, in order to decide whether to extend or modify the measures for a further period. It also requested the Secretary-General to establish a Panel of Experts to collect information on possible violations of the measures and the link between the trade in diamonds and the trade in arms and related materiel.<sup>262</sup> The Council renewed the above measures by resolutions 1385 (2001) and 1446 (2002), stressing that they should be terminated immediately whenever the Council deemed it appropriate.<sup>263</sup>

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<sup>261</sup> Resolution 1299 (2000), para. 3.

<sup>262</sup> Resolution 1306 (2000), sixth preambular paragraph and paras. 1, 5, 6 and 19.

<sup>263</sup> Resolutions 1385 (2001), para. 4, and 1446 (2002), para. 3.

## **The situation in Somalia**

### *Exemptions to the embargo on arms deliveries to Somalia*

By resolution 1356 (2001) of 19 June 2001, the Council decided on exemptions to the arms embargo imposed by resolution 733 (1992). In particular, it decided that those measures would not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only, or to supplies of non-lethal military equipment intended solely for humanitarian or protective use.<sup>264</sup>

### *Strengthening of measures imposed against Somalia*

By resolution 1407 (2002) of 3 May 2002, the Council requested the Secretary-General to establish, in preparation for a Panel of Experts, a team of experts to provide the Security Council Committee established pursuant to resolution 751 (1992) with an action plan detailing the resources and expertise that the panel of experts would require in order to generate independent information on violations of the arms embargo and for improving its enforcement.<sup>265</sup>

By resolution 1425 (2002) of 22 July 2002, the Council decided that the arms embargo imposed by resolution 733 (1992) should also prohibit the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities. It requested the Secretary-General to establish a panel of experts in order to generate independent information on violations of the arms embargo and as a step towards implementing and strengthening the embargo.<sup>266</sup> The Panel was subsequently re-established by resolution 1474 (2003) of 8 April 2003.<sup>267</sup>

By resolution 1519 (2003) of 16 December 2003, the Council requested the Secretary-General to establish a Monitoring Group to be based in Nairobi

<sup>264</sup> Resolution 1356 (2001), paras. 2 and 3.

<sup>265</sup> Resolution 1407 (2002), para. 1.

<sup>266</sup> Resolution 1425 (2002), paras. 2 and 3.

<sup>267</sup> Resolution 1474 (2003), para. 3.

which would, inter alia, investigate ongoing violations of the arms embargo.<sup>268</sup>

## **Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America**

### *Termination of measures*

By resolution 1506 (2003) of 12 September 2003, the Council welcomed the letter dated 15 August 2003 from the delegation of the Libyan Arab Jamahiriya,<sup>269</sup> recounting steps taken by the Government to comply with resolutions 731 (1992), 748 (1992), 883 (1993) and 1192 (1998). The Council therefore decided to lift with immediate effect the aviation, travel, arms, diplomatic, representation, financial and petroleum-related measures imposed by resolution 748 (1992) and resolution 883 (1993). It also dissolved the Security Council Committee established pursuant to resolution 748 (1992).<sup>270</sup>

## **Security Council resolution 1054 (1996) of 26 April 1996**

### *Termination of measures*

By resolution 1372 (2001) of 28 September 2001, the Council noted the steps taken by the Government of the Sudan to comply with the provisions of resolutions 1054 (1996) and 1070 (1996). It welcomed the accession of the Sudan to the relevant international conventions for the elimination of terrorism, its ratification of the 1997 International Convention for the Suppression of Terrorist Bombings<sup>271</sup> and its signing of the 1999 International Convention for the Suppression of Financing of Terrorism. It therefore decided to lift with immediate effect the diplomatic,

<sup>268</sup> Resolution 1519 (2003), para. 2.

<sup>269</sup> S/2003/818. These steps related to the destruction of Pan Am flight 103 over Lockerbie, Scotland and Union de transports aeriens flight 772 over Niger, and involved accepting responsibility for the actions of Libyan officials, payment of appropriate compensation, renunciation of terrorism and a commitment to cooperating with any further requests for information in connection with the investigation.

<sup>270</sup> Resolution 1506 (2003), paras. 2 and 3.

<sup>271</sup> United Nations, *Treaty Series*, vol. 2149, No. 37517.



travel and aviation measures imposed against the Sudan by resolutions 1054 (1996) and 1070 (1996).<sup>272</sup>

**Security Council resolution 1160 (1998)  
of 31 March 1998**

*Termination of measures*

By resolution 1367 (2001) of 10 September 2001, emphasizing the continuing authority of the Secretary-General's Special Representative to restrict and strictly control the flow of arms into, within and out of Kosovo pursuant to resolution 1244 (1999), the Council decided to terminate the arms embargo and dissolve the Security Council Committee established by resolution 1160 (1998).<sup>273</sup>

**Children and armed conflict**

By resolution 1314 (2000) of 11 August 2000, in connection with the protection of children in situation of armed conflict, the Council indicated its willingness, when imposing measures under Article 41, "to consider assessing the potential unintended consequences of sanctions on children and to take appropriate steps to minimize such consequences".<sup>274</sup>

**Threats to international peace and security  
caused by terrorist acts**

By resolution 1373 (2001) of 28 September 2001, the Council reaffirmed its unequivocal condemnation of the terrorist attacks of 11 September 2001 in New York, Washington, D.C. and Pennsylvania, and, acting under Chapter VII, decided that all States should cooperate in a wide range of areas, from suppressing the financing of terrorism to providing early warning, as well as cooperating in criminal investigations, exchanging information on possible terrorist acts, and reporting on the steps they had taken to implement that resolution. In particular, the Council decided that all States were to take the following actions: (a) to prevent and suppress the financing of terrorist acts; (b) to criminalize the wilful provision or collection of funds with the intention or knowledge that the funds would be used to carry out terrorist acts; (c) to freeze funds and other financial assets or economic resources of persons who committed or attempted to commit

terrorist acts or participate in or facilitate the commission of terrorist acts; and (d) to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available for the benefit of such persons.<sup>275</sup>

The Council further decided that States were (a) to refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists; (b) to take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States through exchange of information; (c) to deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens; (d) to prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens; (e) to bring to justice any person who participates in the financing, planning, preparation or perpetration of terrorist acts and establish such terrorist acts as serious criminal offences in domestic laws and regulations, and ensure that the punishment duly reflects the seriousness of such acts; (f) to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; and (g) to prevent the movement of terrorist or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents.<sup>276</sup> By the same resolution, the Council decided to establish a Committee of the Security Council to monitor implementation of the resolution, with the assistance of appropriate expertise. The Council called upon all States to report to the Committee, no later than 90 days from the date of adoption of the resolution and, thereafter, according to a timetable to be proposed by the Committee, on the steps they had taken to implement the resolution itself. Furthermore, the Council directed the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of the resolution, and to consider the support it required, in consultation with the Secretary-General. Finally, the Council expressed its

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<sup>272</sup> Resolution 1372 (2001), sixth preambular paragraph and para. 1.

<sup>273</sup> Resolution 1367 (2001), paras. 1 and 2.

<sup>274</sup> Resolution 1314 (2000), para. 15.

<sup>275</sup> Resolution 1373 (2001), para. 1.

<sup>276</sup> Resolution 1373 (2001), para. 2.

determination to “take all necessary steps” to ensure the full implementation of the resolution, in accordance with its responsibilities under the Charter.<sup>277</sup>

### **Women and peace and security**

By resolution 1325 (2000) of 31 October 2000, in connection with women and peace and security, the Council reaffirmed its readiness, whenever measures were adopted under Article 41, “to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider humanitarian exemptions”.<sup>278</sup>

By resolution 1379 (2001) of 20 November 2001, in connection with children and armed conflict, the Council undertook to consider, “as appropriate when imposing measures under Article 41, the economic and social impact of sanctions on children, with a view to providing appropriate humanitarian exemptions that take account of their specific needs and their vulnerability and to minimizing such impact”.<sup>279</sup>

## **B. Discussion relating to Article 41**

### **The situation in Afghanistan**

At its 4251st meeting, on 19 December 2000, the Council adopted resolution 1333 (2000), by which it took a series of mandatory measures against the Taliban. During the debate, several speakers cautioned that the Taliban continued to flout the will of the international community, as expressed by the Council in resolution 1267 (1999), by failing to hand over Osama bin Laden, and asked for additional measures to be imposed against the Taliban.<sup>280</sup> By contrast, the representative of China emphasized that his country was not in favour of “easily resorting to sanctions or of their repeated use”. He further stated that sanctions had to be adopted with great caution and prudence, and were a “double-edged sword”, adversely impacting the humanitarian situation in Afghanistan. He expressed the belief that a new round of sanctions would “naturally have a negative impact on the Afghan peace

process,” and that a “unilateral arms embargo” could not achieve the objective of enhancing the peace process.<sup>281</sup> The representative of Canada noted that the resolution would send a “strong anti-terrorism message”, but drew attention to the necessity of monitoring the humanitarian situation in Afghanistan to ensure that the civilian population did not suffer “needlessly as a result of these new sanctions”. He remarked that the resolution could have been better targeted and more sensitive to humanitarian considerations, but welcomed the establishment of a committee of experts to monitor and report on the implementation and the humanitarian impact of the sanctions.<sup>282</sup> Likewise, the representative of the Netherlands insisted that the Council should continue to weigh the possible humanitarian and political impact these measures would have against the Council’s wider political objectives. He deemed unacceptable that “the Taliban should use the adoption of the current draft resolution as a pretext for blocking the delivery of humanitarian aid”.<sup>283</sup>

In regard to the humanitarian impact of measures imposed, the representative of Malaysia asserted that his country did not reject the use of sanctions, as long as they were “taken as a measure of last resort short of the use of force”, were targeted, had “minimal humanitarian impact on the population at large” and a “specific time-frame”. He held the belief that the sanctions imposed by the draft resolution would “exacerbate the sense of isolation and despair of the people of Afghanistan” and lead to the deterioration of the humanitarian situation in the Taliban-controlled areas in Afghanistan. He also noted that the periodic assessments regarding the humanitarian impact of the sanctions, to have been undertaken by the sanctions committee pursuant to resolution 1267 (1999), had not been carried out. He expressed concern at the negative impact of the proposed measures on the peace process in Afghanistan. He warned that the imposition of measures against the Taliban would, in effect, interfere with the civil war in the country and that the one-sided arms embargo compromised the neutrality of the Council.<sup>284</sup> A number of representatives expressed confidence that the targeted nature of the sanctions would avoid their having an adverse impact on the

<sup>277</sup> Resolution 1373 (2001), paras. 6, 7 and 8.

<sup>278</sup> Resolution 1325 (2000), para. 14.

<sup>279</sup> Resolution 1379 (2001), para. 7.

<sup>280</sup> S/PV.4251 and Corr.1, pp. 2-4 (Afghanistan); pp. 5-6 (the Netherlands); p. 6 (United Kingdom); pp. 6-7 (Ukraine); pp. 7-8 (United States); p. 9 (Canada); and pp. 9-11 (Russian Federation).

<sup>281</sup> *Ibid.*, pp. 8-9.

<sup>282</sup> *Ibid.*, p. 9.

<sup>283</sup> *Ibid.*, pp. 5-6.

<sup>284</sup> *Ibid.*, pp. 4-5.

civilian population of Afghanistan.<sup>285</sup> The representative of the Russian Federation further noted that the Council should not acquiesce to “blackmail” by responding to threats by the Taliban to expel humanitarian workers if the Council imposed the sanctions. He insisted that the one-sided nature of the arms embargo was “fully justified” since the Taliban had “always banked on using military means to resolve the Afghan problem” and offered their territory for the use and protection of terrorists. He underlined that the Taliban had on many occasions reneged on their commitments to begin negotiations, and that this “consistent policy” of the Taliban was what negatively impacted the peace process, and not the decisions of the Council.<sup>286</sup> The representative of the United States affirmed that the policies of the Taliban had “aggravated the already abysmal economic and social conditions of the people of Afghanistan”.<sup>287</sup>

In regard to the time-bound nature of the measures imposed, the representative of France recalled that this was the third time during the year that the Council had mandated a time-bound sanctions regime and saluted the formation of a new Council doctrine that was conducive to “avoiding the perpetuation of sanctions for indefinite time periods”.<sup>288</sup> The representative of Ukraine also noted that the resolution established time limits for the sanctions regime and deemed that, by adopting these measures, the Council was sending “a clear message to the Taliban regarding the termination of the sanctions regime”.<sup>289</sup>

At its 4325th meeting, on 5 June 2001, the Council discussed the report of the Committee of Experts on Afghanistan appointed pursuant to resolution 1333 (2000) regarding the monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan. During the debate, several speakers pledged their support for the monitoring mechanism recommended in the committee’s report.<sup>290</sup> The

representative of China pointed out that the establishment of a new sanctions monitoring mechanism would require the “close cooperation of States neighbouring Afghanistan” and the Council should, therefore, “carefully consider and respect the opinions of those neighbouring countries” before arriving at a decision.<sup>291</sup> The representative of Tunisia concurred and added that some of Afghanistan’s neighbours might need “concrete support” to strengthen and develop their monitoring mechanisms.<sup>292</sup> The representative of Mali maintained that the “goal of sanctions should not be to punish, but to modify behaviour”, and to attain that goal sanctions should be applied “rigorously”.<sup>293</sup> The representative of Mauritius advised that the sanctions monitoring mechanism should not become a “mere reporting panel for further action by others”, but a “solid structure, with all financial and human resources to effectively deal with sanctions-busting cases”.<sup>294</sup> The representative of Singapore cautioned that in creating the sanctions monitoring mechanism, the Security Council should not “unwittingly” institute measures that would impede the ability of humanitarian agencies to bring aid to the Afghan population.<sup>295</sup> The representative of Uzbekistan added that the effectiveness of the monitoring mechanism would depend on the direct involvement and commitment of “all countries”.<sup>296</sup> The representative of Pakistan expressed his Government’s general opposition to sanctions, “as a matter of principle” and called attention to the humanitarian consequences of sanctions in Afghanistan. He asked for sanctions to be lifted and the “wrong to be corrected”.<sup>297</sup>

### The situation in Angola

At its 4283rd meeting, on 22 February 2001, the Council discussed the final report of the Monitoring Mechanism presented to the Council pursuant to resolution 1295 (2000), which established sanctions against UNITA. During the debate, several speakers

<sup>285</sup> *Ibid.*, pp. 2-4 (Afghanistan); pp. 5-6 (the Netherlands); p. 6 (United Kingdom); p. 6 (France); pp. 7-8 (United States); and pp. 9-11 (Russian Federation).

<sup>286</sup> *Ibid.*, pp. 9-11.

<sup>287</sup> *Ibid.*, pp. 7-8.

<sup>288</sup> *Ibid.*, p. 6.

<sup>289</sup> *Ibid.*, pp. 6-7.

<sup>290</sup> S/PV.4325, p. 4 (Ukraine); pp. 6-7 (Russian Federation); pp. 7-8 (United States); pp. 9-10 (United Kingdom);

p. 10 (Ireland); pp. 10-11 (France); pp. 11-12 (Jamaica); p. 13 (Norway); p. 15 (Colombia); and pp. 15-18 (Afghanistan).

<sup>291</sup> *Ibid.*, p. 5.

<sup>292</sup> *Ibid.*, p. 6.

<sup>293</sup> *Ibid.*, p. 8.

<sup>294</sup> *Ibid.*, p. 12.

<sup>295</sup> *Ibid.*, p. 14.

<sup>296</sup> S.PV.4325 (Resumption 1), p. 3.

<sup>297</sup> *Ibid.*, pp. 5-6.

commended the positive effect of the sanctions regime in diminishing the procurement of arms by UNITA and its capacity to wage war.<sup>298</sup> The representative of France noted that, despite this success, sanctions violations had occurred in Angola and called for the Council to find the “proper means” to put an end to the violations.<sup>299</sup> Similarly, the representative of Ukraine declared that the Council should encourage States to take “strong action” with respect to sanctions violations.<sup>300</sup> Moreover, the representatives of Mali and Mauritius asked for secondary sanctions to be imposed on States that violated the measures adopted against UNITA.<sup>301</sup> In response, the representative of Colombia asserted that “imposing sanctions on Governments that violate sanctions” would run the “risk of proliferating such measures, operating selectively and politicizing the sanctions regime”.<sup>302</sup> The representatives of Brazil and Mozambique remarked that the success of the sanctions against UNITA depended on the continued commitment of the international community in the implementation of sanctions.<sup>303</sup> Similarly, the representative of Togo asserted that the sanctions regime would be implemented effectively only “through substantive dialogue” and “ongoing cooperation with all States”,<sup>304</sup> while the representative of Bulgaria noted that the full implementation of sanctions could be achieved only “through a synergy of actions at the national, regional and global levels”.<sup>305</sup> Furthermore, several speakers emphasized the need to institutionalize the monitoring of sanctions, so that the requisite expertise and methodology would be applied for the whole duration of the sanctions regimes.<sup>306</sup> Several speakers concurred that the sanctions against UNITA should not represent an end in themselves, but create the necessary conditions for a final political solution to the Angolan

question.<sup>307</sup> The representative of Sweden, speaking on behalf of the European Union and associated countries,<sup>308</sup> expressed the European Union’s commitment to maintaining strong international pressure on UNITA and its leadership through the full implementation of the United Nations sanctions.<sup>309</sup> Several representatives asked the Council to augment its sanctions against UNITA so as to compel it to return to the peace process as soon as possible.<sup>310</sup> By contrast, the representative of Bangladesh underlined that his Government encouraged “a process of peaceful resolution of disputes and of genuine national reconciliation”, alongside sanctions.<sup>311</sup>

At its 4418th meeting, on 15 November 2001, the Council heard a briefing by the Under-Secretary-General and Special Adviser of the Secretary-General on the situation in Angola and its effects on Angolan civilians. During the debate, several speakers expressed their satisfaction with the positive impact of the sanctions imposed on UNITA.<sup>312</sup> The representative of Brazil observed that, while the situation in Angola had improved, thanks primarily to sanctions, stability was still a goal to be achieved and asked for strict compliance with the United Nations sanctions.<sup>313</sup> The representative of Malawi, however, argued that the UNITA attacks against civilians demonstrated that the sanctions regime was ineffectual and insisted on an investigation of every possible loophole in the sanctions regime. He called upon the international community to support the Southern African Development Community (SADC) in implementing the sanctions regime against UNITA.<sup>314</sup> Similarly, several representatives called for the international community to play its role in securing peace in Angola, by fully complying with the sanctions against UNITA.<sup>315</sup> The representative of Belgium

<sup>298</sup> S/PV.4283, p. 8 (Jamaica); p. 11 (Colombia); pp. 12-13 (China); and p. 13 (Mali).

<sup>299</sup> *Ibid.*, p. 6.

<sup>300</sup> *Ibid.*, p. 17.

<sup>301</sup> *Ibid.*, p. 14 (Mali); and p. 19 (Mauritius).

<sup>302</sup> *Ibid.*, p. 11.

<sup>303</sup> *Ibid.*, p. 37 (Brazil); and p. 38 (Mozambique).

<sup>304</sup> *Ibid.*, p. 32.

<sup>305</sup> *Ibid.*, p. 35.

<sup>306</sup> *Ibid.*, p. 6 (France); p. 8 (Jamaica); p. 10 (United Kingdom); p. 14 (Mali); p. 15 (Norway); p. 21 (Tunisia); p. 23 (Burkina Faso); p. 25 (Canada); p. 31 (Argentina); p. 36 (Brazil); p. 38 (Mozambique); and pp. 39-40 (Namibia).

<sup>307</sup> *Ibid.*, p. 27 (Swaziland); p. 28 (Portugal); and p. 36 (Brazil).

<sup>308</sup> Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia; Cyprus, Malta and Turkey; and Iceland and Liechtenstein.

<sup>309</sup> *Ibid.*, p. 30.

<sup>310</sup> *Ibid.*, p. 12 (China); p. 13 (Mali); and p. 22 (Angola).

<sup>311</sup> *Ibid.*, p. 18.

<sup>312</sup> S/PV.4418, p. 5 (Angola); p. 6 (Ireland); p. 12 (Mauritius); p. 13 (Bangladesh); p. 15 (Mali); and p. 18 (Norway).

<sup>313</sup> *Ibid.*, p. 25.

<sup>314</sup> *Ibid.*, p. 21.

<sup>315</sup> *Ibid.*, p. 19 (Singapore); p. 20 (Jamaica); and p. 27 (Belgium).

insisted that sanctions were not a solution in themselves and that they should form part of a more comprehensive political framework.<sup>316</sup>

With regard to the monitoring and strengthening of the measures imposed against UNITA, several speakers advocated the creation of a monitoring mechanism to increase the effectiveness of sanctions.<sup>317</sup> The representative of Mauritius, echoed by the representatives of Ukraine and Namibia, noted that sanctions should be not only “closely monitored, but also tightened”.<sup>318</sup> The representative of Cape Verde concluded that additional measures should be taken to put an end to criminal activities, and noted that such measures could be taken “only through effective monitoring mechanisms in the context of a review of the sanctions”.<sup>319</sup> The representative of Canada asked the Council to take “more resolute action” towards Member States that continued such violations by, for example, “imposing secondary sanctions”.<sup>320</sup> The representative of Tunisia insisted that there could be “no military solution to the conflict” and that sanctions should be maintained until the peace process became irreversible.<sup>321</sup>

At its 4517th meeting, on 23 April 2002, the Council was briefed on the situation in Angola by the Under-Secretary-General and Special Adviser of the Secretary-General for Special Assignments in Africa who remarked that, while the suspension of the ban on travel by UNITA officials was in effect, it would be “premature” to talk about the lifting of other sanctions.<sup>322</sup> The representative of Angola attested that sanctions remained an effective policy instrument to ensure the full implementation of the Lusaka Protocol and to prevent any departure from “the spirit of peace growing in Angola”. He acknowledged that sanctions would continue to act as a catalyst for enduring peace and expressed his Government’s willingness to cooperate with the Security Council on the

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<sup>316</sup> Ibid., p. 27.

<sup>317</sup> Ibid., p. 9 (France); p. 9 (Ukraine); p. 13 (Bangladesh); p. 16 (Colombia); and p. 17 (China).

<sup>318</sup> Ibid., p. 9 (Ukraine); p. 12 (Mauritius); and p. 24 (Namibia).

<sup>319</sup> Ibid., p. 22.

<sup>320</sup> Ibid., p. 28.

<sup>321</sup> Ibid., p. 17.

<sup>322</sup> S/PV.4517, p. 4.

consideration of appropriate exemptions so as to facilitate the process of national reconciliation.<sup>323</sup>

### **The situation concerning the Democratic Republic of the Congo**

At its 4437th meeting, on 14 December 2001, the Council considered the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. The Chair of the Panel conveyed the Panel’s recommendation to establish “a moratorium on the purchase, transit and import of high-value commodities” from regions of the Democratic Republic of the Congo where foreign troops were present. He expressed the view that this would end the exploitation of natural resources that was “linked to the continuation of the conflict”.<sup>324</sup> During the ensuing debate, several speakers expressed support for such a moratorium. The representative of Ireland noted that such action might “have an impact on consumers and persuade them to pressurize the companies that purchase the commodities in question to seek alternative sources”.<sup>325</sup> The representative of Jamaica expressed the belief that a moratorium should be “targeted not only at the countries and groups in the region, but also at the end users” to ensure that the people of the Democratic Republic of the Congo benefited from the exploitation of their resources.<sup>326</sup> The representative of Bangladesh stated that the moratorium should ideally also extend to cover financial transactions, arms transfers and military cooperation. He further noted that all parties concerned, including transit countries and the countries of destination of the Democratic Republic of the Congo’s illegally exploited resources, had a “moral obligation” to join the moratorium.<sup>327</sup> The representative of Colombia stated that there was a need to “name and shame” those involved in the illegal exploitation of natural resources as well as the “international arms and munitions merchants” who were sustaining the fighting capacity of the armed groups committing atrocities against civilians of the Democratic Republic of the Congo.<sup>328</sup> The

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<sup>323</sup> Ibid., pp. 6-7.

<sup>324</sup> S/PV.4437, pp. 3-5.

<sup>325</sup> Ibid., p. 23.

<sup>326</sup> Ibid., pp. 23-25.

<sup>327</sup> Ibid., pp. 25-26.

<sup>328</sup> Ibid., pp. 34-35.

representative of Nigeria urged the Council to consider the imposition of sanctions on any country that violated the resolution on the exploitation of mineral resources in the Democratic Republic of the Congo.<sup>329</sup> Several speakers noted the need for more in-depth study of the moratorium measure and for assessment of the possible impact it could have on the economic and humanitarian situation in the Democratic Republic of the Congo.<sup>330</sup> The representative of Uganda advocated more caution, as the moratorium could have “the effect of sanctions against the small farmers and artisan miners” and pointed out that the moratorium would “cripple the capacity of missionary groups and other non-governmental organizations” who delivered humanitarian services.<sup>331</sup> The representative of the United States expressed doubts about the proposed moratorium. He noted that such a targeted moratorium on resources from specific areas would likely be unenforceable because of the difficulty of tracking those kinds of commodities. He further asserted that such a move would risk having a negative impact on the Congolese population.<sup>332</sup> The representative of Japan emphasized the need to protect the legitimate trade in primary commodities in order to support efforts towards peace in the Democratic Republic of the Congo.<sup>333</sup>

At its 4642nd meeting, on 5 November 2002, the Council held a debate on the final report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo. The representative of Belgium declared that the “establishment of a sanctions regime” was possible, but insisted that “the actions decided upon be part of a framework of a peace process and that they not affect it negatively”.<sup>334</sup> The representative of the Russian Federation cautioned that the introduction of sanctions could give rise to “serious legal problems”, since it would be extremely difficult to prove that the plundering of the natural resources of the Democratic Republic of the Congo, posed “a threat

to international peace and security”.<sup>335</sup> The representative of Zimbabwe remarked that the Panel of Experts distinguished between the companies and individuals to be sanctioned on the basis of where they were located and warned that this approach appeared “paternalistic”.<sup>336</sup> The representative of Cameroon appealed to the countries of transit and destination of the natural wealth exploited illegally in the Democratic Republic of the Congo finally to take “adequate measures to control and even, if necessary, to interdict such activities”.<sup>337</sup> The representative of Colombia pointed out that the nationality of an individual or business should not “be used to evade responsibility” for acts that the international community wished to sanction.<sup>338</sup> The representative of Bulgaria expressed support for the Panel’s appeal to the Governments that harbored the entities involved in illegal exploitation to “shoulder their responsibility” by “making detailed inquiries” into the cases referred to in the report and take the necessary steps to stop such illegal practices.<sup>339</sup> The representative of the United States noted that the “naming of those involved and the description of how they worked, in and of itself” was a “valuable tool”. He emphasized that the responsibility of Governments to respond to the Panel’s report did not lie solely with States in the region, but also with those outside of it.<sup>340</sup> The representative of China stressed the need to differentiate between “illegal exploitation and day-to-day economic and trade exchanges” in order to avoid a negative impact on the economic development of the Democratic Republic of the Congo and the livelihood of its people.<sup>341</sup>

At its 4790th meeting, on 18 July 2003, the Council discussed the situation in the Democratic Republic of the Congo in the aftermath of the installation of the Transitional Government of National Unity and the military operation undertaken by the Interim Emergency Multinational Force against the Union des patriotes congolais (UPC) on 11 July 2003 in Bunia. During the debate, several speakers called for the imposition of an arms embargo on all armed factions in the Democratic Republic of the Congo, accompanied by the establishment of a monitoring

<sup>329</sup> S/PV.4437 (Resumption 1), pp. 8-9.

<sup>330</sup> S/PV.4437, pp. 10-14 (Uganda); pp. 20-21 (France); pp. 22-23 (Ireland); pp. 25-26 (Bangladesh); pp. 26-28 (Mauritius); pp. 30-31 (United States); pp. 32-33 (Singapore); pp. 34-35 (Colombia); and p. 36 (Mali).

<sup>331</sup> *Ibid.*, pp. 10-14.

<sup>332</sup> *Ibid.*, pp. 30-31.

<sup>333</sup> S/PV.4437 (Resumption 1), pp. 13-14.

<sup>334</sup> S/PV.4642, p. 14.

<sup>335</sup> *Ibid.*, p. 28.

<sup>336</sup> *Ibid.*, pp. 19-23.

<sup>337</sup> S/PV.4642 (Resumption 1), pp. 9-11.

<sup>338</sup> *Ibid.*, pp. 13-15.

<sup>339</sup> *Ibid.*, pp. 15-16.

<sup>340</sup> *Ibid.*, pp. 16-18.

<sup>341</sup> *Ibid.*, p. 19.

mechanism to ensure its implementation.<sup>342</sup> The representative of Germany also drew attention to the need to create an “efficient monitoring regime” so that the Council could “manifest its political will to impose punitive measures” on those who violated the embargo.<sup>343</sup> The representative of Pakistan cautioned that the Council had to make the embargo “credible, effective and implementable” in order not to undermine the credibility of the Council. He stated that, in making the arms embargo more effective, the Council had to consider ways and means to track the illegal exploitation of resources to the sources of the funds as well as to the points where those resources and funds were converted into arms.<sup>344</sup>

#### **The situation between Eritrea and Ethiopia**

By a letter dated 15 May 2000 addressed to the President of the Security Council,<sup>345</sup> the representative of Ethiopia transmitted his Government’s opinion that the Council had made a “mockery of justice” by contemplating punitive measures, such as an arms embargo against Ethiopia, since Ethiopia was the victim of aggression by Eritrea. He also urged the Council to be conscious of the “enormous implications” of its decision. By a subsequent letter dated 18 May 2000 addressed to the President of the Security Council,<sup>346</sup> the representative of Ethiopia complained that resolution 1298 (2000) was directed at his country, in spite of being “ostensibly aimed also at the aggressor country, Eritrea” and that the Council had committed a “grave mistake” by adopting the resolution.

By a letter dated 19 May 2000 addressed to the President of the Security Council,<sup>347</sup> the representative of Eritrea expressed his Government’s “utter surprise and disappointment” with the “clear imbalance” of the arms embargo imposed by resolution 1298 (2000). It argued that the resolution unjustly applied an arms

embargo on both Ethiopia, “the aggressor”, and Eritrea, “the victim”.

By a letter dated 9 January 2001 addressed to the President of the Security Council,<sup>348</sup> the representative of Ethiopia reiterated his Government’s condemnation of the arms embargo imposed by resolution 1298 (2000). He further asserted that the arms embargo denied his country the “inherent right to defend itself”. He noted that by the Algiers Agreement of 12 December 2000, Eritrea and Ethiopia had in fact “gone beyond what was asked of them” by resolution 1298 (2000). He called on Security Council members to “shoulder their responsibilities by giving a boost to confidence in the region as a whole” and stressed that lifting the sanctions would be “an important symbolic gesture” to restore hope.

At its 4310th meeting, on 19 April 2001, the Council discussed the situation between Eritrea and Ethiopia in the light of the creation of the temporary security zone, which marked the formal separation of the Ethiopian and Eritrean forces. During the debate, the representative of the Russian Federation remarked that the establishment of a temporary security zone was a “qualitatively new stage in the consolidation of the process of settling the conflict”. He therefore advocated an “early lifting of sanctions against both States” considering that the process of stabilization was “forward-moving”.<sup>349</sup>

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

At its 4336th meeting, on 26 June 2001, the Council discussed the effects of the sanctions imposed on Iraq and considered ways of improving the humanitarian situation in the country. The Council also debated a draft resolution presented by the United Kingdom on a new set of arrangements (“smart” sanctions against Iraq). The representative of the United Kingdom noted that the aim of his country as the sponsor of the draft resolution was to set in place measures to liberalize the flow of goods to Iraq while ensuring that military-related items were not exported to Iraq. He therefore insisted that the only route to the ending of sanctions lay through the confidence of the Council that Iraq had disarmed in accordance with the United Nations resolutions.<sup>350</sup> That view was

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<sup>342</sup> S/PV.4790, pp. 6-8 (Secretary-General and High Representative for the Common Foreign Policy and Security Policy of the European Union); pp. 8-9 (Germany); pp. 16-18 (United Kingdom); pp. 18-19 (Chile); pp. 23-25 (Pakistan); pp. 25-26 (Bulgaria); pp. 32-33 (Brazil); pp. 33-35 (Japan); and pp. 38-39 (Nepal).

<sup>343</sup> *Ibid.*, p. 9.

<sup>344</sup> *Ibid.*, pp. 23-25.

<sup>345</sup> S/2000/430.

<sup>346</sup> S/2000/448.

<sup>347</sup> S/2000/464.

<sup>348</sup> S/2001/23.

<sup>349</sup> S/PV.4310, pp. 9-10.

<sup>350</sup> S/PV.4336 and Corr.1, p. 4.

reinforced by a number of representatives who called for the lifting of sanctions but only after Iraq had fully complied with the requirements of the international community.<sup>351</sup> By contrast, the representative of Jordan asserted that the sanctions on Iraq did not achieve their purpose and had repercussions on the entire region. He requested the lifting of the sanctions imposed against Iraq which, in his view, would revive the “dialogue between Baghdad and the United Nations in order to settle all the outstanding issues” that emanated from Iraq’s invasion of Kuwait.<sup>352</sup> Similarly, the representative of Turkey asked for the sanctions to be lifted “altogether in the nearest possible future”.<sup>353</sup> Sharing that view, the representative of the Libyan Arab Jamahiriya observed that the sanctions had become a “crime of genocide against the Iraqi people” and asked for their immediate removal.<sup>354</sup> The representative of the Syrian Arab Republic remarked that economic sanctions had proved “worthless” while having a harmful effect on the people and asked for their elimination.<sup>355</sup> The Observer of the League of Arab States called for the lifting of sanctions against Iraq, but also insisted on the need to guarantee the security and stability of Kuwait.<sup>356</sup> The representative of the Russian Federation cautioned that the perpetuation of sanctions could worsen the situation in the Gulf region and that the proposed resolution would have negative humanitarian and economic consequences in Iraq.<sup>357</sup> By contrast, the representatives of the United States and Mali expressed the view that the proposed smart sanctions would ease the harmful effects of sanctions on civilians.<sup>358</sup> A number of representatives emphasized that sanctions should not be an end in themselves, but a tool for the maintenance of peace and security and that, to achieve that goal, the cooperation of the Government of Iraq was essential.<sup>359</sup> The representative of Singapore asked

for an increase in the effectiveness of sanctions to compel Iraq to comply, while at the same time making the sanctions more focused so that they would not impose “unduly onerous burdens” on the Iraqi people.<sup>360</sup> The representative of Jamaica also spoke in favor of a sanctions regime that would be “focused, effectively targeted and of limited duration”.<sup>361</sup> Along the same lines, the representative of New Zealand called for sanctions “targeted for maximum effectiveness”.<sup>362</sup> Similarly, the representative of France expressed his Government’s disposition to ease the civilian sanctions as long as the Government of Iraq accepted the return of inspectors and the Council put in place a long-term monitoring mechanism.<sup>363</sup> Finally, several speakers drew attention to the worsening humanitarian situation in Iraq and urged the Council to find ways to ease the effect of sanctions on the Iraqi people.<sup>364</sup>

At its 4625th meeting, on 16 October 2002, the Council continued its discussion on the sanctions regime imposed against Iraq. The representative of Iraq stressed that the measures imposed against his country constituted a “blatant violation of several provisions of the Charter”, but expressed his Government’s readiness to accept United Nations inspectors.<sup>365</sup> The representative of South Africa asked the Council to make the lifting of sanctions conditional upon Iraq’s compliance with the relevant Security Council resolutions.<sup>366</sup> The representative of Egypt also emphasized the need for Iraq “to implement scrupulously its obligations” and expressed his hope to see “progress on disarmament and the lifting of sanctions”.<sup>367</sup> Iraq’s decision to allow the return of United Nations inspectors was commended by several speakers, who insisted that Iraq should comply with all its obligations before all sanctions against Iraq were lifted.<sup>368</sup> Similarly, other representatives called on Iraq

<sup>351</sup> S/PV.4336 and Corr.1, p. 11 (China); p. 12 (Tunisia); p. 13 (Norway); p. 17 (Ukraine); p. 30 (Saudi Arabia); and p. 31 (Sweden); S/PV. 4336 (Resumption 1), p. 4 (India); p. 8 (Germany); p. 9 (Netherlands); p. 10 (Italy); and p. 14 (Spain).

<sup>352</sup> S/PV.4336 and Corr.1, pp. 28-29.

<sup>353</sup> S/PV.4336 (Resumption 1), p. 4.

<sup>354</sup> *Ibid.*, p. 2.

<sup>355</sup> *Ibid.*, p. 12.

<sup>356</sup> *Ibid.*, p. 15.

<sup>357</sup> S/PV.4336 and Corr.1, p. 3.

<sup>358</sup> *Ibid.*, p. 9 (United States); and p. 19 (Mali).

<sup>359</sup> S/PV.4336 and Corr.1, p. 16 (Colombia); p. 17 (Ukraine); and p. 18 (Mauritius).

<sup>360</sup> *Ibid.*, p. 22.

<sup>361</sup> *Ibid.*, p. 23.

<sup>362</sup> S/PV.4336 (Resumption 1), p. 6.

<sup>363</sup> S/PV.4336 and Corr.1, p. 7.

<sup>364</sup> S/PV.4336 and Corr.1, p. 18 (Mauritius); p. 19 (Mali); and p. 32 (Malaysia); S/PV.4336 (Resumption 1), p. 3 (Japan); p. 5 (Australia); and p. 7 (Bahrain).

<sup>365</sup> S/PV.4625 and Corr.1, p. 7.

<sup>366</sup> *Ibid.*, p. 4.

<sup>367</sup> *Ibid.*, p. 17.

<sup>368</sup> S/PV.4625 (Resumption 1), p. 2 (Iran); p. 7 (League of Arab States); p. 19 (Argentina); p. 21 (Nigeria); and p. 24 (Sudan).



to adhere to its commitments under Security Council resolutions.<sup>369</sup> The representative of Morocco insisted that military actions against Iraq should be avoided, and that instead sanctions should be used to persuade Iraq to comply with international law.<sup>370</sup> The representative of Brazil underlined that the Council should “define positive incentives for full compliance” that would eventually lead to a gradual lifting of the sanctions regime.<sup>371</sup> Several speakers shared the view that Iraq’s cooperation with the inspectors should lay the foundation for lifting the sanctions and thus improve the humanitarian situation in Iraq.<sup>372</sup> The representatives of Belarus and Zimbabwe expressed support for an alteration of the sanctions regime against Iraq, to alleviate its humanitarian consequences.<sup>373</sup> A number of speakers noted that the sanctions would have been lifted already had Iraq complied with its obligations.<sup>374</sup> France insisted that the Council “must also demonstrate fairness by showing Iraq that war” was not inevitable if it “fully and scrupulously” fulfilled its obligations.<sup>375</sup> The representative of Bulgaria also expressed his country’s commitment to a peaceful solution to the problem of disarming Iraq and for the lifting of sanctions.<sup>376</sup> Several speakers expressed concern for the “humanitarian tragedy” suffered by the Iraqi people as a consequence of the sanctions.<sup>377</sup> Also referring to the humanitarian consequences of sanctions against Iraq, a number of representatives called for their “early” or “immediate” removal to alleviate the suffering of the Iraqi people.<sup>378</sup>

At its 4683rd meeting, on 30 December 2002, the Council adopted resolution 1454 (2002) by which it

<sup>369</sup> Ibid., p. 4 (Ukraine); and p. 13 (Indonesia).

<sup>370</sup> S/PV.4625 (Resumption 2), p. 3.

<sup>371</sup> Ibid., p. 4.

<sup>372</sup> S/PV.4625 (Resumption 2), p. 7 (Malaysia); p. 10 (Lebanon); p. 11 (India); p. 18 (Saudi Arabia); p. 20 (Organization of the Islamic Conference); and p. 22 (Cambodia).

<sup>373</sup> Ibid., p. 18 (Belarus); and p. 24 (Zimbabwe).

<sup>374</sup> S/PV.4625 (Resumption 1), p. 25 (Senegal); S/PV.4625 (Resumption 3) and Corr.1, p. 8 (United Kingdom); and p. 19 (Ireland).

<sup>375</sup> S/PV.4625 (Resumption 3) and Corr.1, p. 14.

<sup>376</sup> Ibid., p. 25.

<sup>377</sup> S/PV.4625 (Resumption 2), p. 7 (Syrian Arab Republic); p. 18 (Singapore); S/PV.4625 (Resumption 3) and Corr.1, p. 14 (Yemen); and p. 15 (Algeria).

<sup>378</sup> S/PV.4625 and Corr.1, p. 19 (Pakistan); p. 20 (United Arab Emirates); and p. 23 (Tunisia).

introduced a number of adjustments to the way in which humanitarian deliveries to Iraq were carried out. The representative of the Russian Federation expressed his hope that as the relevant Security Council resolutions were implemented with the full cooperation of the Government of Iraq, a prospect would open for the “suspension and then the lifting of sanctions”.<sup>379</sup> Similarly, the representative of the Syrian Arab Republic asserted that the cooperation of Iraq with United Nations weapons inspectors “should inevitably lead to the lifting of the sanctions” and not to “the sanctions regime being complicated by the addition of further restrictions under the pretext that certain goods could be of dual use”.<sup>380</sup>

At its 4717th meeting, on 11 March 2003, the Council continued its debate on non-compliance by Iraq with relevant Security Council resolutions. The representative of Iraq reiterated his Government’s readiness to cooperate in a fruitful and constructive manner to determine that weapons of mass destruction no longer existed in Iraq and sanctions could be lifted.<sup>381</sup> The representative of Malaysia emphasized that the disarmament efforts in Iraq “should not be an end in themselves”, but that they should constitute a step towards the lifting of sanctions.<sup>382</sup> Similarly, several speakers expressed their hope for a peaceful solution to the situation in Iraq, so that sanctions against Iraq could be lifted.<sup>383</sup>

At its 4761st meeting, on 22 May 2003, the Council adopted resolution 1483 (2003) which lifted the economic sanctions on Iraq imposed by resolution 661 (1990). The representative of the United States saluted the removal of sanctions as a “momentous event for the people of Iraq”.<sup>384</sup> Several speakers expressed the belief that the lifting of sanctions would give the Iraqi Government access to resources necessary to rebuild the economy and improve the humanitarian situation.<sup>385</sup> The representatives of Guinea and Cameroon concurred that the situation in

<sup>379</sup> S/PV.4683, p. 2.

<sup>380</sup> Ibid., p. 3.

<sup>381</sup> S/PV.4717, p. 5.

<sup>382</sup> Ibid., p. 7.

<sup>383</sup> Ibid., p. 16 (Libyan Arab Jamahiriya); and p. 34 (Lebanon); S/PV.4717 (Resumption 1), p. 3 (Sudan); and p. 14 (Tunisia).

<sup>384</sup> S/PV.4761, p. 2.

<sup>385</sup> Ibid., p. 4 (France); p. 5 (United Kingdom); p. 5 (Germany); p. 6 (Mexico); p. 8 (Russian Federation); p. 10 (Chile); and p. 11 (Pakistan).

Iraq no longer justified the maintenance of economic sanctions against it.<sup>386</sup>

At its 4872nd meeting, on 24 November 2003, the Council adopted resolution 1518 (2003) which established a Committee to continue to identify individuals and entities dealing with Iraq's funds or other financial assets. The representative of Germany declared that his Government's preference was for the mandate of the new Committee to cover "all remaining sanctions, for example, including the arms embargo".<sup>387</sup> Similarly, the representative of France endorsed a broadening of the Committee's mandate, to "monitor compliance of States with the arms embargo against Iraq".<sup>388</sup>

### **The situation in Liberia**

At its 4815th meeting, on 27 August 2003, the Council was briefed by the Executive Secretary of the Economic Community of West African States (ECOWAS) on the progress made in bringing to an end the civil war in Liberia and establishing the basis for a lasting peace. In his briefing, the Executive Secretary of ECOWAS stressed that in the light of the interim Government's denunciation of support for rebel groups in the region and moves towards national unity and peace, there was a need to review the sanctions regime imposed against Liberia. He noted that the sanctions would make it impossible for the interim Government to function, and thereby urged the Council to consider lifting the sanctions imposed against Liberia, except for the arms embargo.<sup>389</sup>

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

At its 4204th meeting, on 3 October 2000, the Council discussed the situation in the Middle East in the light of the clashes between Palestinian citizens and Israeli security forces. During the debate, the representative of the Libyan Arab Jamahiriya called for the Council to stop the "Israeli aggression against the Palestinian people". He noted that if "this matter concerned Iraq, Libya or the Sudan, even by way of mere allegations, the Council would not have taken all this time to adopt resolutions and to implement

sanctions". He called upon the Council to take the "necessary and effective measures" to provide full protection to the Palestinian civilians.<sup>390</sup>

At its 4506th meeting, on 3 April 2002, the Council debated the situation in the Middle East following a new military action taken by Israel in the Palestinian territories. The representative of Malaysia, conveying the position of the Organization of the Islamic Conference, called on the international community to take immediate action to stop the Israeli "aggression and illegitimate practices". It also requested the Council to take the necessary measures to provide international protection for the Palestinian people and to apply "deterrent sanctions against Israel".<sup>391</sup>

At its 4510th meeting, on 8 April 2002, the Council discussed the situation in the Middle East in the aftermath of an escalation of the Israeli military campaign to reoccupy the city of Ramallah. During the debate, the representative of Mauritius noted that had any other country "challenged Security Council resolutions in such a manner", it would have been subjected to "all kinds of sanctions".<sup>392</sup> The representative of Malaysia asserted that the situation in the occupied Palestinian territories had deteriorated and echoed that the Council would have acted if a different country had defied it.<sup>393</sup>

### **The situation in Sierra Leone**

At its 4168th meeting, on 5 July 2000, taking into consideration the role played by the illicit trade in diamonds in fuelling the conflict in Sierra Leone and the reports that such diamonds transited through neighbouring countries, the Council imposed an embargo against the import of all rough diamonds from Sierra Leone.<sup>394</sup> During the debate preceding the adoption of the resolution, several speakers agreed that diamonds played an important role in fueling the conflict in Sierra Leone.<sup>395</sup> The representative of the United Kingdom asserted that the measures imposed

<sup>386</sup> *Ibid.*, p. 9 (Guinea); and p. 9 (Cameroon).

<sup>387</sup> S/PV.4872, p. 3.

<sup>388</sup> *Ibid.*, p. 3.

<sup>389</sup> S/PV.4815, pp. 5-7.

<sup>390</sup> S/PV.4204 (Resumption 2) and Corr.1, pp. 2-3.

<sup>391</sup> S/PV.4506 and Corr.1, p. 23.

<sup>392</sup> S/PV.4510, p. 10.

<sup>393</sup> S/PV.4510 (Resumption 1), pp. 17-18.

<sup>394</sup> Resolution 1306 (2000).

<sup>395</sup> S/PV.4168, pp. 2-3 (Sierra Leone); pp. 3-4 (United Kingdom); pp. 4-5 (United States); p. 6 (Russian Federation); pp. 6-7 (Argentina); p. 7 (China); pp. 7-8 (Canada); and pp. 9-10 (France).

were a “robust and imaginative response” by the Security Council to the tragedy in Sierra Leone and would “shine a powerful light on an illicit trade which prefers to operate in the shadows”. He further noted that the draft resolution was “unusual in its direct appeal to the diamond trade” to address the problem.<sup>396</sup> The representative of the United States indicated that the illicit trade in diamonds was closely linked to the illicit trade in small arms, and reminded all States of existing sanctions on arms shipments to the Revolutionary United Front. She indicated that the resolution was a necessary and critical step to assisting the Government of Sierra Leone in “re-establishing authority over its diamond-producing regions”.<sup>397</sup> The representative of the Russian Federation observed that the measures were not “detrimental to the interests of legitimate participants in the international diamond market”.<sup>398</sup> The representative of Canada expressed his Government’s hope that light would be shed on the link between the trade in diamonds and the supply of arms to rebel groups in Sierra Leone. He further stated that the Council would have to examine whether States, such as Liberia, had ceased their involvement in the illicit diamond trade and whether additional measures were required to enforce the arms embargo imposed against RUF.<sup>399</sup> The representative of France argued that the measures would strengthen the existing arms embargo and agreed on the necessity of examining the links between the diamond and arms trades.<sup>400</sup>

With regard to the issue of the time-bound nature of sanctions, the representative of the United States expressed her concern “about the negative implications of putting in place time-limited sanctions”, stressing that Member States would have difficulties applying the sanctions if the measures were “turned off and on”.<sup>401</sup> The representative of the Netherlands concurred, suggesting periodic reviews of sanctions to relieve the unease of many members about the “phenomenon of sanctions that last much longer than originally intended”.<sup>402</sup> By contrast, several speakers conveyed their support for the use of time limits, as they would allow the Council to review the situation on the ground and thereby extend, modify or otherwise

adjust the measures.<sup>403</sup> The representative of Argentina, however, noted that, in the light of Government of Sierra Leone support for the measures and the targeting of a rebel movement “notorious for its unusual cruelty against the civilian population”, a longer initial period for the sanctions would make the regime “more functional and effective”.<sup>404</sup>

At its 4264th meeting, on 25 January 2001, the Council considered the report of the Panel of Experts appointed pursuant to resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, to investigate the violations of the measures imposed against Sierra Leone and the link between the trade in diamonds and arms. The representative of the United Kingdom stressed that his Government would look very seriously at any hint that citizens and companies of the United Kingdom might be involved in violating sanctions and would investigate fully where necessary. He urged other States to do the same and to ensure that the violation of United Nations sanctions was a criminal offence in their domestic legislation.<sup>405</sup> Several speakers expressed their support for a monitoring mechanism that would review the implementation of sanctions and assess their unintended consequences.<sup>406</sup> A number of representatives asserted that a new “diamond certification system” was required for a better monitoring of exports.<sup>407</sup> By contrast, the representative of the Russian Federation emphasized that the process of resolving the problem of conflict diamonds in Sierra Leone and other conflict areas in Africa had to be focused primarily on “specific measures to break the linkage between the illicit traffic in rough diamonds and the financing of rebel movements” and should not involve “the interest of legal participants in the international diamond business”.<sup>408</sup>

As for the humanitarian impact of the sanctions regime, several speakers expressed the need to precisely target sanctions to prevent humanitarian

<sup>396</sup> Ibid., pp. 3-4 .

<sup>397</sup> Ibid., p. 4.

<sup>398</sup> Ibid., p. 6.

<sup>399</sup> Ibid., pp. 7-8.

<sup>400</sup> Ibid., pp. 9-10.

<sup>401</sup> Ibid., pp. 4-5.

<sup>402</sup> Ibid., pp. 8-9.

<sup>403</sup> Ibid., p. 6 (Russian Federation); pp. 6-7 (Argentina); p. 7 (China); and pp. 9-10 (France).

<sup>404</sup> Ibid., pp. 6-7.

<sup>405</sup> S/PV.4264, p. 5.

<sup>406</sup> Ibid., p. 6 (Jamaica); pp. 10-11 (Colombia); and p. 20 (Norway).

<sup>407</sup> Ibid., pp. 4-6 (United Kingdom); p. 6 (Jamaica); p. 8 (France); p. 10 (Colombia); p. 11 (Tunisia); p. 14

(Ireland); p. 18 (Mauritius); p. 18 (Ukraine); and p. 21 (Norway).

<sup>408</sup> Ibid., pp. 12-13.

consequences on the civilian population.<sup>409</sup> In that connection, the representative of Sierra Leone emphasized that weapons bought from the sale of diamonds were being used to “maim and kill” thousands of people in Sierra Leone.<sup>410</sup>

With reference to the involvement of Liberia in the conflict, several speakers noted that the country was prolonging the conflict in Sierra Leone through its support for RUF, and called for the imposition of measures on Liberia designed to apply pressure to modify such behavior.<sup>411</sup> The representative of the United Kingdom added that such measures would cease as soon as Liberia stopped its financial and military support to RUF.<sup>412</sup> The representative of the United States indicated that the measures were intended to bring an end to President Taylor’s ongoing support to RUF and his “continued engagement in illicit arms-for-diamonds trafficking”, and “to undermine the Government of Liberia’s ability to conduct war against its neighbours”, without causing hardship for the people of Liberia.<sup>413</sup> The representative of France recommended that the sanctions against Liberia be limited in time, subject to periodical review, “motivational”, and linked to precise criteria for their lifting. He emphasized that his country advocated an “incremental approach” to the implementation of sanctions so as to allow the “democratically elected Government of Liberia to shoulder its responsibilities”.<sup>414</sup> In response, the representative of Liberia maintained that his Government was the target of “grossly unsubstantiated allegations of diamond smuggling and gun running” with RUF, and that it was “neither connected nor a party to the illicit trade of Sierra Leonean diamonds”. He further noted that the possible imposition of a travel ban on Liberian officials and diplomats had “no basis in the Charter” and would deny Liberia the opportunity to “conduct its external relations as a sovereign Member of the United Nations”.<sup>415</sup>

<sup>409</sup> Ibid., pp. 6-7 (Jamaica); pp. 11-12 (Tunisia); p. 12 (China); and pp. 20-21 (Norway).

<sup>410</sup> Ibid., pp. 22-24.

<sup>411</sup> Ibid., pp. 4-6 (United Kingdom); pp. 7-8 (France); pp. 13-15 (Ireland); pp. 15-17 (United States); and pp. 22-24 (Sierra Leone).

<sup>412</sup> Ibid., pp. 4-6.

<sup>413</sup> Ibid., pp. 15-17.

<sup>414</sup> Ibid., pp. 7-8.

<sup>415</sup> Ibid., pp. 24-29.

### **Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America**

By a letter dated 15 August 2003 addressed to the President of the Security Council,<sup>416</sup> the representative of the Libyan Arab Jamahiriya stated that his country had met its obligations pursuant to the relevant Council resolutions and requested that the measures imposed by resolutions 748 (1992) and 883 (1993) be lifted.

By a letter dated 15 August 2003 addressed to the President of the Security Council,<sup>417</sup> the representatives of the United Kingdom and the United States noted that they were not opposed to the lifting of sanctions against the Libyan Arab Jamahiriya and that they expected the country to adhere fully to its commitments. A similar message was conveyed by a letter dated 12 September 2003 addressed to the Secretary-General from the representative of France.<sup>418</sup>

At its 4820th meeting, on 9 and 12 September 2003, the Council adopted resolution 1506 (2003), by which it lifted the sanctions against the Libyan Arab Jamahiriya imposed by resolutions 748 (1992) and 883 (1993) in the aftermath of the terrorist attacks against Pan Am flight 103 and Union de Transports Aeriens flight 772. During the subsequent debate, a number of speakers explained their vote in favour of the removal of sanctions based on the Libyan Arab Jamahiriya’s fulfilment of the conditions previously imposed by the Council. They agreed it was a matter of justice for sanctions to be lifted once a country had complied with Security Council requirements.<sup>419</sup> The representative of the United States concurred that the Libyan Arab Jamahiriya had met its obligations and stated that his Government was not opposed to the “formal lifting” of sanctions. He cautioned, however, that the United States’ abstention should not be “misconstrued by Libya or by the world community as tacit United States acceptance” that the Government of the Libyan Arab Jamahiriya had rehabilitated itself. Hence, he explained, the United States would keep in place the bilateral sanctions against the country.<sup>420</sup> The

<sup>416</sup> S/2003/818.

<sup>417</sup> S/2003/819.

<sup>418</sup> S/2003/885.

<sup>419</sup> S/PV.4820 (Part II), p. 4 (Bulgaria); p. 5 (Russian Federation); p. 5 (Spain); and pp. 5-6 (United Kingdom).

<sup>420</sup> Ibid., pp. 2-3.

representative of France declared that the lifting of sanctions constituted an important step in the process of reintegrating the Libyan Arab Jamahiriya in the international community, but also encouraged the latter to make “the necessary gestures beyond the requirements for the lifting of sanctions”.<sup>421</sup> Similarly, the representative of Germany declared that his Government was “relieved” that the Libyan Arab Jamahiriya had fulfilled the demands of the Council, therefore enabling the definite lifting of sanctions. However, he emphasized that the Libyan Arab Jamahiriya had to take the further step of addressing the bombing of a Berlin discotheque in 1986.<sup>422</sup> The representative of Pakistan indicated that the people of the Libyan Arab Jamahiriya had “paid a high price with the sanctions imposed collectively on them”, noticing that sanctions always had “unintended consequences”.<sup>423</sup> Similarly, the representative of the Syrian Arab Republic recognized that the people of the Libyan Arab Jamahiriya had suffered for a long time because of the “unjust sanctions imposed against them”, and expressed his country’s belief that the Council should not impose sanctions that would “adversely impact the civilian population” and that would “expose children, women and men to suffering under collective sanctions” considered unacceptable under international law and the Charter.<sup>424</sup>

**Security Council resolution 1054 (1996) of 26 April 1996**

In a series of letters dated June 2000 addressed to the President,<sup>425</sup> the representatives of the Sudan, Algeria, South Africa and Gabon expressed the support of their Governments for the removal of the sanctions against the Sudan, in the light of that country’s compliance with Council resolutions 1054 (1996) and 1070 (1996).

At its 4384th meeting, on 28 September 2001, the Council adopted resolution 1372 (2001), by which it lifted the sanctions against the Sudan imposed by paragraphs 3 and 4 of resolution 1054 (1996) and

paragraph 3 of resolution 1070 (1996). During the debate following the vote, several representatives indicated that the Sudan had met its obligations under Security Council resolutions and welcomed the removal of sanctions.<sup>426</sup> The representative of the United Kingdom stated that the resolution sent out a clear signal that the Council stood ready to act once it had determined that a country had complied with the demands set out in a resolution.<sup>427</sup> The representative of the United States welcomed the steps taken by the Sudan, but expressed concern for “the enormous suffering of the Sudanese people” and the civil war in the country. He stressed that in the light of those considerations, the United States had abstained from the vote.<sup>428</sup> The representative of Ireland welcomed the steps taken by the Sudan, but cautioned that the sanctions were lifted because only “very specific requirements” had been met. He indicated that Ireland remained “deeply concerned” at the wider political, humanitarian and human rights situation in the Sudan.<sup>429</sup>

**General issues relating to sanctions**

At its 4128th meeting, on 17 April 2000, the Council discussed a number of general issues relating to sanctions regimes, including the following: (a) the general purpose of sanctions; (b) the criteria used for their imposition and termination; (c) the concept of targeted sanctions; (d) the humanitarian impact of sanctions; and (e) the monitoring of sanctions.

**General purpose of sanctions.** Many speakers emphasized that sanctions should be employed as an option for ensuring compliance only after all other peaceful options had been exhausted.<sup>430</sup> The representative of Jamaica pointed out that sanctions were an alternative to the use of force, while the representative of New Zealand characterized sanctions as a “middle course” between “diplomatic censure and the use of force”.<sup>431</sup> The representatives of France and

<sup>421</sup> *Ibid.*, pp. 3-4.

<sup>422</sup> *Ibid.*, p. 4.

<sup>423</sup> *Ibid.*, pp. 4-5.

<sup>424</sup> *Ibid.*, p. 5.

<sup>425</sup> Letters dated 1 June 2000 from the representatives of the Sudan (S/2000/513); Algeria (S/2000/517); and South Africa (S/2000/521); and letter dated 2 June 2000 from the representative of Gabon (S/2000/533).

<sup>426</sup> S/PV.4384, p. 2 (Russian Federation); p. 3 (United Kingdom); and p. 4 (the Sudan).

<sup>427</sup> *Ibid.*, p. 3.

<sup>428</sup> *Ibid.*, p. 3.

<sup>429</sup> *Ibid.*, p. 3.

<sup>430</sup> S/PV.4128, p. 5 (Bangladesh); pp. 9-11 (Ukraine); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 23-24 (Russian Federation); pp. 28-30 (Pakistan); and pp. 38-39 (Cuba).

<sup>431</sup> *Ibid.*, pp. 21-23 (Jamaica); and pp. 36-37 (New Zealand).

the Netherlands noted that sanctions were often an intermediate measure between peaceful measures and the use of force.<sup>432</sup> The representative of Canada stressed that sanctions were a “very potent means” of promoting peace and an “effective way to prevent or stop violence against civilians” and to “save human lives in the face of brutality and destruction”.<sup>433</sup> By contrast, the representative of Pakistan stated that his country was opposed to sanctions as a “matter of principle”, preferring the adoption of means leading to a peaceful resolution of conflicts.<sup>434</sup> The representative of Argentina understood sanctions to be “an important element of preventive action” that made it possible “to express the international community’s rejection of a given position or action” without the use of force.<sup>435</sup> The representative of Australia acknowledged that while sanctions could be a “blunt instrument,” they remained a “necessary instrument and an integral part of the graduated set of responses” available to the Council.<sup>436</sup> Several speakers noted that sanctions should not be an end in themselves but a means to an end,<sup>437</sup> while others emphasized that sanctions should be combined with incentives in order to achieve compliance.<sup>438</sup> The representative of Argentina warned that attention should be paid to the design of sanctions to make sure that their use was not viewed as a “half measure”, thus jeopardizing their effectiveness and the credibility of the United Nations.<sup>439</sup>

**Criteria for the imposition and termination of sanctions.** A number of speakers observed that sanctions should be imposed only when the Council has clearly established a threat to the peace or a breach of the peace.<sup>440</sup> Other representatives stated that national interests should not influence the imposition of economic sanctions.<sup>441</sup> In that respect, the

representative of China cautioned that it was not appropriate to impose sanctions unilaterally in the absence of authorization by the Council.<sup>442</sup> The representative of the Libyan Arab Jamahiriya stated that the Council “had ignored threats to the peace and acts of aggression”, while at the same time imposing the “severest sanctions when there was no threat to international peace and security” in order to achieve the “specific political objectives of particular States, utterly unrelated to international peace and security”.<sup>443</sup> The representative of Cuba agreed that the implementation of sanctions could not represent “an exclusive right of a select club of countries” or a “coercive instrument in the hands of a few Security Council members”.<sup>444</sup> The representative of Iraq argued that the United States was able to impose an “extremist use of sanctions” due to the “absence of any checks or balances in the Charter of the United Nations” to limit the excessive use of sanctions.<sup>445</sup> The representative of the Russian Federation expressed the view that sanctions should not be used to overthrow or change the “legitimate Government or existing political regime in the targeted country”,<sup>446</sup> while the representative of the Libyan Arab Jamahiriya commented that the Council should not use sanctions to “force people to abandon their political choices or values, or to impose a particular pattern of behavior”.<sup>447</sup> Moreover, several representatives insisted that sanctions should have a clearly defined purpose, and should comprise the objective criteria for their suspension or termination.<sup>448</sup> The representative of the United States observed that once sanctions were imposed, the burden of proof for their suspension or termination resided in “the demonstrated behavior of the sanctioned entity”. He remarked that, just as sanctions “must never be lightly entered into, they should not be terminated due to a lack of resolve, a

<sup>432</sup> Ibid., pp. 7-9 (France); and pp. 17-18 (Netherlands).

<sup>433</sup> Ibid., pp. 24-26.

<sup>434</sup> Ibid., pp. 28-30.

<sup>435</sup> Ibid., pp. 15-17.

<sup>436</sup> Ibid., pp. 33-35.

<sup>437</sup> Ibid., pp. 6-7 (United States); pp. 18-20 (Tunisia); and pp. 21-23 (Jamaica).

<sup>438</sup> Ibid., pp. 7-9 (France); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 18-20 (Tunisia); pp. 23-24 (Russian Federation); pp. 24-26 (Canada); and pp. 40-43 (Iraq).

<sup>439</sup> Ibid., pp. 15-17.

<sup>440</sup> Ibid., pp. 7-9 (France); pp. 13-15 (Malaysia); pp. 23-24 (Russian Federation); pp. 30-31 (Libyan Arab Jamahiriya); and pp. 38-39 (Cuba).

<sup>441</sup> Ibid., pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 28-30 (Pakistan); and pp. 30-31 (Libyan Arab Jamahiriya).

<sup>442</sup> Ibid., pp. 12-13.

<sup>443</sup> Ibid., pp. 30-31.

<sup>444</sup> Ibid., pp. 38-39.

<sup>445</sup> Ibid., pp. 40-43.

<sup>446</sup> Ibid., pp. 23-24.

<sup>447</sup> Ibid., pp. 30-31.

<sup>448</sup> Ibid., pp. 5-6 (United Kingdom); pp. 6-7 (United States); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 28-30 (Pakistan); pp. 30-31 (Libyan Arab Jamahiriya); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 38-39 (Cuba); and pp. 40-43 (Iraq).

lack of will or a lack of patience”.<sup>449</sup> The representative of the Russian Federation asserted that often “biased approaches” prevailed in the imposition, implementation, and removal of sanctions. He elaborated that “new criteria” were “artificially introduced by setting various additional trial periods and control periods, and complex mechanisms for monitoring and accountability”.<sup>450</sup>

**Targeted sanctions.** The majority of speakers shared the view that sanctions should be better targeted in relation to those responsible for the sanctioned behaviour to ensure a more effective compliance with the Council’s decisions and prevent harming civilians.<sup>451</sup> The representative of New Zealand observed that, “in the case of comprehensive trade sanctions imposed on authoritarian regimes in particular,” there was the unintended effect of “manipulation and profiteering by the elite” that would escape any adverse impact on themselves and exploit the situation to their own advantage. He further stated that, in light of such unintended consequences, “the trend away from general trade sanctions towards a more selective approach” needed to be accelerated by identifying a limited range of goods and services that would “target the interests of the regimes and elites identified as responsible for threats to peace and security”.<sup>452</sup> The representative of Portugal recommended that a more unified and precise terminology be used in sanctions resolutions to enhance harmonized national implementation.<sup>453</sup> By contrast, the representative of Australia cautioned that targeted sanctions remained “untested” and might not be appropriate in all instances.<sup>454</sup> The representative of the United Kingdom, while expressing his support for “smart” sanctions, commented that in the financial arena he suspected that the “fox” would be able “to stay ahead of the hounds”.<sup>455</sup> The representative of Iraq held the belief that the “idea of replacing the

current sanctions regime against Iraq with a smart one” was “ill-intentioned” and was aimed at “entrenching the sanctions and rendering them an objective in of themselves”.<sup>456</sup>

**Humanitarian impact of sanctions.** The majority of representatives concurred about the possible humanitarian implications of sanctions and urged the Council to take them into account when imposing measures under Article 41 of the Charter.<sup>457</sup> Several speakers also expressed concern at the impact sanctions had on third-parties such as States.<sup>458</sup> The representative of Tunisia, echoed by the representative of Canada, commented that, as the implementation of sanctions was the “collective responsibility” of the international community, it was “entirely logical” that the costs of implementing sanctions had to be borne by the community as a whole and not just by a small number of States, such as the target State’s neighbors or economic partners.<sup>459</sup> Several speakers contended that any assessment of the humanitarian or third-party impact of sanctions had to occur prior, during, as well as after their imposition.<sup>460</sup> In contrast, the representative of the Netherlands explicitly stated that pre-assessment was not a viable option if sanctions were to remain an effective tool, and instead pointed to

<sup>449</sup> Ibid., pp. 6-7.

<sup>450</sup> Ibid., pp. 23-24.

<sup>451</sup> Ibid., p. 5 (Bangladesh); pp. 7-9 (France); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 26-28 (Portugal); p. 28 (Germany); pp. 31-32 (Italy); pp. 32-33 (Sweden); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); and p. 40 (Switzerland).

<sup>452</sup> Ibid., pp. 36-37.

<sup>453</sup> Ibid., pp. 26-28.

<sup>454</sup> Ibid., pp. 33-35.

<sup>455</sup> Ibid., pp. 5-6.

<sup>456</sup> Ibid., pp. 40-43.

<sup>457</sup> Ibid., p. 5 (Bangladesh); pp. 5-6 (United Kingdom); pp. 6-7 (United States); pp. 7-9 (France); pp. 9-11 (Ukraine); pp. 11-12 (Namibia); pp. 12-13 (China); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 17-18 (Netherlands); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 24-26 (Canada); pp. 26-28 (Portugal); p. 28 (Germany); pp. 28-30 (Pakistan); pp. 31-32 (Italy); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 38-39 (Cuba); p. 40 (Switzerland); and pp. 40-43 (Iraq).

<sup>458</sup> Ibid., pp. 7-9 (France); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 26-28 (Portugal); pp. 28-30 (Pakistan); pp. 30-31 (Libyan Arab Jamahiriya); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 43-45 (the former Yugoslav Republic of Macedonia); and p. 45 (Turkey). For a more detailed discussion, see chapter XI, part VIII, sections B and C.

<sup>459</sup> Ibid., pp. 18-20 (Tunisia); and pp. 24-26 (Canada).

<sup>460</sup> Ibid., pp. 11-12 (Namibia); pp. 12-13 (China); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 32-33 (Sweden); and pp. 38-39 (Cuba).

the need to monitor humanitarian and economic impacts of sanctions once they were in place.<sup>461</sup>

**Monitoring of sanctions.** The majority of speakers agreed on the need to enhance capacities to implement and monitor sanctions at the national, regional and international levels.<sup>462</sup> The representative of France stated that the working methods of the sanctions committees had to be modified, as the rule of consensus had become a paralysing force. Furthermore, he advocated greater transparency in the conduct of business of the sanctions committees.<sup>463</sup>

At its 4394th meeting, on 22 October 2001, the Council discussed the results of the Interlaken and Bonn-Berlin processes on financial sanctions, arms embargoes and travel- and aviation-related sanctions. The Permanent Observer of Switzerland noted the important role played by sanctions in promoting international peace and security, but showed concern for the negative humanitarian impact of sanctions on civilians. He therefore voiced support for targeted sanctions.<sup>464</sup> A similar position was held by the representative of Germany, who added that sanctions should not be a form of punishment, but should lead to compliance with the Charter of the United Nations.<sup>465</sup> Several representatives indicated that the Council should focus on the implementation and monitoring of sanctions in order to improve their effectiveness.<sup>466</sup> The Assistant Secretary-General for Political Affairs stressed that sanctions needed “continued refining to strengthen their effectiveness and to ease any possible negative impact” and advocated a “constructive dialogue on their implementation and monitoring”.<sup>467</sup> Other speakers concurred that the focus should be on the national implementation and enforcement of

sanctions.<sup>468</sup> The representative of Mali noted that sanctions had “rarely achieved their goals” and recommended a “continuous evaluation of their socio-economic impact”.<sup>469</sup> The representatives of Chile and Tunisia declared that sanctions were not an end in themselves and should be part of an overall strategy for conflict settlement and prevention.<sup>470</sup> The representative of the Russian Federation emphasized that the introduction of sanctions was “an extreme measure to be applied only where all other methods of bringing political impact to bear” had been exhausted. He also insisted that sanctions should be “carefully targeted”, “subject to regular review”, and contain “conditions for lifting them”.<sup>471</sup>

At its 4713th meeting, on 25 February 2003, the Council discussed general issues relating to sanctions in connection with the final report of the Stockholm Process on the Implementation of Targeted Sanctions. The representative of Sweden declared that the goals of the Stockholm Process were to find ways to improve the efficiency of sanctions, while minimizing their unintended consequences, and to suggest ways to strengthen the capacity to implement targeted sanctions.<sup>472</sup> Several speakers drew attention to the importance of minimizing the unintended consequences sanctions had on the population of the targeted States and/or on neighbouring States.<sup>473</sup> Other speakers concurred that targeted sanctions were more efficient at reaching specific actors while reducing the risk of collateral impact on innocent civilian populations.<sup>474</sup> The representative of the United States insisted that sanctions still remained a “viable and very useful policy option” for use by the Security Council to modify State behaviour. He also stressed the importance of targeted measures as a way for the Council to avoid unnecessary negative impact on civilians and other States.<sup>475</sup> The representative of the Syrian Arab Republic remarked that targeted sanctions were more difficult to implement than collective

<sup>461</sup> *Ibid.*, pp. 17-18.

<sup>462</sup> *Ibid.*, p. 5 (Bangladesh); pp. 6-7 (United States); pp. 9-11 (Ukraine); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 26-28 (Portugal); pp. 28-30 (Pakistan); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); and pp. 43-45 (the former Yugoslav Republic of Macedonia).

<sup>463</sup> *Ibid.*, pp. 7-9.

<sup>464</sup> S/PV.4394, p. 2.

<sup>465</sup> *Ibid.*, p. 4.

<sup>466</sup> S/PV.4394, p. 6 (Sweden); p. 9 (France); and p. 10 (Ukraine); S/PV.4394 (Resumption 1) and Corr.1, p. 2 (Jamaica); p. 6 (Mauritius); p. 7 (Colombia); p. 8 (United States); and p. 9 (Singapore).

<sup>467</sup> S/PV.4394, p. 6.

<sup>468</sup> S/PV.4394 (Resumption 1) and Corr.1, p. 4 (United Kingdom); and p. 4 (Norway).

<sup>469</sup> *Ibid.*, p. 8.

<sup>470</sup> *Ibid.*, p. 10 (Tunisia); and p. 11 (China).

<sup>471</sup> *Ibid.*, p. 9.

<sup>472</sup> S/PV.4713, pp. 2-3.

<sup>473</sup> *Ibid.*, pp. 5-6 (Bulgaria); p. 7 (China); p. 8 (Guinea); p. 14 (Russian Federation); p. 15 (Pakistan); and p. 19 (Spain).

<sup>474</sup> *Ibid.*, p. 8 (France); and p. 11 (Chile).

<sup>475</sup> *Ibid.*, p. 10.



sanctions. He also emphasized the role played by the political will of Member States for the effective implementation of sanctions.<sup>476</sup> Several representatives voiced support for the creation of a monitoring mechanism to counter sanctions evasions and to maintain an accurate assessment of sanctions.<sup>477</sup> The representative of Mexico advocated improving the coordination among sanctions committees, as well as the “possibility of including in United Nations peacekeeping operation mandates the requirement of reporting violations of sanctions regimes”.<sup>478</sup>

### **The situation in Africa**

At its 4577th meeting, on 18 July 2002, the Council discussed the effect of sanctions imposed on Sierra Leone and Liberia and sought ways to encourage regional peace in the Mano River region. The representative of Guinea cautioned that the international community should remain vigilant in monitoring political normalization and reconciliation in Liberia and the stability of the subregion and asked for sanctions to be lifted only once the Government of Liberia had discharged “all of its commitments under the relevant resolutions of the Security Council”.<sup>479</sup> The representative of Mexico stressed that, for sanctions to be effective, it was essential for the population to perceive them as mechanisms “contributing to peace and security and not as acts of reprisal or of political reprimand”. He also observed that sanctions were not a guarantee that weapons would not enter Sierra Leone again and emphasized the importance of compliance by third parties with the sanctions.<sup>480</sup> The representative of Colombia drew attention to the difficulties of dealing with armed groups and maintained that sanctions against them should be applied if necessary.<sup>481</sup> The representative of Mauritius remarked that the sanctions imposed on Liberia had been of “tremendous help” in bringing peace to Sierra Leone, but suggested that the Council should find ways of engaging constructively with Liberia rather than isolating it “any further”.<sup>482</sup> Similarly, the representatives of China and Ireland

reiterated the positive effect the sanctions against Liberia had had on the peace process in Sierra Leone.<sup>483</sup> The representative of Norway expressed concern over the danger of the conflict in Liberia spilling over into neighbouring countries. He insisted that the sanctions on Liberia should be as effective as possible to prevent President Charles Taylor from continuing his destabilizing activities and to minimize the negative humanitarian impact.<sup>484</sup>

### **Children and armed conflict**

At its 4176th meeting, on 26 July 2000, the Council discussed the role of the Security Council in protecting children in war-torn areas. The Special Representative of the Secretary-General for Children and Armed Conflict called upon the Council to adopt a more active role in easing the impact of such sanctions on children, by using targeted sanctions against actors who flouted “international standards regarding the protection of children”.<sup>485</sup> The representative of Bangladesh asserted that the Council had “a duty” to design sanctions regimes that did not affect the innocent.<sup>486</sup> The representative of Malaysia expressed his Government’s concern about the “debilitating effects of sanctions on children” and voiced support for the “dispatching of assessment missions to targeted States” to minimize the unintended consequences on civilian populations, especially children.<sup>487</sup> Similarly, the representative of Ukraine advocated the establishment of a permanent technical review mechanism that would monitor the impact of sanctions on civilians, in particular children.<sup>488</sup> The representative of Tunisia supported the Secretary-General’s proposal for an assessment of the impact of sanctions on the civilian population before imposing the sanctions.<sup>489</sup> The representative of France asked for an assessment of the consequences of sanctions before their implementation.<sup>490</sup> The representative of Iraq expressed concern with the “indiscriminate and excessive application of sanctions by the Council” and concurred on the necessity of dispatching evaluation missions to assess the potential negative impact of

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<sup>476</sup> Ibid., p. 13

<sup>477</sup> Ibid., p. 7 (China); p. 12 (United Kingdom); and p. 20 (Germany).

<sup>478</sup> Ibid., p. 18.

<sup>479</sup> S/PV.4577, p. 8.

<sup>480</sup> Ibid., p. 18.

<sup>481</sup> Ibid., p. 23.

<sup>482</sup> S/PV.4577 (Resumption 1), p. 8.

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<sup>483</sup> Ibid., p. 16 (China); and pp. 18-19 (Ireland).

<sup>484</sup> Ibid., p. 20.

<sup>485</sup> S/PV.4176, p. 4.

<sup>486</sup> Ibid., p. 17.

<sup>487</sup> Ibid., p. 16.

<sup>488</sup> Ibid., p. 22.

<sup>489</sup> Ibid., p. 23.

<sup>490</sup> Ibid., p. 25.

sanctions.<sup>491</sup> The representative of Indonesia insisted that efforts should be made to relieve the suffering of children living under sanctions regimes by providing humanitarian exemptions so that children would not be denied access to basic necessities.<sup>492</sup>

At its 4422nd meeting, on 20 November 2001, the Council continued its discussion of possible measures to be taken to alleviate the plight of children affected by war. In his statement, the representative of the Republic of Korea remarked that, in the past years, there had been a surge in the number of armed conflicts and that innocent civilians had been increasingly targeted. He asked Member States to cooperate in imposing sanctions on individuals and groups involved in illegal trafficking of currency, arms and natural resources, which exacerbated armed conflict.<sup>493</sup> The representatives of Iraq and Malaysia drew attention to the number of civilian victims resulting from the sanctions imposed on Iraq, and asked for the removal of those sanctions.<sup>494</sup>

#### **Ensuring an effective role of the Security Council in the maintenance of peace and security, particularly in Africa**

At its 4288th meeting, on 7 March 2001, the Council discussed ways to increase the effectiveness of the Security Council in the maintenance of peace and security, especially in Africa. The representative of Sweden noted that the systematic and deliberate violations of sanctions continued to fuel some of the conflicts in Africa. He urged the Council to make the objectives of sanctions and the criteria for lifting them “clear”, to assess the possible humanitarian impacts of sanctions and to ensure that appropriate mechanisms for review were incorporated into sanctions regimes.<sup>495</sup> The representative of Egypt shared the view that the Council should establish a specific time frame for the duration of the sanctions and specific mechanisms for their lifting.<sup>496</sup> Along the same lines, the representative of Belarus advocated an improvement of the principles and mechanisms for the establishment of enforcement measures, in particular of economic sanctions.<sup>497</sup> The

representative of Namibia agreed that the Council should take action against those who violated sanctions, but, at the same time, should ease or lift sanctions when the humanitarian situation demanded it.<sup>498</sup>

#### **Protection of civilians in armed conflict**

At its 4312th meeting, on 23 April 2001, the Council debated ways to improve the protection of civilians in armed conflict and lessen the effect of sanctions on civilians. The representative of Jamaica stressed the importance of a permanent technical review mechanism that would assess the unintended consequences of sanctions before they were imposed.<sup>499</sup> The representative of China cautioned that protracted sanctions caused “enormous harm to civilians” and emphasized the need for action to curtail civilian suffering.<sup>500</sup> The representative of Canada acknowledged that, despite certain setbacks, the Council had improved its “sanctions instrument”.<sup>501</sup> The representative of the Republic of Korea noted that targeted sanctions should be tailored to a specific regime and have clear goals. He also urged the Council to take into account the humanitarian implications of sanctions.<sup>502</sup> The representative of Switzerland shared the view that the Council should take better account of the humanitarian repercussions of sanctions regimes on civilian populations and promote targeted sanctions.<sup>503</sup> The representative of Pakistan, however, stressed that there were “no smart sanctions, nor targeted sanctions, only unjust sanctions”.<sup>504</sup> The representative of Sierra Leone drew attention to the role played by external actors in fostering conflict. He urged the Council to take action against those actors by using “the threat of the use of sanctions”.<sup>505</sup> The representative of Iraq drew attention to the effects of sanctions on his country, stressing the “devastating impact of sanctions on children and infants”.<sup>506</sup>

At its 4877th meeting, on 9 December 2003, the Council continued its discussion on the means for

<sup>491</sup> S/PV.4176 (Resumption 1) and Corr.1, p. 14.

<sup>492</sup> Ibid., p. 26.

<sup>493</sup> S/PV.4422 (Resumption 1), pp. 17-18.

<sup>494</sup> Ibid., pp. 24-25 (Iraq); and p. 29 (Malaysia).

<sup>495</sup> S/PV.4288, p. 6.

<sup>496</sup> Ibid., p. 14.

<sup>497</sup> Ibid., p. 24.

<sup>498</sup> Ibid., p. 22.

<sup>499</sup> S/PV.4312, p. 15.

<sup>500</sup> Ibid., p. 18.

<sup>501</sup> S/PV.4312 (Resumption 1) and Corr.1, p. 4.

<sup>502</sup> Ibid., p. 9.

<sup>503</sup> Ibid., p. 12.

<sup>504</sup> Ibid., p. 23.

<sup>505</sup> Ibid., p. 30.

<sup>506</sup> Ibid., p. 32.

better protecting civilians in armed conflict. The representative of Chile maintained that “sanctions should be reserved for very specific areas, focused directly on those responsible and avoid negatively affecting the civilian population”.<sup>507</sup> The representative of Germany insisted that sanctions should be imposed “with the consequences for civilians in mind”.<sup>508</sup> Similarly, the representative of Canada welcomed the Council’s efforts to develop more-targeted sanctions regimes to minimize the potential humanitarian impact of sanctions on civilian populations.<sup>509</sup>

### Small arms

At its 4355th meeting, on 2 August 2002, the Council discussed the impact of the illicit trafficking of small arms and light weapons on conflict situations. In their statements, the representatives of Jamaica and Mauritius emphasized the role of targeted sanctions in limiting combatants’ access to resources and reducing the flow of arms to areas of conflict.<sup>510</sup> A number of speakers called for the establishment of a standing monitoring mechanism for sanctions that would more efficiently supervise compliance.<sup>511</sup> The representative of Ukraine insisted that the Council should focus on ensuring the full implementation of its arms embargoes and other sanctions targeting illicit trade.<sup>512</sup> That approach was supported by the representative of Brazil, who added that the Council should also provide “incentives” to all States to cooperate with the investigations of the sanctions committees.<sup>513</sup> The representative of Costa Rica asked the Council to investigate and find illicit supply routes for small arms and light weapons to various areas in conflict and impose appropriate sanctions on “the nations, entities or individuals involved in such activities”.<sup>514</sup>

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<sup>507</sup> S/PV.4877, p. 12.

<sup>508</sup> *Ibid.*, p. 25.

<sup>509</sup> S/PV.4877 (Resumption 1), p. 13.

<sup>510</sup> S/PV.4355, p. 7 (Jamaica); and p. 18 (Mauritius).

<sup>511</sup> S/PV.4355, p. 11 (France); p. 20 (Mali); and p. 23 (Singapore); S/PV.4355 (Resumption 1) and Corr.1, p. 4 (Argentina); and p. 33 (Bulgaria).

<sup>512</sup> S/PV.4355, p. 21.

<sup>513</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 7.

<sup>514</sup> *Ibid.*, p. 28.

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

At its 4466th meeting, on 31 January 2002, the Council discussed its activity for the current month. The representative of Colombia referred to resolution 1390 (2002) by which, in connection with the situation in Afghanistan, the Council had established the only sanctions regime that was “not linked to a specific territory or country” and instead had “global application”. He noted that its implementation would require new mechanisms and discussion of substantive topics “never before tackled in the Council”.<sup>515</sup> The representative of Singapore agreed that the resolution had global application while providing some “continuity” by retaining mechanisms such as the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, the consolidated list issued by that Committee and the Monitoring Group established by resolution 1363 (2001).<sup>516</sup>

At its 4748th meeting, on 30 April 2003, the Council discussed the role of the United Nations in post-conflict situations, especially with regard to Iraq. The Secretary-General noted that the Council would have to make difficult decisions in the near future, notably on the issue of sanctions. He also emphasized that the Council should play an important role in determining the role of the United Nations in the reconstruction of Iraq.<sup>517</sup> In that respect, the representative of the Russian Federation expressed his preference for the easing or suspension of “certain sanctions” in order to alleviate the humanitarian situation in the country.<sup>518</sup> The representative of Georgia cautioned that the Security Council’s handling of Iraq’s postwar reconstruction could serve as a “litmus test” of its commitment to peace and international security. He declared as unacceptable the attempts to “manipulate the technicalities of previously adopted resolutions” to prevent the Council from lifting the sanctions against Iraq.<sup>519</sup>

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<sup>515</sup> S/PV.4466, pp. 3-4.

<sup>516</sup> *Ibid.*, pp. 12-14.

<sup>517</sup> S/PV.4748 and Corr.1, p. 4.

<sup>518</sup> *Ibid.*, p. 14.

<sup>519</sup> *Ibid.*, p. 22.

## Part IV

### 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 explicitly invoke Article 42 in any of its decisions. However, the Council did adopt several resolutions by which it called on Member States to use “all necessary measures” to enforce its demands relating to the restoration of international peace and security and which may be of relevance to the Council’s interpretation and application of the principle in Article 42.

Section A presents eight case studies relating to the Council’s authorization of enforcement action under Chapter VII of the Charter, for the maintenance of peace and security: Afghanistan, Bosnia and Herzegovina, Côte d’Ivoire, the Democratic Republic of the Congo, East Timor, Iraq, Liberia and Sierra Leone. Section B covers highlights the salient issues that were raised in the Council’s deliberations in connection with the adoption of the relevant resolutions. Particular attention is also devoted to the discussion which arose in the Council in connection with the situation between Iraq and Kuwait and, specifically, on whether the Council should authorize the use of force against Iraq for its failure to comply with relevant Security Council resolutions.

#### A. Decisions of the Security Council relating to Article 42

##### The situation in Afghanistan

By resolution 1386 (2001) of 20 December 2001, the Council authorized the establishment, for a period of 6 months, of the International Security Assistance

Force (ISAF) to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas.<sup>520</sup> It also authorized the Member States participating in the Force to “take all necessary measures to fulfill its mandate”.<sup>521</sup> The mandate of the Force was extended several times by subsequent Council resolutions.<sup>522</sup>

##### The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, the Security Council authorized Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), in accordance with resolution 1088 (1996), to fulfil the role determined in the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), under annex 1-A, by taking “all necessary measures” to fulfil its mandate.<sup>523</sup> By the same resolution, the Council also authorized the relevant Member States to “take all necessary measures”, at the request of the Stabilization Force (SFOR), either in defence of the Force or to assist the Force in carrying out its mission, and recognized the right of the Force to “take all necessary measures” to defend itself from attack or threat of attack. The Council also authorized the relevant Member States to “take all necessary measures” to ensure compliance with the rules and procedures established by the Commander of SFOR, governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.<sup>524</sup> The mandate of the United Nations Mission in Bosnia and Herzegovina was extended several times by subsequent Council resolutions.<sup>525</sup>

<sup>520</sup> Resolution 1386 (2001), para. 1.

<sup>521</sup> Resolution 1386 (2001), para. 3.

<sup>522</sup> Resolutions 1413 (2002), paras. 1 and 2; 1444 (2002), paras. 1 and 2; and 1510 (2003), paras. 3 and 4.

<sup>523</sup> Resolution 1305 (2000), paras. 10 and 11.

<sup>524</sup> Resolution 1305 (2000), paras. 12 and 13.

<sup>525</sup> Resolutions 1357 (2001), paras. 10, 11, 12, 13 and 19; 1418 (2002), para. 1; 1420 (2002), para. 1; 1421 (2002), para. 1; 1423 (2002), paras. 10, 11, 12, 13 and 19; and 1491 (2003), paras. 10, 11, 12 and 13.

### **The situation in Côte d'Ivoire**

By resolution 1464 (2003) of 4 February 2003, recalling the decision taken by the Economic Community of West African States to promote a peaceful settlement of the conflict and deploy a peacekeeping force in Côte d'Ivoire, the Council authorized Member States participating in the forces of ECOWAS, together with the French forces supporting them, to "take the necessary steps to guarantee the security and freedom of movement of their personnel" and to ensure "the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them".<sup>526</sup> The Council subsequently renewed the authorization by resolution 1498 (2003) of 4 August 2003.<sup>527</sup>

### **The situation concerning the Democratic Republic of the Congo**

By resolution 1291 (2000) of 24 February 2000, in connection with the expansion of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),<sup>528</sup> the Council decided that the Mission might "take the necessary action [...] to protect United Nations and co-located Joint Military Commission personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence".<sup>529</sup> By several subsequent resolutions, the Council extended the Mission's mandate.<sup>530</sup>

By resolution 1484 (2003) of 30 May 2003, the Council authorized the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC, and authorized the Member States participating in the Multinational Force in Bunia "to take all necessary measures to fulfill its mandate".<sup>531</sup>

By resolution 1493 (2003) of 28 July 2003, which authorized the increase of the Mission's military strength to 10,800 personnel, the Council authorized

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<sup>526</sup> Resolution 1464 (2003), para. 9.

<sup>527</sup> Resolution 1498 (2003), para. 1.

<sup>528</sup> Resolution 1291 (2000), para. 4.

<sup>529</sup> *Ibid.*, para. 8.

<sup>530</sup> Resolutions 1323 (2000), para. 1; 1332 (2000), para. 1; 1355 (2001), para. 29; 1417 (2002), para. 1; and 1489 (2003), para. 1.

<sup>531</sup> Resolution 1484 (2003), paras. 1 and 4.

the Mission to "take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities" (a) to protect United Nations personnel, facilities, installations and equipment; (b) to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or disarmament, demobilization, repatriation, reintegration or resettlement; (c) to protect civilians and humanitarian workers under imminent threat of physical violence; and (d) to contribute to the improvement of the security conditions in which humanitarian assistance is provided.<sup>532</sup> By the same resolution, the Council also authorized the Mission to "use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu".<sup>533</sup>

### **The situation in Timor-Leste**

By resolution 1410 (2002) of 17 May 2002, the Council decided to establish, as of 20 May 2002 and for an initial period of 12 months, the United Nations Mission of Support in East Timor (UNMISET), with the following mandate: (a) to provide assistance to core administrative structures critical to the viability and political stability of East Timor; (b) to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in East Timor, the East Timor Police Service; and (c) to contribute to the maintenance of the external and internal security of East Timor.<sup>534</sup> By the same resolution, acting under Chapter VII of the Charter, the Council authorized the Mission "to take the necessary actions, for the duration of its mandate, to fulfil its mandate",<sup>535</sup> and decided to review this issue and all other aspects of the mandate of the Mission after 12 months. By resolution 1480 (2003) of 19 May 2003, the Council extended the mandate of UNMISET until 20 May 2004.<sup>536</sup>

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<sup>532</sup> Resolution 1493 (2003), para. 25.

<sup>533</sup> Resolution 1493 (2003), para. 26.

<sup>534</sup> Resolution 1410 (2002), paras. 1 and 2.

<sup>535</sup> Resolution 1410 (2002), para. 6.

<sup>536</sup> Resolution 1480 (2003), para. 1. The composition and the strength of the military and police components of the Mission were modified by resolution 1473 (2003) of 4 April 2003.

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

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under unified command “to take all necessary measures to contribute to the maintenance of security and stability in Iraq”, including for the purpose of (a) ensuring the necessary conditions for the implementation of the timetable and programme for the drafting of a new constitution for Iraq and for the holding of democratic elections; and (b) contributing to the security of the United Nations Assistance Mission for Iraq, the Governing Council and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure.<sup>537</sup>

### **The situation in Liberia**

By resolution 1497 (2003) of 1 August 2003, the Council authorized Member States to establish a Multinational Force in Liberia (a) to support the implementation of the 17 June 2003 ceasefire agreement; (b) to help to establish and maintain security in the period after the departure of the President of Liberia and the installation of a successor authority; (c) to secure the environment for the delivery of humanitarian assistance; and (d) to prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force.<sup>538</sup> By the same resolution, the Council authorized Member States participating in the Multinational Force to “take all necessary measures to fulfill its mandate”.<sup>539</sup>

### **The situation in Sierra Leone**

By resolution 1289 (2000) of 7 February 2000, the Council authorized the United Nations Mission in Sierra Leone (UNAMSIL) to “take the necessary action” to fulfil its mandate and ensure the security and freedom of movement of its personnel, as well as to afford protection to civilians under imminent threat of physical violence, within its capabilities and areas of deployment and taking into account the responsibilities of the Government of Sierra Leone.<sup>540</sup>

<sup>537</sup> Resolution 1511 (2003), para. 13.

<sup>538</sup> Resolution 1497 (2003), para. 1.

<sup>539</sup> Resolution 1497 (2003), para. 5.

<sup>540</sup> Resolution 1289 (2000), para. 10.

## **B. Discussion relating to Article 42**

### **The situation in Afghanistan**

At its 4414th meeting, on 13 November 2001, the Council discussed its role in setting Afghanistan on the path to a stable and lasting peace and in addressing the humanitarian needs of the Afghan people. The Special Representative of the Secretary-General for Afghanistan emphasized that the establishment of a new Government could not be achieved in the absence of “genuine and lasting security”. He noted that the pervasive presence of non-Afghan armed and terrorist groups with no interest in a lasting peace would necessitate the introduction of a “robust security force, able to deter and, if possible, defeat challenges” to the Afghan Government’s authority. He presented three options to the Council: an all-Afghan security force, a multinational force and a United Nations peacekeeping force, stressing that the preferred option was an all-Afghan force, provided it could be fielded in a “speedy, robust and credible manner”.<sup>541</sup> The representative of Norway noted that the refusal by the Taliban regime to comply with Council resolutions “left no alternative but to use military force”, in accordance with the right of self-defence. He advised that the efforts to assist Afghanistan would only be effective if they were “well coordinated and part of a comprehensive political and economic strategy” supported by a “necessary security presence”.<sup>542</sup> The representative of China called on the United Nations to play a “leading role” and provide, together with the international community, the necessary political, technical and financial assistance to Afghanistan “on an urgent basis”. He announced his Government’s willingness to take into “serious consideration” any proposals or recommendations conducive to restoring the peace, stability and neutrality of Afghanistan.<sup>543</sup> The representative of the United States argued that the international presence should be re-established “as soon as possible”.<sup>544</sup> The representative of the Netherlands noted that a Security Council resolution had to enable “swift action to ensure as soon as possible some international, preferably United Nations, presence” in the towns that had just changed hands. He pointed out that “transitional military arrangements” would be essential

<sup>541</sup> S/PV.4414, p. 6.

<sup>542</sup> *Ibid.*, p. 13.

<sup>543</sup> *Ibid.*, p. 19.

<sup>544</sup> *Ibid.*, p. 22.

to create a secure environment.<sup>545</sup> The representative of Pakistan pointed out the significance of the interim administration's move to Kabul and called for the creation of a multinational force "with the coalition providing back-up support" to secure the peace and security of Kabul.<sup>546</sup> The representative of Italy asserted that a "proper security framework" was an indispensable element for stability and also for the distribution of humanitarian assistance.<sup>547</sup> The representative of the Islamic Republic of Iran observed that the United Nations political and monitoring presence was one of the prerequisites for a successful transition, and that the presence of a United Nations military force was needed to ensure peace, order and security until the national army and police were in place.<sup>548</sup> The representative of Germany argued that without military means it would not be possible to destroy the "hotbed of terror" in Afghanistan. He underlined the importance of clear political, economic and humanitarian objectives and urged the Council to provide the "mandate necessary to this end" through a Security Council resolution.<sup>549</sup> The representative of Kazakhstan expressed the view that the Security Council should adopt comprehensive measures in the "political, military, humanitarian and human rights arena" along the lines of Mr. Brahimi's recommendations.<sup>550</sup> The representative of Argentina maintained that the new Government of Afghanistan had to be helped to attain stability and security and that, in this respect, the "support of a security mechanism with an international component" might be necessary.<sup>551</sup> The representative of Chile reaffirmed that the United Nations had a central role in "creating effective cooperation mechanisms between countries in order to tackle international terrorism", a role that should be "intensified" when it became necessary to adopt measures aimed at "creating conditions for national stability in Afghanistan and, as a result, in the region".<sup>552</sup>

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<sup>545</sup> S/PV.4414 (Resumption 1), p. 4.

<sup>546</sup> *Ibid.*, pp. 5-7.

<sup>547</sup> *Ibid.*, p. 8.

<sup>548</sup> *Ibid.*, p. 10.

<sup>549</sup> *Ibid.*, pp. 12-13.

<sup>550</sup> *Ibid.*, p. 26.

<sup>551</sup> *Ibid.*, p. 27.

<sup>552</sup> *Ibid.*, p. 28.

### **The situation concerning the Democratic Republic of the Congo**

At its 4092nd meeting, on 24 January 2000, the Council discussed ways to end to the conflict in the Democratic Republic of the Congo based on the principles laid out in the Lusaka Agreement. During the debate, the representative of Mozambique stated that the situation in the Democratic Republic of the Congo could no longer afford further delays in the establishment of a full-fledged United Nations peacekeeping mission with an appropriate mandate under Chapter VII and with adequate numbers, taking into account the size of the country and the magnitude and complexity of the conflict.<sup>553</sup> The representative of Zimbabwe indicated that the people of the Democratic Republic of the Congo did not require "more talk of sending observers to their country, but the invoking of Chapter VII of the Charter and the urgent dispatch of peacekeepers to keep the peace".<sup>554</sup> The representative of Uganda echoed that position, demanding that a neutral international peacekeeping force be deployed as an "interpositional force" in the Democratic Republic of the Congo under the auspices of the United Nations. He proposed that the mission be established under Chapter VII of the Charter to enable it to deal effectively with questions of disarmament, demobilization and the protection of civilians.<sup>555</sup> The representative of Namibia called for the speedy deployment of a United Nations peacekeeping force in the Democratic Republic of the Congo, military observers and peacekeepers alike, under Chapter VII of the United Nations Charter.<sup>556</sup> The representative of Canada expressed his Government's support for the "immediate creation of a robust United Nations mission" to assist in the implementation of the Lusaka Agreement, for which the mandate should include clear and unequivocal provision for the protection of civilians under Chapter VII of the Charter.<sup>557</sup> The representative of Bangladesh concurred that a more robust mission with a Chapter VII mandate needed to be considered in due course for the implementation of the remaining provisions of the Lusaka Agreement.<sup>558</sup>

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<sup>553</sup> S/PV.4092. p. 11.

<sup>554</sup> *Ibid.*, p. 18.

<sup>555</sup> *Ibid.*, p. 20.

<sup>556</sup> *Ibid.*, p. 30.

<sup>557</sup> S/PV.4092 (Resumption 1), p. 11.

<sup>558</sup> *Ibid.*, p. 17.

At its 4790th meeting, on 18 July 2003, the Council discussed the security situation in Bunia, following the installation of the Transitional Government of National Unity and a military operation undertaken by the Interim Emergency Multinational Force against the Union des patriotes congolais on 11 July 2003. During the debate, the High Representative for the Common Foreign and Security Policy of the European Union expressed support for a “strengthened presence” of MONUC to be deployed in Bunia, with a “mandate under Chapter VII”.<sup>559</sup> The representatives of Mexico and France noted that the Council had been preparing a draft to strengthen the mandate of MONUC, giving the mission a “robust mandate”.<sup>560</sup> Similarly, several other speakers called for the Council to strengthen MONUC and grant it a robust mandate so that it could act effectively in emergency situations on the ground.<sup>561</sup> The representative of the Russian Federation shared the view of the Secretary-General on the need to adapt MONUC’s mandate to the realities in the country and conveyed his support for the adoption of a new resolution with “new tasks” for the United Nations peacekeeping operation in the Democratic Republic of the Congo.<sup>562</sup> The representative of the United Kingdom stressed that a Chapter VII authorization for MONUC was “important” as it would help deter violence, but only if it was “credibly embodied on the ground”.<sup>563</sup> The representative of Chile also advocated a “robust mandate under Chapter VII” for MONUC, which would be “essential to protect civilian populations and military personnel” subjected to “danger and threat”.<sup>564</sup> The representative of China concurred, indicating that, as a result of the latest development, both the “mandate and size” of MONUC had to be adjusted. He therefore asserted his support for the draft resolution that would change MONUC’s mandate.<sup>565</sup> The representative of Pakistan voiced support for an expansion of MONUC “to a ceiling of

10,800 troops, Chapter VII cover for Ituri and, if required, for the Kivu, and the presence of a brigade-size force in Ituri, with a clear, realistic and robust mandate”. He added that the expanded presence of MONUC should be accompanied by a “strong message” to the warring factions and those who backed them that further hostilities, which undermined the peace process, would “no longer be tolerated”. He concluded that, in that regard, his delegation supported the imposition of an arms embargo on all the warring parties.<sup>566</sup> The representative of South Africa insisted that, in addition to strengthening the numbers and capabilities of the MONUC forces, the operation should be given a mandate under Chapter VII so that it could effectively carry out the tasks assigned to it.<sup>567</sup> The representative of Japan acknowledged that, given the seriousness of the situation in the area of Bunia and in order to advance the Ituri pacification process, the MONUC contingent deployed in the region required a “sufficiently robust enforcement mandate”, and expressed his support for granting such a mandate to MONUC. Nevertheless, he asked States to exercise caution, as a strong enforcement mandate for activities, such as providing security under Chapter VII, under circumstances in which certain parties were not participating in the ceasefire agreement or peace accord, would risk changing the extant practices of peacekeeping operations and “plunging the troops into very complicated situations”, in which they might be required to “engage in combat as if they were parties to the conflict”. He concluded that the Council should not “easily” confer such “robust powers” to other peacekeeping operations and that such a mandate “should be given to peacekeepers only in exceptional cases” in which the urgency of the situation made it “absolutely necessary” and in which there were countries willing to contribute troops, as well as the clear prospect that the troops dispatched with such a mandate would contribute to the improvement of the situation.<sup>568</sup> The representative of the Philippines pointed out that the formation of a Transitional Government in the Democratic Republic of the Congo was only a first step and that the security situation in the Ituri region remained “fragile”. Hence, he endorsed the Secretary-General’s proposal to strengthen MONUC and announced his delegation’s support for an early adoption of the draft resolution, under

<sup>559</sup> S/PV.4790, p. 7.

<sup>560</sup> *Ibid.*, p. 10 (Mexico); and p. 11 (France).

<sup>561</sup> *Ibid.*, p. 12 (Guinea); pp. 20-21 (Cameroon); pp. 29-30 (South Africa); p. 31 (Bangladesh); and p. 33 (Brazil).

<sup>562</sup> *Ibid.*, p. 16.

<sup>563</sup> *Ibid.*, p. 17.

<sup>564</sup> *Ibid.*, p. 19. Along the same lines, at the 4784th meeting, on 7 July 2003, the representative of Chile endorsed strengthening the Mission’s presence with a mandate that enabled it to provide the necessary protection to the civilian population. See S/PV.4784, p. 15.

<sup>565</sup> S/PV.4790, p. 22.

<sup>566</sup> *Ibid.*, p. 24.

<sup>567</sup> *Ibid.*, pp. 29-30.

<sup>568</sup> *Ibid.*, p. 34.



Chapter VII of the Charter.<sup>569</sup> The representative of Nepal endorsed a quick, “fresh decision” by the Council to increase the Mission’s troop strength considerably and to adjust its mandate. He contended that only a “credible MONUC presence” could create confidence in the Democratic Republic of the Congo, which was critical “to stop hostilities in the Ituri region and elsewhere, to secure the Transitional Government on a firm footing in Kinshasa, and to implement an effective disarmament, demobilization and reintegration programme”.<sup>570</sup>

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

At its 4625th meeting, on 16 October 2002, the Security Council held an open debate on the situation between Iraq and Kuwait, during which a number of speakers discussed the possibility of the use of force against Iraq. Several speakers welcomed the decision by Iraq to accept the return of United Nations inspectors on its territory and expressed the view that the Council should seize upon such positive developments by authorizing the immediate return of inspectors to Iraq, which would in turn open the way for the full implementation of all Council resolutions on Iraq.<sup>571</sup>

A conspicuous number of speakers stressed that the use of force should be considered as a last resort. Only if it turned out that the inspectors had been prevented from doing their job, and when that had been communicated to the Council should the Council decide on a position to adopt in the face of such a situation.<sup>572</sup> The representative of Morocco reminded the Council that the “common defence system provided for in Chapter VII of the Charter” was designed in a way that made resorting to the use of force “the very last means available to the Security Council”, after all other means had been exhausted, and emphasized that avoiding the use of force was “central to both the role and the responsibilities of the United Nations,

especially of the Security Council”.<sup>573</sup> The representative of Pakistan recalled that most of the resolutions relating to Iraq were adopted under Chapter VII of the Charter with an “explicit implication that enforcement action could be taken by the United Nations, as envisaged in Article 42 of the Charter, to secure compliance with its resolutions”. He underlined that any action involving the use of force should be considered only as a “last resort”, and that Article 42 should not provide the authority to one or more Member States “to resort to force unilaterally and on their own judgment, independently of the Security Council or without its explicit approval”.<sup>574</sup> The representative of Liechtenstein stressed that ensuring full compliance with the Security Council decisions was indispensable to the Council’s credibility, and that the Council should do “everything possible, and be seen as doing everything possible, to ensure compliance with and implementation of its decisions without resorting to the use of force”.<sup>575</sup>

Similarly, other speakers made reference to the consequences that the use of force would cause. The representatives of Kuwait, Chile and Cambodia commented on the humanitarian impact of any military action against Iraq.<sup>576</sup> The representative of Switzerland cautioned that the possible use of force should not be considered without account being taken of all the potential short and long-term consequences at the political, security, humanitarian and economic levels.<sup>577</sup>

Other delegations commented on the legitimacy of the use of force against Iraq. A number of speakers underlined that only the United Nations, and specifically the Security Council, could confer international legitimacy to any action against Iraq. The representative of South Africa noted that it would be inconsistent with the spirit and letter of the Charter if the Security Council were to authorize the use of military force against Iraq at a time when Iraq had indicated its willingness to abide by Council resolutions.<sup>578</sup> The representative of Iraq called on

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<sup>569</sup> Ibid., pp. 36-37.

<sup>570</sup> Ibid., pp. 38-39.

<sup>571</sup> S/PV.4625 and Corr.1, p. 5 (South Africa); and p. 15 (Algeria).

<sup>572</sup> Ibid., p. 11 (Kuwait); and p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 12 (Chile); and p. 13 (Indonesia); S/PV.4625 (Resumption 2), p. 2 (Morocco); p. 4 (Brazil); p. 13 (Djibouti); p. 14 (Liechtenstein); p. 16 (Angola); pp. 21-22 (Cambodia); and p. 27 (Nepal).

<sup>573</sup> S/PV.4625 (Resumption 2), pp. 2-3.

<sup>574</sup> Ibid., p. 18.

<sup>575</sup> Ibid., p. 14.

<sup>576</sup> S/PV.4625 and Corr.1, p. 11 (Kuwait); S/PV.4625 (Resumption 1), p. 12 (Chile); and S/PV.4625 (Resumption 2), p. 21 (Cambodia).

<sup>577</sup> S/PV.4625 (Resumption 2), p. 5.

<sup>578</sup> S/PV. 4625 and Corr.1, p. 5.

States to voice their objections to the “aggressive designs of the United States of America against Iraq” as silence “would be the beginning of the end of the collective security system” and would violate the principle of refraining from the use of force.<sup>579</sup> The representative of Yemen pointed out that launching war solely on the basis of “reading one’s intentions” would open the door to exploding “hotbeds of tension and wars whose roots had been lying dormant”. He stressed that, in many cases, resorting to force illustrated a “shortcoming” more than it provided “evidence of the sensibility and rationality of the decision to use force”.<sup>580</sup> The representative of Tunisia observed that advocating “an automatic recourse to force”, and “thus prejudging the outcome of inspections”, was unacceptable as it had not yet been established that Iraq possessed weapons of mass destruction. He underlined that an “ill-advised” act of force would undermine all the principles of the Charter, including the prohibition of the use of force.<sup>581</sup> The representative of India insisted that in contemplating the use of force, the question of legitimacy and the international rule of law were “important”, thus noting that, without an authorization of the Council “any support for a campaign would not be forthcoming”.<sup>582</sup>

Some speakers envisaged the possibility of the use or threat of use of force if Iraq did not fully comply with its obligations under Council resolutions. The representative of Mexico supported a two-stage action of the Council, the first of which would include the establishment of a revised system of inspections in Iraq. He further remarked that, if Iraq did not comply with the new resolution of the Council, the Council would have to determine, on the basis of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and International Atomic Energy Agency reports, whether the non-compliance constituted a threat to international peace and security and “to decide on the measures to be adopted, preferably unanimously, including the possible use of force”.<sup>583</sup> The representative of the United States expressed his Government’s hope that the use of force would not become necessary and that the Iraqi regime would give up its weapons of mass destruction.

Otherwise, he cautioned, his country would lead a global coalition to disarm the Iraqi regime.<sup>584</sup> The representative of Argentina conveyed his confidence that the use of force, as the last resort for the Council, could be avoided, but acknowledged that force, exercised in accordance with the norms of international law, the Charter of the United Nations and the authorization of the Council, would become “the only option” once all negotiating mechanisms were exhausted.<sup>585</sup> The representative of Cameroon asserted that Iraq had failed to comply with multiple Security Council resolutions and if that continued, the Council would have to take appropriate measures to ensure compliance with its decisions, in accordance with the provisions of Article 42.<sup>586</sup> The representative of New Zealand asserted that if Iraq failed to comply with the inspection regime, the Council would need to make a “clear decision on further action”, and noted that use of force was “clearly not beyond the Council’s contemplation”.<sup>587</sup>

At its 4644th meeting, on 8 November 2002, the Council unanimously adopted resolution 1441 (2002) by which, acting under Chapter VII, it decided that Iraq’s failure to comply with the implementation of the resolution would constitute a further material breach of its obligations. During the debate, the Secretary-General stated that the newly adopted resolution clearly defined Iraq’s obligations to cooperate with the United Nations’ demands, and warned that in the event that Iraq’s defiance continued, the Council would have to face its responsibilities.<sup>588</sup> The representative of the United States warned that, in “one way or another”, Iraq would be disarmed and stressed that the resolution contained no “hidden triggers” and no “automaticity” with respect to the use of force.<sup>589</sup> Similarly, the representative of the United Kingdom noted that resolution 1441 (2002) contained no “automaticity”. Should Iraq commit a further breach of its disarmament obligations, the matter would return to the Council for discussion. In that regard he added that he would expect the Council to “then meet its responsibilities”. The disarmament of Iraq by peaceful means remained the preferred option of his delegation. But, if Iraq

<sup>579</sup> Ibid., p. 9.

<sup>580</sup> Ibid., p. 14.

<sup>581</sup> Ibid., pp. 23-24.

<sup>582</sup> S/PV.4625 (Resumption 2), p. 10.

<sup>583</sup> S/PV.4625 (Resumption 3) and Corr.1, p. 5.

<sup>584</sup> Ibid., p. 12.

<sup>585</sup> S/PV.4625 (Resumption 1), p. 19.

<sup>586</sup> S/PV.4625 (Resumption 3) and Corr.1, p. 28.

<sup>587</sup> S/PV.4625 (Resumption 1), p. 18.

<sup>588</sup> S/PV. 4644 and Corr.1, p. 2.

<sup>589</sup> Ibid., p. 3.

chose to reject the final opportunity it had been given, his delegation, he “trusted”, together with other members of the Council, would ensure that the task of disarmament required by the resolutions was completed.<sup>590</sup> Several representatives, including China, France and the Russian Federation, reiterated that resolution 1441 (2002) did not provide an automatic right to the use of force against Iraq in case of non-compliance.<sup>591</sup> The representative of Ireland noted carefully and welcomed the assurance given by the sponsors that their purpose was to achieve disarmament through inspections, and not to establish a basis for the use of military force. The use of force, he stressed, was, and should remain, a matter of last resort.<sup>592</sup> In that context, several speakers drew attention to the clearly defined two-stage process outlined in paragraphs 4, 11 and 12 of the resolution. They welcomed the reaffirmation, by those provisions, of the central role of the Council on the issue of Iraq.<sup>593</sup> The representative of the Syrian Arab Republic declared that his Government had voted in favour of the resolution owing to the assurances received from the representatives of the United States, United Kingdom, France and the Russian Federation that the resolution “would not be used as pretext” or as “a basis for any automatic strikes against Iraq”.<sup>594</sup>

At its 4707th meeting, on 14 February 2003, the Council heard a briefing by the Executive Chairman of UNMOVIC on the progress of inspections in Iraq. During the ensuing debate, several representatives, including France and the Russian Federation, urged the Council to reserve the “use of force” for the moment when it became clear that all peaceful means had failed.<sup>595</sup> The representative of France also added that the use of force was not justified “at this time” and that there was an alternative to war, namely “disarming Iraq through inspections”.<sup>596</sup> The representative of Angola expressed the view that use of force at this stage would deprive the international community of valuable information that could be provided through

inspections. He therefore appealed to the Council to allow sufficient time for the inspectors to gather the necessary information to “make informed decisions at the appropriate time”.<sup>597</sup> The representative of Germany warned that military action against Iraq would, in addition to the terrible humanitarian consequences, above all endanger the stability of a “tense and troubled region”. Consequently, he stressed that there should be “no automatism” leading the Council to the use of military force and that “all possible alternatives” needed to be “exhaustively explored”.<sup>598</sup> By contrast, the representative of the United States expressed the view that the improvements of process, more inspectors and longer inspecting period, would not move the Council away from the central problem — that Iraq had failed to comply with resolution 1441 (2002) — and that the Council would have to consider in the very near future whether it had reached the point where it must face the issue “whether or not it is time to consider serious consequences of the kind intended by resolution 1441 (2002)”.<sup>599</sup> The representative of Spain stated that if there was no change in the political attitude in Iraq, the Council would be obliged to “assume its responsibilities in the interest of peace and security of the world”, while the representative of the United Kingdom stated that the Council had reached that stage only by doing what the Charter required, which was to back a diplomatic process with a credible threat of force and also, if necessary, to be ready to use that threat of force.<sup>600</sup>

At its 4709th meeting, on 18 and 19 February 2003, the Council continued its discussion regarding Iraq’s compliance with resolution 1441 (2002). During the debate, a number of representatives reiterated their position that the use of force against Iraq should be considered only as a “last resort”, that the time to use military force had not yet arrived, given the progress of the inspections regime, and that therefore the use of force would not be justified at the present stage.<sup>601</sup> The representative of Malaysia recalled that the Council

<sup>590</sup> Ibid., p. 5.

<sup>591</sup> Ibid., p. 5 (France); p. 6 (Mexico); p. 7 (Ireland); p. 8 (Russian Federation); p. 9 (Bulgaria); p. 10 (Syrian Arab Republic); p. 11 (Colombia); and p. 13 (China).

<sup>592</sup> Ibid., p. 7.

<sup>593</sup> Ibid., p. 9 (Bulgaria); and p. 11 (Colombia).

<sup>594</sup> Ibid., p. 10.

<sup>595</sup> S/PV.4707, p. 11 (France); p. 15 (Chile); p. 22 (Russian Federation); and p. 25 (Pakistan).

<sup>596</sup> Ibid., p. 13.

<sup>597</sup> Ibid., p. 28.

<sup>598</sup> Ibid., p. 30.

<sup>599</sup> Ibid., pp. 19-21.

<sup>600</sup> Ibid., pp. 16-17 (Spain); and p. 18 (United Kingdom).

<sup>601</sup> S/PV.4709, p. 8 (Kuwait); p. 14 (Algeria); p. 16 (Bahrain); p. 25 (New Zealand); p. 30 (Greece, on behalf of the European Union and associated countries); and p. 32 (Sudan); S/PV.4709 (Resumption 1) and Corr.1, p. 6 (Switzerland); and p. 14 (Libyan Arab Jamahiriya).

had never authorized the use of force “on the basis of a potential threat of violence” and that all past authorizations had been in response to “actual invasions”.<sup>602</sup> The representative of South Africa stated that, since the inspections process was working and Iraq was showing signs of cooperating more proactively with the inspectors, no information provided thus far would seem to justify the Council abandoning the inspections process and immediately resorting to the threatened “serious consequences”. Recalling that there were no time limits stipulated for inspections in resolution 1441 (2002), he held the view that resorting to war without fully exhausting all other options represented an admission of failure by the Council in carrying out its mandate of maintaining international peace.<sup>603</sup> Other delegations emphasized that the right to use force against Iraq could be authorized only by the Security Council and under the Charter of the United Nations.<sup>604</sup> For instance, the representative of Nigeria characterized as “imperative” that every effort be made to avoid the use of force. He contended that if the use of force became “inescapable” for the enforcement of Council resolutions and for the Council’s credibility, such enforcement action should be the result of the collective will and decisions of the Council, under Article 42 of the Charter.<sup>605</sup> While recognizing that force could be used only as a last resort, the representative of Iceland concluded his remarks by emphasizing that the Council had to face “its responsibility” in the eventuality that all other means proved inadequate.<sup>606</sup>

At its 4714th meeting, on 7 March 2003, the Council considered the quarterly report of UNMOVIC. A number of speakers shared the view that the inspectors’ reports demonstrated that progress had been achieved in implementing resolution 1441 (2002) and therefore saw no need for a new resolution, pointing instead to the importance of accelerated and strengthened inspections.<sup>607</sup> While signaling that Iraq’s efforts to comply with resolution 1441 (2002) had been

insufficient, others also called for inspections to continue, although “not indefinitely”.<sup>608</sup> The representative of France also underlined that the military agenda must not dictate the calendar of inspections, noting that he could not accept an ultimatum as long as inspectors were reporting cooperation, and would not allow a resolution to pass that authorized the automatic use of force.<sup>609</sup> Similarly, the representative of China opposed a new resolution, “particularly one authorizing the use of force”,<sup>610</sup> while the representative of the Syrian Arab Republic questioned the rationale behind the necessity for “adopting a new resolution allowing the use of military force, as if war were the best and not the worst option” and expressed his hope that peace would prevail over the use of force.<sup>611</sup> The representative of Iraq held that the United States and United Kingdom were unable to prove the existence of weapons of mass destruction in his country and aimed at advancing their “private agenda” in the region.<sup>612</sup> In response, the representative of the United Kingdom observed that, since there had not been “active cooperation in the areas which matter” by Iraq, the only way disarmament could be achieved was by backing diplomacy with a credible threat of force. He recalled that “nothing” had ever been “automatic about the threat of force or the use of force”, indicating that the use of force was conditional rather than automatic.<sup>613</sup> The representative of the United States stressed that the “limited progress” noticed in Iraq’s behaviour was not the result of resolutions or inspectors, but of the “unified political will of the Council” and of the “willingness to use force”, if necessary, to ensure that the disarmament of Iraq was achieved.<sup>614</sup>

At its 4717th meeting, on 11 March 2003, the Council continued to discuss the feasibility of a new resolution authorizing the use of force against Iraq. During the debate, a number of speakers voiced opposition to the prospect of an imminent military action against Iraq and underscored the need for the peaceful disarmament of Iraq. In their statements, many delegations expressed the view that inspections

<sup>602</sup> S/PV.4709 (Resumption 1) and Corr.1, p. 10.

<sup>603</sup> S/PV.4709, pp. 4-5.

<sup>604</sup> S/PV.4709 (Resumption 1) and Corr.1, p. 2 (Qatar); p. 13 (Nigeria); p. 15 (Ecuador); p. 26 (Norway); pp. 26-27 (Paraguay); and p. 34 (Belarus).

<sup>605</sup> *Ibid.*, p. 13.

<sup>606</sup> *Ibid.*, p. 28.

<sup>607</sup> S/PV.4714, p. 9 (Germany); p. 11 (Syrian Arab Republic); p. 17 (Russian Federation); p. 18 (France); and p. 21 (China).

<sup>608</sup> *Ibid.*, p. 29 (Cameroon); p. 28 (Angola); and p. 34 (Guinea).

<sup>609</sup> *Ibid.*, p. 19.

<sup>610</sup> *Ibid.*, p. 21.

<sup>611</sup> *Ibid.*, pp. 10-12.

<sup>612</sup> *Ibid.*, p. 35.

<sup>613</sup> *Ibid.*, pp. 25-27.

<sup>614</sup> *Ibid.*, pp. 14-17.

were making concrete progress towards a genuine resolution of the question.<sup>615</sup> The representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed his commitment to the “fundamental principles of the non-use of force and of respect for the sovereignty, territorial integrity, political independence and security of all Member States of the United Nations”.<sup>616</sup> Emphasizing that the fundamental issue at stake was the peaceful disarmament of Iraq, the representative of South Africa pointed out that resolution 1441 (2002) was about disarming Iraq through inspections and “not a declaration of war”. He therefore added that the use of military force was not “the best way to bring about democracy or to improve human rights in any country”.<sup>617</sup> The representative of Algeria indicated that, since the inspections were beginning to bear fruit and Iraq was entering into a phase of “proactive” cooperation with the inspectors, everything should be done to avoid the use of force.<sup>618</sup> Similarly, recalling that the latest reports of UNMOVIC and IAEA indicated progress in the cooperation of Iraq, the representative of India stated that force should be resorted to only as “the very last, unavoidable option”, and as authorized by the Council.<sup>619</sup>

By contrast, the representative of Canada expressed the view that an open-ended inspections process would relieve the pressure on Iraq to disarm, adding that there was no doubt that Iraq had begun to disarm only when it faced heavy outside pressure. At the same time, he maintained that military action without a Council mandate would risk undermining respect for international law and raise questions about the Security Council and its authority and efficacy. He therefore stated that a message of absolute clarity should be sent by the Council to Baghdad on what was required, namely the following: (a) that the leadership of Iraq should publicly direct all levels of the Government to take all necessary disarmament decisions; (b) that the Council should ask IAEA to bring forward the programme of work urgently, including the list of key remaining disarmament tasks; (c) that the Council should set a deadline of three

weeks for Iraq to demonstrate conclusively that it was implementing those tasks; and (d) that the Council should consider authorizing Member States eventually to use all necessary means to force compliance, unless it concluded that Iraq was complying.<sup>620</sup>

A number of speakers expressed the view that Iraqi cooperation with UNMOVIC and IAEA had not been immediate, unconditional and active, and that the United Nations inspectors had not received the information necessary to draw conclusions about Iraq’s possession of weapons of mass destruction.<sup>621</sup> At the same time, some delegations added that the inspections could not go on forever — their time limit must be short and precise, but achievable.<sup>622</sup> Several speakers maintained that Iraq had fallen short of what resolution 1441 (2002) required it to do, and had in fact only taken small and belated steps under pressure created by the threat of the use of force. The preceding speakers maintained that the best and perhaps last hope of achieving a peaceful solution was for the Council to send a clear message to Iraq through a new resolution, which set deadlines and included concrete demands that it must fully disarm.<sup>623</sup> In appealing to Council members to support the draft, a number of speakers stated clearly that it was time that the Council faced its responsibilities, adding that the unity of the Council, particularly if force was required, needed to be maintained. For instance, the representative of El Salvador called upon the Council to “assume its lofty responsibilities and give effect to its decisions” under Chapter VII of the Charter.<sup>624</sup> In the same way, the representative of the former Yugoslav Republic of Macedonia expressed the view that the Council had to act “in an even firmer manner” and that the inspection process in Iraq could not go on “indefinitely”. He remarked that political pressure and the real threat of the use of force had proven to be the “right

<sup>615</sup> *Ibid.*, pp. 6-8 (Malaysia); pp. 8-9 (South Africa); pp. 11-13 (Algeria); pp. 13-14 (Egypt); and pp. 14-16 (India).

<sup>616</sup> *Ibid.*, p. 7.

<sup>617</sup> *Ibid.*, p. 9.

<sup>618</sup> *Ibid.*, p. 12.

<sup>619</sup> *Ibid.*, pp. 14-15.

<sup>620</sup> *Ibid.*, pp. 19-21.

<sup>621</sup> S/PV.4717, pp. 22-23 (Turkey); pp. 23-24 (Norway); pp. 26-27 (Iceland); and pp. 27-28 (Singapore); S/PV.4717 (Resumption 1), p. 4 (Philippines); pp. 7-8 (Argentina); and p. 11 (Nicaragua).

<sup>622</sup> S/PV.4717, p. 23 (Norway); S/PV.4717 (Resumption 1), p. 5 (Greece, on behalf of the European Union and associated countries); and p. 11 (Nicaragua).

<sup>623</sup> S/PV.4717, p. 6 (Kuwait); S/PV.4717 (Resumption 1), p. 8 (Argentina); p. 10 (El Salvador); p. 17 (the former Yugoslav Republic of Macedonia); and p. 23 (Colombia).

<sup>624</sup> S/PV.4717 (Resumption 1), p. 10.

mechanisms” and had yielded results.<sup>625</sup> Similarly, the representative of Colombia affirmed that only the threat of the use of force and the unanimous adoption by the Council of resolution 1441 (2002) had made it possible for “certain headway to be made”, but stressed that the use of force should be used as “last resort”.<sup>626</sup>

At its 4721st meeting, on 19 March 2003, the Council met to discuss Iraq’s progress on complying with relevant Council resolutions. During the debate, several representatives, including those of Germany, France, the Russian Federation and China, expressed the belief that it was still possible to disarm Iraq peacefully, specifically by adhering to the deadlines outlined in the work programme of UNMOVIC, considering the progress made by the inspection regime lately.<sup>627</sup> In particular, Germany, echoed by the Russian Federation, stated that, under the existing circumstances, the policy of military intervention had “no credibility”, as there was no basis in the Charter for “regime change by military means”.<sup>628</sup> The representative of the Russian Federation underlined that no decision of the Council authorized the use of force against Iraq outside the Charter of the United Nations, nor did it authorize “the violent overthrow of the leadership of a sovereign State”.<sup>629</sup> The representative of the Syrian Arab Republic noted that the “attempts by some to blame the Security Council” for the failure to adopt a draft resolution authorizing military force against Iraq ignored the fact that the majority of the members of the Council rejected such a draft resolution, “thus rendering the use of the veto unnecessary by any country”.<sup>630</sup> By contrast, while expressing regret that the Council had not been able to find an agreed way forward, the United Kingdom reiterated that it had been Iraq’s fundamental failure to disarm over a period of 12 years, despite pleas and pressure from the Council and the whole international community, which had led to the present situation. He also stressed that any action undertaken with regard to this matter would be in accordance with international law and based on relevant resolutions of the

Council.<sup>631</sup> Similarly, the representative of Spain avowed that the legitimate recourse to the use of force to disarm Iraq of its weapons of mass destruction was based on “the logical linking of resolutions 660 (1990), 678 (1990), 687 (1991) and 1441 (2002), adopted pursuant to Chapter VII of the Charter”.<sup>632</sup>

At its 4726th meeting, on 26 March 2003, following the commencement of the United States-led military action against Iraq on 20 March 2003, the Council continued its discussion on the use of force against Iraq, with a particular focus on the legality of the military action undertaken. While a number of Member States maintained that the inspections should have been allowed to continue and that Iraq had indeed been actively cooperating with the inspectors,<sup>633</sup> several others held that it was precisely because Iraq had failed to comply with Security Council resolutions that the coalition had been compelled to use force.<sup>634</sup> During the debate, several representatives strongly objected to the use of force by coalition members, as a “unilateral” action which had failed to receive the authorization of the Council.<sup>635</sup> Recalling the recent resolution adopted in Cairo at the Ministerial level by the League of Arab States, several speakers called the “Anglo-American aggression against Iraq” a flagrant violation of the Charter and of the principles of international law. Among others, the representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed his opposition to unilateral military actions or use of force, including those made without proper authorization from the Council. Pointing out that there was no authorization by the Council for the military action, he further underlined

<sup>625</sup> Ibid., p. 17.

<sup>626</sup> Ibid., pp. 22-23.

<sup>627</sup> S/PV.4721, p. 5 (Germany); p. 5 (France); pp. 7-8 (Russian Federation); pp. 8-10 (Syrian Arab Republic); p. 10 (Pakistan); p. 17 (Angola); and p. 18 (China).

<sup>628</sup> Ibid., p. 4 (Germany); and p. 8 (Russian Federation).

<sup>629</sup> Ibid., p. 8.

<sup>630</sup> Ibid., p. 9.

<sup>631</sup> Ibid., pp. 19-20.

<sup>632</sup> Ibid., p. 15.

<sup>633</sup> S/PV.4726, pp. 6-8 (Malaysia, on behalf of the Non-Aligned Movement); pp. 10-11 (Algeria); pp. 20-21 (South Africa); and pp. 21-23 (Cuba).

<sup>634</sup> S/PV.4726, pp. 26-27 (Australia); pp. 25-27 (Singapore); p. 39 (Japan); pp. 39-40 (the former Yugoslav Republic of Macedonia); pp. 41-42 (Latvia); pp. 42-43 (Nicaragua); and p. 45 (Albania); S/PV.4726 (Resumption 1), p. 15 (Ethiopia); p. 29 (Spain); and p. 31 (Bulgaria).

<sup>635</sup> S/PV.4726, pp. 8-7 (Malaysia, on behalf of the Non-Aligned Movement); pp. 8-9 (League of Arab States); p. 20 (South Africa); p. 22 (Cuba); pp. 31-32 (Viet Nam); pp. 33-34 (Islamic Republic of Iran); and p. 35 (Lebanon); S/PV.4726 (Resumption 1), pp. 26-28 (Russian Federation); p. 28 (China); and pp. 28-29 (France).

that the pre-emptive use of force threatened the foundation of international law.<sup>636</sup> Similarly, a number of other speakers concurred that the military action was a violation of the Charter, calling it “unilateral action,” an “act of aggression” and a “unilateral attack”.<sup>637</sup> The representative of the Russian Federation, echoed by the representative of Yemen, said that it was clear that the use of force against Iraq in an effort to change the political regime of a sovereign State ran counter to the fundamental principles contained in the Charter of the United Nations.<sup>638</sup> Other speakers stressed that the “pre-emptive” use of force threatened the foundation of international law.<sup>639</sup>

By contrast, other Member States argued that failure to have taken action against the Iraqi regime would have been tantamount to tolerating breaches of the law and persistent disregard of the obligations to the United Nations.<sup>640</sup> The actions of the coalition were, rather, in accordance with international law, they noted, pointing out that resolutions 678 (1990), 687 (1991) and 1441 (2002) provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region. They stressed that failure to take action to disarm effectively the Iraqi regime would be a serious political and military mistake and would lead to the further undermining of the authority of the United Nations. The representative of the United States, joined by the representative of the United Kingdom, underscored that the coalition, comprising more than 48 countries, was acting to compel Iraq’s compliance with Council resolutions “because the risk of inaction was too great to tolerate”.<sup>641</sup>

<sup>636</sup> S/PV.4726, p. 8.

<sup>637</sup> *Ibid.*, p. 19 (Indonesia); pp. 21-22 (Cuba); p. 28 (Brazil); p. 32 (Viet Nam); and p. 9 (United Republic of Tanzania).

<sup>638</sup> S/PV.4726 (Resumption 1), pp. 26-28.

<sup>639</sup> S/PV.4726, p. 8 (Malaysia, on behalf of the Non-Aligned Movement); p. 13 (Yemen); and p. 32 (Viet Nam).

<sup>640</sup> S/PV.4726, pp. 14-16 (Kuwait); pp. 24-25 (Poland); p. 27 (Australia); pp. 38-39 (Japan); pp. 39-40 (the former Yugoslav Republic of Macedonia); pp. 42-43 (Nicaragua); and pp. 47-48 (Mongolia); S/PV. 4726 (Resumption 1), pp. 22-24 (United Kingdom); and pp. 25-26 (United States).

<sup>641</sup> S/PV.4726 (Resumption 1), pp. 22-24 (United Kingdom); and pp. 25-26 (United States).

### The situation in Sierra Leone

At its 4099th meeting, on 7 February 2000, the Council adopted resolution 1289 (2000) by which it decided to extend the presence on the ground of the military component of the United Nations Mission in Sierra Leone and to revise its mandate. During the debate preceding the adoption of the resolution, the representative of Sierra Leone welcomed “wholeheartedly” the fact that the revised mandate and the additional responsibilities of UNAMSIL were “fully backed by Chapter VII of the Charter of the United Nations”.<sup>642</sup> The representative of the United States acknowledged the need to expand the Mission’s mandate and welcomed the draft resolution that would grant United Nations troops “Chapter VII authority in the discharge of their mandate to take the necessary action to ensure the security and freedom of their personnel”.<sup>643</sup> By contrast, the representative of the United Kingdom stressed that, while UNAMSIL was not a Chapter VII peace enforcement operation, his Government recognized in formulating the mandate for the force, that the task would require “a robust and serious stance against possible threats”.<sup>644</sup>

At its 4139th meeting, on 11 May 2000, the Council discussed the situation in Sierra Leone in the context of the abduction of several hundred United Nations peacekeepers in various parts of Sierra Leone. During the debate, many representatives called for a review of the mandate of UNAMSIL, with some of them expressing a preference for a Chapter VII operation.<sup>645</sup> The representative of Algeria pointed out that the crisis at hand showed “very clearly” that the mandate and resources available to UNAMSIL were not adequate and appealed to the Council to review urgently the Mission’s mandate and then adopt a new resolution placing UNAMSIL action “within the context of Chapter VII of the United Nations Charter, making it a peace-enforcement mission”.<sup>646</sup> The representative of Canada called for the Council to recommit itself to establishing a strong and credible

<sup>642</sup> S/PV.4099, p. 3.

<sup>643</sup> *Ibid.*, p. 5.

<sup>644</sup> *Ibid.*, p. 4.

<sup>645</sup> S/PV.4139 and Corr.1 and Corr.2, pp. 4-5 (Algeria, on behalf of the Organization of African Unity); pp. 5-6 (Mali); pp. 8-9 (Canada); pp. 9-10 (Malaysia); pp. 12-13 (Bangladesh); pp. 13-14 (Namibia); pp. 16-17 (Jamaica); pp. 17-18 (Ukraine); and pp. 19-20 (Tunisia).

<sup>646</sup> *Ibid.*, p. 5.

force in the face of “appalling provocation” on the part of the Revolutionary Unified Party (RUF). He pointed out that the Council should be prepared to revisit the UNAMSIL mandate “in the light of the fundamental changes in the situation on the ground” and to re-examine, on a regular basis, the Mission’s requirements in personnel and capabilities.<sup>647</sup> The representative of Malaysia expressed the view that the question of the adequacy of the limited Chapter VII mandate given to UNAMSIL should be “promptly examined in the light of the hard realities on the ground and in the context of the changed environment from that originally envisaged”. He reminded the Council that his country had supported a limited Chapter VII mandate because there was “an agreement on the table and because the cooperation of the parties was assured to be forthcoming”. He stated that the reality was different and the response should be recalibrated appropriately.<sup>648</sup> The representative of Bangladesh highlighted the need for a “much more robust mandate for a long-term solution of the problem in Sierra Leone” and, to make it effective, advocated a “full Chapter VII mandate for UNAMSIL”.<sup>649</sup> Similarly, the representative of China spoke in favour of the Council adopting “appropriate measures” with respect to the situation in Sierra Leone, including a review of the mandate of UNAMSIL and the adoption of measures to ensure that its mandate was fully implemented. He asked the Secretariat to formulate recommendations in that regard, as soon as possible, for consideration by the Council.<sup>650</sup>

By contrast, other delegations were of the view that the current mandate was sufficient to deal with the situation, as it contained elements of Chapter VII, and that UNAMSIL should be reinforced only in terms of strength and resources.<sup>651</sup> The representative of the United Kingdom expressed the view that the UNAMSIL mandate was “sufficient” for it to carry out its tasks, as it contained elements that allowed for the “use of force in self-defence and, where possible, in defence of the civilian population”. The immediate objective, therefore, was to reinforce UNAMSIL and

“get it up to strength”. He asserted that, as the situation evolved, the decision on the mandate of the Mission would depend on the tasks expected from UNAMSIL. In addition, he agreed with the Secretary-General’s point that changing the Mission’s mandate would not “of itself change it into an effective peace enforcement mission” and stressed that “moving to peace enforcement would be a radical change of approach” which required careful thought.<sup>652</sup> The representative of the Russian Federation observed that the UNAMSIL mandate under resolution 1289 (2000) allowed sufficiently strong measures to be taken to ensure the safety of international personnel and of the Government of Sierra Leone. He underlined that of “key importance” was “the effective exercise by the military contingent of its mandate”. If fully deployed, he added, UNAMSIL would be able to stabilize the situation.<sup>653</sup> Conveying the position of the European Union and associated countries,<sup>654</sup> the representative of Portugal noted that UNAMSIL had authority, under Chapter VII of the Charter, to use force to ensure the security and freedom of movement of its personnel and to protect civilians, where possible. He therefore called on all States to provide UNAMSIL with the “means deemed necessary for the accomplishment of its mandate”.<sup>655</sup> The representative of India affirmed that UNAMSIL needed to be “consolidated” as it was unable to implement many of the tasks given to it. He emphasized that, with the new “professional and well-equipped reinforcements,” UNAMSIL should concentrate on measures that would make it impossible for power “to be seized by force”. He further indicated that UNAMSIL already had a Chapter VII mandate to provide security at key locations and Government buildings and to use force in self-defence, and noted that, if all units in UNAMSIL acted “with discipline and courage” in accordance with their current mandate, they would be able to serve the United Nations and the people of Sierra Leone well.<sup>656</sup> The representative of Jordan held the belief that a reconsideration of the UNAMSIL mandate might lead to “an absence of agreement between the troop contributors”, which would weaken the United Nations position in Sierra Leone. He endorsed the stance taken by India that the mandate should remain unchanged, under Chapter VII

<sup>647</sup> Ibid., p. 8.

<sup>648</sup> Ibid., p. 10.

<sup>649</sup> Ibid., p. 13.

<sup>650</sup> Ibid., p. 20.

<sup>651</sup> Ibid., pp. 6-8 (United Kingdom); pp. 16-17 (Russian Federation); p. 22 (Portugal on behalf of the European Union); pp. 23-25 (India); p. 27 (Pakistan); and p. 28 (Jordan).

<sup>652</sup> Ibid., p. 7.

<sup>653</sup> Ibid., p. 16.

<sup>654</sup> Slovakia, Hungary, Czech Republic and Poland.

<sup>655</sup> Ibid., p. 22.

<sup>656</sup> Ibid., p. 24.



of the Charter, until the situation in Sierra Leone stabilized.<sup>657</sup> Similarly, the representative of Pakistan observed that while an adequate mandate had been given to the Mission, the peacekeepers were not adequately equipped to act in line with the mandate. There had to be a balance and linkage between the mandate, composition of forces and operational posture adopted in the field. He stressed that the Council could not allow the peace process in Sierra Leone to fail, “despite invoking Chapter VII elements in the mandate of the Security Council”. He contended that there could not be “different types of Chapter VII missions in different regions” and that, if “Chapter VII missions in other regions” had successfully helped to establish peace, it had to be the case in Sierra Leone as well.<sup>658</sup> Other speakers expressed their willingness to consider a revision of the UNAMSIL mandate, without however explicitly supporting it.<sup>659</sup> The representative of Argentina indicated that it might be helpful to review the question of the mandate, and that his country would not oppose “any change in the mandate if it were necessary”. He nevertheless expressed the view that the UNAMSIL mandate was “sufficiently strong” to serve

in the extant circumstances, being able to take all necessary measures to guarantee the security and freedom of movement of its personnel and to protect civilians under imminent threat of physical violence.<sup>660</sup> While indicating his Government’s willingness to think about reviewing the mandate of UNAMSIL, the representative of France indicated that there should be “true cohesiveness” between the mandate of a force and the size, training and equipment of the contingents responsible for implementation, and opined that this was not “sufficiently” the case for UNAMSIL.<sup>661</sup> The representative of Ukraine voiced support for the “substantial strengthening” and reinforcement of UNAMSIL.<sup>662</sup> The representative of Japan remarked that it was for the Council to decide between two options: expanding the mandate of the Mission to include the task of peace enforcement by incorporating the ECOWAS Monitoring Group (ECOMOG) into the United Nations mission; or entrusting peace enforcement to ECOMOG itself. He suggested that what was “most important” was for the Council to respond promptly, before the situation deteriorated further.<sup>663</sup>

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<sup>657</sup> Ibid., p. 28.

<sup>658</sup> Ibid., p. 27.

<sup>659</sup> Ibid., pp. 14-16 (Argentina); pp. 18-19 (France); and p. 25 (Japan).

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<sup>660</sup> Ibid., pp. 15-16.

<sup>661</sup> Ibid., p. 19.

<sup>662</sup> Ibid., p. 18.

<sup>663</sup> Ibid., p. 25.

## 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

During the period under review, the Security Council and the United Nations as a whole paid considerable attention to enhancing peacekeeping efforts and to improving consultations with troop-contributing countries. One major impetus was the report of the Panel on United Nations Peace Operations (the Brahimi report), which was released by the Secretary-General on 21 August 2000.<sup>664</sup> This report took a critical look at past peacekeeping efforts and strove to clarify what United Nations peacekeeping was trying to accomplish and how it might be doing so. Its focus included preventive action, peacebuilding, peacekeeping strategy and concrete operational issues. Among other things, it aimed to improve the rapid deployment of forces and strengthen the surge capacity for planning, preparing and deploying missions. The report also stressed the importance of improved consultations with troop-contributing countries.

On 3 October 2000, the Council established the Security Council Working Group on the Brahimi Report to undertake a full examination of those recommendations in the report which fell within the purview of the Council, in particular peacekeeping operations. On the basis of a draft recommendation by the Working Group, the Council adopted resolution 1327 (2000) of 13 November 2000 in which, inter alia, it underlined the importance of an improved system of consultations among the troop-contributing countries, the Secretary-General and the Security Council, and agreed to strengthen significantly the existing system of consultations.<sup>665</sup> By a statement of the President dated 31 January 2001,<sup>666</sup> Council members gave further consideration to the issue and, by resolution 1353 (2001) of 13 June 2001, the Council specified the format, procedures and documentation of meetings with the troop-contributing countries. During the period under review, the Council held three meetings on the item entitled "Strengthening cooperation with

<sup>664</sup> S/2000/809. On 7 March 2000, the Secretary-General convened a high-level Panel to undertake a thorough review of the United Nations peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities better in the future. The Chairman of the Panel was Mr. Lakhdar Brahimi.

<sup>665</sup> Resolution 1327 (2000), annex I.

<sup>666</sup> S/PRST/2001/3.

troop-contributing countries”,<sup>667</sup> and held 54 private meetings with troop-contributing countries, pursuant to resolution 1353 (2001).

During the period under review, the Council did not explicitly refer to Articles 43 and 44 of the Charter in any of its decisions. The Council, however, adopted decisions by which it called upon States to enforce demands related to the maintenance of peace and security, and which are therefore of relevance to the interpretation of Articles 43 and 44.<sup>668</sup> During the same period, the Council did not adopt any resolutions referring to Article 45 of the Charter, nor was there any constitutional discussion regarding the application and interpretation of this Article. By two resolutions, in accordance with the principles enshrined in Articles 46 and 47, the Council undertook to consider, *inter alia*, the possibility of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity.<sup>669</sup>

The following overview is divided into six sections. Section A contains decisions of the Council by which it imposed measure based on the principles of Article 43, and section B attempts to draw out the salient issues raised in the Council’s deliberations relevant to Article 43. Section C provides an overview of the Council’s decisions that may be interpreted as having reference to the principles contained in Article 44, while part D outlines the relevant discussion in that connection which took place in the Council’s deliberations. Section E outlines the Council’s decisions relating to the Military Staff Committee (Articles 46-47 of the Charter), and is followed by section F which attempts to identify the salient issues raised in the Council’s deliberations relevant to Articles 46 to 47.

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

### **The situation in Afghanistan**

By resolution 1386 (2001) of 20 December 2001, the Council established the International Security

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<sup>667</sup> S/PV.4257 and Resumption 1, S/PV.4270 and S/PV.4326.

<sup>668</sup> See chapter V for additional details on arrangements concerning peacekeeping missions and other measures used by subsidiary organs of the Council to give effect to its decisions.

<sup>669</sup> Resolution 1327 (2000), annex IV; and resolution 1353 (2001), annex I.C.

Assistance Force for six months and called upon Member States to contribute personnel, equipment and other resources to it. It also encouraged neighbouring States and other Member States to provide to ISAF such necessary assistance as might be requested, including the provision of overflight clearances and transit.<sup>670</sup> Subsequent resolutions extending the Mission’s mandate made similar requests for contributions.<sup>671</sup>

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

By resolution 1305 (2000) of 21 June 2000, the Council authorized the Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), to continue the multinational Stabilization Force established in accordance with its resolution 1088 (1996) for a further planned period of 12 months under unified command and control. The resolution invited all States, in particular those in the region, to continue to provide appropriate support and facilities, including transit facilities, for the Member States participating in SFOR. It also requested the Member States, acting through or in cooperation with NATO, to continue to report to the Council, through the appropriate channels and at least at monthly intervals.<sup>672</sup>

### **The situation in Côte d’Ivoire**

By resolution 1464 (2003) of 4 February 2003, the Council authorized Member States participating in the Economic Community of West African States forces, in accordance with Chapter VIII, together with the French forces supporting them, to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them, for a period of six months.

The resolution also called upon all States neighbouring Côte d’Ivoire to support the peace process by preventing any action that might undermine

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<sup>670</sup> Resolution 1386 (2001), paras. 1, 2 and 7.

<sup>671</sup> Resolutions 1413 (2002), para. 3; and 1444 (2002), para. 3. By resolution 1510 (2003), the Council strengthened the mandate of ISAF but did not make a renewed call for contributions.

<sup>672</sup> Resolution 1305 (2000), paras. 10, 16 and 18.

the security and territorial integrity of Côte d'Ivoire, particularly the movement of armed groups and mercenaries across their borders and illicit trafficking and proliferation of arms in the region, including small arms and light weapons.<sup>673</sup>

By resolution 1498 (2003) of 4 August 2003, the Council extended the Mission's mandate and requested ECOWAS, through the command of its force, and France to report to the Council periodically, through the Secretary-General, on all aspects of the implementation of their respective mandates.<sup>674</sup>

#### **The situation concerning the Democratic Republic of the Congo**

By resolution 1291 (2000) of 24 February 2000, the Council decided that the United Nations Organization Mission in the Democratic Republic of the Congo would establish, under the overall authority of the Special Representative of the Secretary-General, a joint structure with the Joint Military Commission that would ensure close coordination during the period of deployment of MONUC.<sup>675</sup>

By resolution 1332 (2000) of 14 December 2000, the Council endorsed the proposal made by the Secretary-General to deploy, as soon as he considered that conditions would allow it and in accordance with the relevant provisions of resolution 1291 (2000), additional military observers, to monitor and verify the parties' implementation of the ceasefire and disengagement plans adopted in Maputo and Lusaka. It also expressed its readiness to support the Secretary-General, as soon as he considered that conditions would allow it, in the deployment of infantry units in support of the military observers in Kisangani and Mbandaka.<sup>676</sup>

By resolution 1355 (2001) of 15 June 2001, the Council updated the concept of operations put forward by the Secretary-General in his report of 8 June 2001, requested the Secretary-General to deploy military observers in locations where early withdrawal was implemented, with a view to monitoring the process, and reiterated the authorization contained in resolution 1291 (2000) for up to 5,537 military personnel for MONUC, including observers as deemed necessary by

the Secretary-General. It also stressed the need for the co-location of the Joint Military Commission with MONUC in Kinshasa and reaffirmed that it was ready to support the Secretary-General, if and when he deemed it necessary and when conditions allowed it, to further deploy military personnel in the border areas in the east of the Democratic Republic of the Congo (DRC).<sup>677</sup>

By resolution 1417 (2002) of 14 June 2002, the Council extended the mandate of MONUC until 30 June 2003 and called upon Member States to contribute personnel to enable the Mission to reach its authorized strength of 5,537, including observers, within the time frame outlined in its concept of operation. It also took note of the recommendation by the Secretary-General for a troop ceiling increase and expressed its intention to consider authorizing it as soon as further progress had been achieved.<sup>678</sup>

By resolution 1493 (2003) of 28 July 2003, the Council extended and expanded the mandate of MONUC until 30 July 2004.<sup>679</sup> It authorized an increase in the military strength of the Mission to 10,800 personnel. By the same resolution, the Council also encouraged MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, and welcomed the efforts of the Member States to support the transition and national reconciliation.<sup>680</sup>

#### **The situation in Timor-Leste**

By resolution 1410 (2002) of 17 May 2002, the Council established the United Nations Mission of Support in East Timor, authorizing the Mission to take the necessary actions to fulfil its mandate which consisted of the following elements: (a) to provide assistance to core administrative structures critical to the viability and political stability of East Timor; (b) to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in East Timor, the East Timor

<sup>673</sup> Resolution 1464 (2003), paras. 9 and 11.

<sup>674</sup> Resolution 1498 (2003), paras. 1 and 2.

<sup>675</sup> Resolution 1291 (2000), para. 6.

<sup>676</sup> Resolution 1332 (2000), paras. 4 and 8.

<sup>677</sup> Resolution 1355 (2001), paras. 31, 33, 38 and 39.

<sup>678</sup> Resolution 1417 (2002), paras. 1, 2 and 3.

<sup>679</sup> Resolution 1493 (2003), paras. 2, 6, 7, 17, 19, 25, 26 and 27.

<sup>680</sup> Resolution 1493 (2003), paras. 3 and 5.

Police Service; and (c) to contribute to the maintenance of the external and internal security of East Timor.<sup>681</sup>

By the same resolution, the Council also decided that the Mission was to be headed by a Special Representative of the Secretary-General and should consist of the following: (a) a civilian component comprising an office of the Special Representative of the Secretary-General with focal points for gender and HIV/AIDS, a civilian support group of up to 100 personnel filling core functions, a serious crimes unit and a human rights unit; (b) a civilian police component initially comprised of 1,250 officers; and (c) a military component with an initial strength of up to 5,000 troops, including 120 military observers. The Council also urged Member States, international agencies and organizations to provide support “as requested by the Secretary-General”, in particular in support of the full establishment of the East Timor Police Service and East Timor Defence Force.<sup>682</sup>

By resolution 1473 (2003) of 4 April 2003, the Council decided that the composition and strength of the police component of UNMISSET and the schedule for its downsizing should be adjusted in line with paragraphs 33 and 35 of the special report of the Secretary-General dated 3 March 2003,<sup>683</sup> and should include the following specific measures: (a) inclusion of an internationally formed unit for one year; (b) provision of additional training capacity in key areas specified in the special report of the Secretary-General; (c) greater emphasis on human rights and rule of law elements; (d) retention of a greater monitoring and advisory presence in districts where policing authority had been handed over to the Timor-Leste Police Force; (e) follow-up to the recommendations outlined in the report of the Joint Assessment Mission on policing of November 2002; and (f) adjustment of planning for the gradual transfer of policing authority to the Timor-Leste Police Force.<sup>684</sup> The Council further decided that the schedule for the downsizing of the military component of UNMISSET for the period up until December 2003 should be adjusted in line with the letter of 28 March 2003 from the Under-Secretary-General for Peacekeeping Operations addressed to the members of the Security Council; and, accordingly, that two battalions be retained within regions adjoining

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<sup>681</sup> Resolution 1410 (2002), para. 2.

<sup>682</sup> Resolution 1410 (2002), paras. 3, 6 and 9.

<sup>683</sup> S/2003/243.

<sup>684</sup> Resolution 1473 (2003), para. 1.

the Tactical Coordination Line during that period, together with associated force elements, including mobility; and that the number of military peacekeepers should be reduced to 1,750 more gradually than was foreseen in resolution 1410 (2002). Finally, the Council requested the Secretary-General to provide for approval by the Security Council, by 20 May 2003, a detailed military strategy for the revised schedule for the downsizing of the military component of UNMISSET, and also to keep the Council closely and regularly informed of developments on the ground and on the implementation of the revised military and police strategies.<sup>685</sup>

By resolution 1480 (2003) of 19 May 2003, the Council took note of the military strategy outlined by the Secretary-General in his report dated 21 April 2003,<sup>686</sup> and decided to extend the mandate of UNMISSET until 20 May 2004.<sup>687</sup>

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

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under a unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq. In that connection, the Council urged Member States to contribute assistance, including military forces, to the multinational force and requested that the United States, on behalf of the multinational force, report to the Council on the efforts and progress of this force, as appropriate, and not less than every six months.<sup>688</sup>

#### **The situation in Sierra Leone**

By resolution 1289 (2000) of 7 February 2000, the Council decided that the military component of the United Nations Mission in Sierra Leone would be expanded to a maximum of 11,100 military personnel, subject to periodic review in the light of conditions on the ground and the progress made in the peace process. It stressed the importance of a smooth transition between the Economic Community of West African States Monitoring Group and UNAMSIL and urged all

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<sup>685</sup> Resolution 1473 (2003), paras. 2, 3 and 4.

<sup>686</sup> S/2003/449.

<sup>687</sup> Resolution 1480 (2003), para. 1.

<sup>688</sup> Resolution 1511 (2003), paras. 14 and 25.

those concerned to consult over the timing of troop movements and withdrawals.<sup>689</sup>

By resolution 1299 (2000) of 19 May 2000, the Council decided that the military component of UNAMSIL would be expanded to a maximum of 13,000 military personnel. It also expressed its appreciation to all States that, to expedite the rapid reinforcement of UNAMSIL, had accelerated the deployment of their troops to UNAMSIL, made available additional personnel, and offered logistical, technical and other forms of military assistance, and called upon all those in a position to do so to provide further support.<sup>690</sup>

By resolution 1313 (2000) of 4 August 2000, the mandate of UNAMSIL was extended with the stated intention of strengthening its structure, capability and resources. Towards that end, the Council considered that the military component of UNAMSIL should be reinforced through accelerated troop rotations, as appropriate, and with further aviation and maritime assets, a strengthened force reserve, upgraded communications and specialist combat and logistic support assets. The Council stressed that the successful achievement of the objectives of the Mission would depend on the provision of fully equipped, complete units to UNAMSIL, with the required capabilities, effective command and control structure and capacity, a single chain of command, adequate resources and the commitment to implement the mandate of the Mission in full as authorized by the Council.<sup>691</sup>

By resolution 1334 (2000) of 22 December 2000, the Council strongly urged all States in a position to do so seriously to consider contributing peacekeeping forces for Sierra Leone, and expressed its appreciation to those States who had already made such offers. It also expressed its intention, following consultations with troop-contributing countries, to respond promptly to any additional specific recommendations made by the Secretary-General in the next period on the force, strength and tasks of UNAMSIL.<sup>692</sup>

By resolution 1346 (2001) of 30 March 2001, the Council further extended the mandate of UNAMSIL and decided to increase its military component as recommended by the Secretary-General in his

report.<sup>693</sup> It also expressed its appreciation to those Member States who had provided additional troops and support elements to UNAMSIL, and those who had made commitments to do so. The Council encouraged the Secretary-General to continue his efforts to seek, if necessary, further properly trained and equipped forces to strengthen the military components of UNAMSIL to enable the Mission to implement fully its revised concept of operations, and requested the Secretary-General to inform the Council upon receipt of firm commitments to that end.<sup>694</sup>

By four subsequent resolutions, the Council further extended the mandate of UNAMSIL and expressed its appreciation to those Member States who had provided troops and support elements to UNAMSIL, and to those who had made commitments to do so.<sup>695</sup> In one of the resolutions it also urged Member States able to do so to provide qualified civilian police trainers and advisers, and resources, to help the Sierra Leone Police fulfil its size and capacity targets.<sup>696</sup>

**Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

By resolution 1318 (2000) of 7 September 2000, the Council underlined the importance of enhancing the United Nations capacity for rapid deployment of peacekeeping operations and urged Member States to provide sufficient and timely resources. The Council also welcomed the report of the Panel on United Nations Peace Operations and decided to consider the recommendations which fell within its area of responsibility expeditiously.<sup>697</sup>

**Ensuring an effective role of the Security Council in the maintenance of international peace and security**

By resolution 1327 (2000), the Security Council resolved, *inter alia*, to give peacekeeping operations clear, credible and achievable mandates. It also

<sup>689</sup> Resolution 1289 (2000), paras. 9 and 14.

<sup>690</sup> Resolution 1299 (2000), paras. 1 and 2.

<sup>691</sup> Resolution 1313 (2000), paras. 1, 3, 4 and 6.

<sup>692</sup> Resolution 1334 (2000), paras. 4, 5 and 6.

<sup>693</sup> S/2001/228.

<sup>694</sup> Resolution 1346 (2001), paras. 1, 2 and 4.

<sup>695</sup> Resolutions 1370 (2001), paras. 1 and 2; 1400 (2002), paras. 1 and 2; 1436 (2002), paras. 1 and 2; and 1470 (2003), paras. 1 and 2.

<sup>696</sup> Resolution 1470 (2003), para. 10.

<sup>697</sup> Resolution 1318 (2000), annexes III and IV.

recognized that the problem of the commitment gap with regard to personnel and equipment for peacekeeping operations required the assumption by all Member States of the shared responsibility to support United Nations peacekeeping.<sup>698</sup>

## B. Discussion relating to Article 43

### The situation in Sierra Leone

At its 4139th meeting, on 11 May 2000, the Council met to discuss the deterioration of the situation in Sierra Leone, including the detention of several hundred United Nations peacekeepers in various parts of the country. During the debate several tributes were paid to troop-contributing countries, and a discussion took place on whether the peacekeeping force had been sufficiently mandated and equipped. The representative of Algeria, while advocating a review of the UNAMSIL mandate within the context of Chapter VII of the Charter, informed the Council of the willingness of certain members of ECOWAS, as stated at the Abuja summit of 9 May 2000, to make the necessary troops available to the United Nations to strengthen its Mission in Sierra Leone. He further appealed to countries with the necessary resources to offer an appropriate logistic and financial contribution to UNAMSIL so that it could best discharge its revised mandate.<sup>699</sup> The representative of the United Kingdom reported that his country had taken a number of “important steps” to support UNAMSIL, in particular by deploying the British Spearhead Battalion to Freetown securing the Lungi airport, thus freeing up UNAMSIL troops to concentrate on their wider tasks. He also pointed out that, at United Nations request, a United Kingdom military advisory team was also sent to Freetown to help the United Nations assess what technical support was needed to strengthen UNAMSIL. He stated that the Council should be ready to do anything necessary to assist in the reinforcement of UNAMSIL and that the United Kingdom would continue to offer technical and logistical support to help strengthen the Mission. He welcomed the willingness of the ECOWAS leaders, following their summit meeting in Abuja on 9 May, to consider, in the event of any new involvement of regional forces in Sierra Leone, the practical modalities of such

involvement and, in that connection, warned that new troops should be “blue-hatted, properly equipped for the job they have to do, under a single United Nations chain of command and with the same rules of engagement”.<sup>700</sup> The representative of Canada, recognizing the importance of a peacekeeping effort that was “truly multilateral and under the United Nations flag”, encouraged Member States to work towards the creation of a “strong, united and cohesive force” that should take the form of “an expanded UNAMSIL and should respect the fundamental military principle of unity of command”. He added that his country would offer an airlift for rapid deployment of troops from India and Bangladesh and that Canada was considering increasing its assistance to UNAMSIL troops, which were without sufficient equipment.<sup>701</sup> Similarly, the representative of the United States stated that his country would “assist the deployment of additional troops for UNAMSIL”.<sup>702</sup> In his statement, the representative of Malaysia expressed the view that, among the immediate priorities for UNAMSIL, the Mission should strengthen its presence by regrouping in larger numbers to enable the force to better defend itself in case of rebel attack. He believed that the time had come for the Council to consider the “possible next steps”, including as a priority the dispatch of a rapid reaction force to Sierra Leone for the purpose of stabilizing the situation and putting the political process “back on track”. Although supporting the idea that ECOMOG should play a pivotal role in helping the international community to restore order in the country, he stated that, under the present circumstances, all countries deploying troops in Sierra Leone should come under “the United Nations banner and under one command structure”, with adequate resources.<sup>703</sup> The representative of Bangladesh stressed the need to bolster UNAMSIL by bringing it up to its mandated strength at the earliest date, by deploying “additional numbers on the ground”. In that regard, he informed the Council that the battalion his country promised to the Mission would be ready for airlifting along with all its equipment by 20 May 2000. He maintained that the Council should look into the possibility of mobilizing more troops, and stated his appreciation for the ECOWAS countries that expressed their intention of providing extra forces to bring stability to Sierra

<sup>698</sup> Resolution 1327 (2000), annex I.

<sup>699</sup> S/PV.4139 and Corr.1 and Corr.2, p. 5.

<sup>700</sup> *Ibid.*, pp. 7-8.

<sup>701</sup> *Ibid.*, p. 8.

<sup>702</sup> *Ibid.*, p. 12.

<sup>703</sup> *Ibid.*, pp. 8-9.

Leone. He cautioned, however, that the entire military presence on the ground should be under an integrated United Nations command with “one mandate provided by the Security Council”.<sup>704</sup> Similarly, the representative of Namibia advocated that UNAMSIL be strengthened, and welcomed the decision of ECOWAS to put ECOMOG troops immediately at the disposal of UNAMSIL and their integration into the Mission. He added that many troop-contributing countries did not have the equipment that would make “a Chapter VII mandate meaningful” and thus appealed to those in a position to do so to contribute equipment to UNAMSIL. He further stated that the Council should not “abdicate” its responsibility in Sierra Leone and “pass it to ECOMOG”, unless ECOMOG could be provided with financial and logistical support.<sup>705</sup> The representative of Argentina emphasized the need to speed up the transportation of the battalions that had been pledged in order to provide the required number of troops and the equipment required to deal with the current situation. He supported the Secretary-General’s request to increase the number of troops to 11,100, as quickly as possible.<sup>706</sup> Similarly, the representative of the Russian Federation attached paramount importance to the speedy increase of UNAMSIL to 11,100 soldiers and officers. He specified that his country was at that time addressing with the United Nations the practical issues of providing an airlift to Sierra Leone for additional units for UNAMSIL and of sending a number of Russian military helicopters to Sierra Leone.<sup>707</sup> In his statement, the representative of Jamaica commended the countries which had pledged rapidly to increase the troop strength of the Mission, endorsed the integration of ECOMOG troops into UNAMSIL, and called upon the international community to commit the necessary funding and the logistical expertise as required.<sup>708</sup> Echoing the previous speaker, the representative of Ukraine supported a substantial reinforcement of UNAMSIL by increasing its “combat capabilities” and by ensuring that the Mission was properly equipped and performing its functions under the United Nations chain of command. He confirmed his country’s availability to support the reinforced Mission and, in that regard, he recalled that Ukraine was already involved in

providing airlift support for the needs of UNAMSIL.<sup>709</sup> The representative of France voiced his support for any proposal of the Secretary-General to reinforce UNAMSIL “with Blue Helmets” and stated that France stood ready to think about reviewing the mandate of the force to take into account the unilateral breaking of the Lomé Agreement by the Revolutionary United Front.<sup>710</sup> Supporting the strengthening of UNAMSIL through ECOWAS troops, the representative of Tunisia held the view that, for effective implementation, sufficient equipment and appropriate financial and logistical support should be given to the peacekeeping force under UNAMSIL command.<sup>711</sup> Speaking on behalf of the European Union and associated countries,<sup>712</sup> the representative of Portugal encouraged all States in a position to do so to assist and provide the means deemed necessary for the accomplishment of the Mission’s mandate. He echoed the words of the Secretary-General by inviting the Council to “back words with deeds, and mandates with resources needed to make them work”.<sup>713</sup> The representative of India informed the Council that his country was sending a second battalion urgently, together with other reinforcements, to bolster the Mission’s strength. He emphasized that, in the current crisis, it would be essential to preserve the unity of command of UNAMSIL, which should function as “a cohesive force”, and warned that undermining the leadership of UNAMSIL was “fraught with dangerous consequences for the Mission as a whole and for the troops under its command”.<sup>714</sup> The representative of Pakistan stated that, in carrying out their mandate, peacekeepers in Sierra Leone were mandated to take the necessary action to ensure the security and freedom of UNAMSIL personnel and, within their capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence. According to the speaker, while an adequate mandate was given to the Mission to address such situations as hostage-taking, the peacekeepers deployed on the ground were not adequately equipped to act in accordance with the mandate. He therefore requested the Secretariat to assess what went wrong in the planning and deployment of peacekeepers in Sierra Leone, including

<sup>704</sup> Ibid., p. 13.

<sup>705</sup> Ibid., p. 14.

<sup>706</sup> Ibid., p. 14.

<sup>707</sup> Ibid., p. 16.

<sup>708</sup> Ibid., p. 17.

<sup>709</sup> Ibid., p. 18.

<sup>710</sup> Ibid., p. 18.

<sup>711</sup> Ibid., pp. 19-20.

<sup>712</sup> Slovakia, Hungary, Czech Republic and Poland.

<sup>713</sup> Ibid., p. 22.

<sup>714</sup> Ibid., p. 24.



the configuration of the force, to ensure that in the future the security component of a peacekeeping mission would serve as an asset rather than become a liability. He concluded by remarking that his country wished to see a practical concept of operation and configuration of force capable of supporting the implementation of the mandate of the Mission, such that its success did not depend only on the declared intentions of the parties involved in the conflict.<sup>715</sup> The representative of Jordan reported that his country was in the process of reinforcing UNAMSIL by committing two extra companies drawn from the country's special forces, as well as another battalion within a few days. He thus appealed to the Council not to consider "new initiatives" during the process of deployment of the Jordanian troops.<sup>716</sup>

**Ensuring an effective role of the Security Council in the maintenance of international peace and security**

At its 4220th meeting, on 13 November 2000, the Council considered the report of the Security Council Working Group on the Brahimi Report,<sup>717</sup> which included a draft resolution containing decisions and recommendations to strengthen United Nations peacekeeping operations. The draft resolution was subsequently adopted unanimously, without change, as resolution 1327 (2000). A key point in resolution 1327 (2000), as noted by many representatives in their statements following the voting, was the Council's resolve to give peacekeeping operations clear, credible and achievable mandates.<sup>718</sup> Several representatives noted the importance of rapid deployment and admitted that there was a gap between Council mandates and the commitments by Member States to make them achievable.<sup>719</sup> The representative of Bangladesh explicitly referred to Article 43 and stated that his country had proposed the inclusion of a paragraph in the draft resolution which would have addressed the

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<sup>715</sup> Ibid., p. 27.

<sup>716</sup> Ibid., p. 28.

<sup>717</sup> S/2000/1084.

<sup>718</sup> S/PV.4220, p. 3 (Jamaica); p. 5 (United States and Bangladesh); p. 9 (Canada); p. 9 (Russian Federation); p. 10 (Argentina); p. 11 (United Kingdom); p. 13 (Tunisia); p. 14 (Ukraine); p. 16 (Mali); and p. 16 (Netherlands). See also resolution 1327 (2000), annex I, first paragraph.

<sup>719</sup> S/PV.4220, p. 5 (United States); p. 6 (Bangladesh); p. 9 (Canada); p. 15 (Ukraine); and p. 16 (Mali).

commitment gap. He proposed that "the Council recognize that the contribution of troops by Member States possessing the greatest capacity and means, particularly permanent members of the Security Council, is critically important for bridging the commitment gap, facilitating rapid deployment and further increasing the operational effectiveness of United Nations peacekeeping operations". His delegation therefore suggested that each of the permanent members agree to provide at least 5 per cent, or another agreed percentage, of the troops for each United Nations peacekeeping operation.<sup>720</sup> However, the proposal was not included in the resolution adopted.

**Strengthening cooperation with troop-contributing countries**

At its 4257th meeting, on 16 January 2001, the Council held an open debate on the item entitled "Strengthening cooperation with troop-contributing countries". In his statement, the representative of Zambia noted that, whenever the use of peacekeeping forces was contemplated, the Security Council should adhere to the provisions of Article 43 and Article 44 of the Charter.<sup>721</sup> Similarly, the representative of Mali stated that his country "would like us to be able to invoke Articles 43 and 44 whenever useful and whenever possible".<sup>722</sup>

**C. Decisions of the Security Council relating to Article 44**

**Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

By resolution 1318 (2000) of 7 September 2000, the Council affirmed its determination to strengthen United Nations peacekeeping operations by, among other things, strengthening consultations with troop-contributing countries when deciding on such operations.<sup>723</sup>

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<sup>720</sup> S/PV.4220, p. 6.

<sup>721</sup> S/PV.4257, p. 25.

<sup>722</sup> Ibid., p. 21. For a more detailed summary of the debate, see section D, "Discussion relating to Article 44".

<sup>723</sup> Resolution 1318 (2000), annex III.

### **Ensuring an effective role of the Security Council in the maintenance of international peace and security**

By resolution 1327 (2000) of 13 November 2000, the Security Council (a) encouraged the Secretary-General to begin his consultations with potential troop contributors well in advance of the establishment of peacekeeping operations, and requested him to report on his consultations during the consideration of new mandates; (b) underlined the importance of an improved system of consultations among the troop-contributing countries, the Secretary-General and the Council, to foster a common understanding of the situation on the ground, of the mandate of the mission and of its implementation; (c) agreed, in that regard, to strengthen significantly the existing system of consultations through the holding of private meetings with troop-contributing countries, including at their request and without prejudice to the provisional rules of procedure of the Security Council, in particular when the Secretary-General had identified potential troop-contributing countries for a new or ongoing peacekeeping operation, during the implementation phase of an operation, when considering a change in, or renewal or completion of a peacekeeping mandate, or when a rapid deterioration in the situation on the ground threatened the safety and security of United Nations peacekeepers; and (d) welcomed the proposals of the Panel on United Nations Peace Operations for improving the capacity of the United Nations to deploy military, civilian police and other personnel rapidly, including through the United Nations standby-arrangements system, and urged the Secretary-General to consult current and potential troop-contributing countries on how best to achieve this important objective.<sup>724</sup>

#### **Strengthening cooperation with troop-contributing countries**

Following an open debate on strengthening cooperation with troop-contributing countries at the 4257th meeting, on 16 January 2001,<sup>725</sup> the Council made two related decisions under the item during the period under review.

<sup>724</sup> Resolution 1327 (2000), annexes I, II and IV.

<sup>725</sup> For a detailed summary of the debate, see section D, "Discussion relating to Article 44".

By a statement of the President dated 31 January 2001,<sup>726</sup> the Council decided to establish a Working Group of the Whole on United Nations peacekeeping operations. While not replacing the private meetings with the troop-contributing countries, the Working Group was to address both generic peacekeeping issues relevant to the responsibilities of the Council and technical aspects of individual peacekeeping operations without prejudice to the competence of the Special Committee on Peacekeeping Operations. As a first step, the Working Group was given the task of undertaking an in-depth consideration of, inter alia, all the proposals made in the course of the Council's 4257th meeting, including ways to improve the three-way relationship between the Council, the troop-contributing countries and the Secretariat.

At its 4326th meeting, on 13 June 2001, the Council resumed its consideration of the item entitled "Strengthening cooperation with troop-contributing countries", and had before it the first report of the Security Council Working Group on Peacekeeping Operations.<sup>727</sup> On the basis of a draft resolution contained in the report, the Council adopted resolution 1353 (2001) of 13 June 2001 which, inter alia, stressed the need to improve the relationship between the Security Council, the troop-contributing countries and the Secretariat to foster a spirit of partnership, cooperation, confidence and mutual trust. It also encouraged Member States to take steps to bridge the commitment gap with regard to personnel and equipment for specific United Nations peacekeeping operations.<sup>728</sup> Annex II of the resolution laid out the format, procedures and documentation of meetings with the troop-contributing countries.

### **D. Discussion relating to Article 44**

#### **The situation in Sierra Leone**

At its 4139th meeting, on 11 May 2000, the Council discussed, inter alia, a possible revision of the mandate for UNAMSIL. With respect to a review of the mandate and an increase of troops on the ground, the representative of India stated that he expected that troop contributors would be "associated in the

<sup>726</sup> S/PRST/2001/3.

<sup>727</sup> S/2001/546.

<sup>728</sup> Resolution 1353 (2001), eighth preambular paragraph and annex I.A, second paragraph.

Council's decision-making process, in the spirit of Article 44 of the Charter".<sup>729</sup>

### **Strengthening cooperation with troop-contributing countries**

At its 4257th meeting, on 16 January 2001, the Council held an open debate on the item entitled "Strengthening cooperation with troop-contributing countries", during which 37 speakers, including representatives of 21 troop-contributing countries and the Deputy Secretary-General, addressed the Council.<sup>730</sup>

The representative of Egypt stated that measures to strengthen the relationship between the troop-contributing countries and the Security Council should lead to the participation by those countries in the Council's decision-making process "at all stages of the establishment, deployment and withdrawal of a peacekeeping operation", especially when the use of force was involved, "as provided for clearly in Article 44 of the Charter of the United Nations".<sup>731</sup> Similarly, the representative of Zambia noted that, whenever the use of peacekeeping forces was contemplated, the Security Council should adhere to the provisions of Article 43 and Article 44 of the Charter.<sup>732</sup> The representative of New Zealand affirmed that the question of strengthening cooperation with troop contributors should be approached from the perspective that the Charter guarantees, under Article 44, those troop contributors who are not members of the Council the right to be heard by the Council, "at the very least". Echoing previous speakers, he noted that the Charter included provisions contemplating the invitation of troop contributors to participate in the decisions of the Council concerning the employment of their contingents. He therefore maintained that those provisions should be considered as a "starting point in considering the possible establishment of new

mechanisms and the procedural issues that flow therefrom". He concluded by affirming that Article 44 should be given "due weight in United Nations peacekeeping in the twenty-first century".<sup>733</sup> The representative of Malaysia emphasized the need to establish a formalized mechanism of consultations between the Council and troop-contributing countries in order "to give effect to Article 44 of the Charter". In this connection, he added that meetings with troop-contributing countries could be made "more interactive and useful and less ritualistic if they were convened well ahead of the renewal of a peacekeeping operation, not just before, as is often the case".<sup>734</sup> The representative of Bangladesh asserted that, as a policy issue, his country strongly favoured the involvement of troop-contributing countries in the decisions of the Council in accordance with the provisions of Article 44 of the Charter of the United Nations.<sup>735</sup> Similarly, the representative of Mali stated that it should be possible "to invoke Articles 43 and 44 whenever useful and whenever possible".<sup>736</sup>

During the debate, several representatives referred to a proposal contained in the Brahimi report but not included in resolution 1327 (2000) that suggested the institutionalization of consultations with the troop-contributing countries through the establishment of ad hoc subsidiary organs of the Council, as provided for in Article 29.<sup>737</sup> The representative of India, in referring to that proposal, expressed disappointment that this "attempt to arrive at an appropriate mechanism of mutually advantageous communication between troop contributors and the Council" was seen as "root canal work by the Council, particularly when this is an obligation on the Council and not an indulgence by it". Maintaining that the Council, when the use of force was being authorized, should implement Articles 43 and 44 of the Charter, he further specified that Article 44 stipulated that troop-contributing countries should "participate in the Council's decisions, not just be consulted".<sup>738</sup> The representative of the Republic of Korea noted that what mattered was not the number of times troop-contributing countries were briefed or allowed to speak

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<sup>729</sup> S/PV.4139 and Corr.1 and Corr.2, p. 24.

<sup>730</sup> Prior to the 4257th meeting, by a letter dated 8 January 2001 addressed to the Secretary-General (S/2001/21), the representative of Singapore announced his country's intention, during its Presidency, to hold an open debate on strengthening cooperation with troop-contributing countries. The letter also contained two papers on the subject, providing background information to the issue as well as suggesting some specific questions that could be addressed by the participants in the open debate.

<sup>731</sup> S/PV.4257, p. 24.

<sup>732</sup> *Ibid.*, p. 25.

<sup>733</sup> *Ibid.*, p. 26.

<sup>734</sup> *Ibid.*, p. 28.

<sup>735</sup> S/PV.4257 (Resumption 1), p. 9.

<sup>736</sup> *Ibid.*, p. 21.

<sup>737</sup> S/2000/809, para. 61.

<sup>738</sup> S/PV.4257, pp. 8 and 11.

in the Council, but the degree to which they could substantially contribute to the decision-making process of peacekeeping operations.<sup>739</sup> Similarly, the representative of Canada pointed out that the main issue was not a proper communication or consultation process with troop-contributing countries, even though improvements were possible, but that of better “cooperation and participation”.<sup>740</sup> The representative of Argentina stated that, notwithstanding the fact that the Council had exclusive decision-making power, the Council’s decisions directly affected troop contributors, “since the risks of the operations fell mainly on their shoulders”.<sup>741</sup> The representative of Nigeria felt the need for better coordination and consultation between troop-contributing countries, the Security Council and the Secretariat. That, in his view, was the best way to forge trust and understanding among the various stakeholders and to ensure the success of the various United Nations peacekeeping operations. He added that, while the Council was responsible for issuing mandates and the Secretariat for logistics and administration through the Department of Peacekeeping Operations, it was the troop-contributing countries that actually translated Security Council mandates into action. He therefore deemed it important that the three entities continue to consult among themselves for the eventual success of any operation at hand.<sup>742</sup>

## **E. Decisions of the Security Council relating to Articles 46 and 47**

### **Ensuring an effective role of the Security Council in the maintenance of international peace and security**

By resolution 1327 (2000) of 13 November 2000, the Security Council undertook “to consider the possibility of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity”.<sup>743</sup>

<sup>739</sup> Ibid., p. 13.

<sup>740</sup> Ibid., p. 22.

<sup>741</sup> Ibid., pp. 19 and 20.

<sup>742</sup> Ibid., p. 31.

<sup>743</sup> Resolution 1327 (2000), annex IV.

### **Strengthening cooperation with troop-contributing countries**

By resolution 1353 (2001) of 13 June 2001, the Council undertook “to consider the possibility of using the Military Staff Committee as one of the means of enhancing United Nations peacekeeping operations”.<sup>744</sup>

## **F. Discussion relating to Articles 46 and 47**

### **Ensuring an effective role of the Security Council in the maintenance of international peace and security**

At the Council’s 4220th meeting, on 13 November 2000, the Russian Federation commented that, following the resolution on the Brahimi report,<sup>745</sup> the Council had entered the equally important stage of implementing agreed decisions. He believed that the approach of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity would maintain balance in the distribution of responsibilities between Member States and the United Nations Secretariat.<sup>746</sup>

### **Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

At the 4288th meeting, on 7 March 2001, the representative of the Russian Federation recalled that, in resolution 1327 (2000), a decision was made to consider the question of how best to utilize the Military Staff Committee. He commented that there was a need not to leave all of it on paper or simply within the sphere of conversation, but to see what in fact could really be done.<sup>747</sup>

### **No exit without strategy**

At the Council’s 4223rd meeting, on 15 November 2000, the representative of the Russian Federation noted that, for peacekeeping operations to conclude successfully, the United Nations rapid deployment capacity should be developed, the effectiveness of the planning enhanced, and the technical and financial

<sup>744</sup> Resolution 1353, annex I.C.

<sup>745</sup> S/2000/809.

<sup>746</sup> S/PV.4220, p. 9.

<sup>747</sup> S/PV.4288 (Resumption 1), p. 15.

resources of operations ensured. In that connection, he added that it was important to strengthen relevant Secretariat units, including the possibility of making full use of the capacity of the Military Staff Committee as “an important source of military expertise both for preparing for the possible deployment of an operation and for wrapping one up”.<sup>748</sup>

#### **Strengthening cooperation with troop-contributing countries**

At the Council’s 4257th meeting, on 16 January 2001, the representative of India, in advancing his views on the relationship between the Security Council and the troop-contributing countries, reminded the Council that Article 47(2) of the Charter stipulated that the Military Staff Committee could include officers from any Member State, when the efficient discharge of the Committee’s responsibilities required the participation of that Member in its work. He further invited the Council to revive the Military Staff Committee and use it as a forum for consultations with troop-contributing countries on purely military aspects.<sup>749</sup> In response, the representative of the Russian Federation stated that his delegation would regard India’s proposal on making more use of the Military Staff Committee in line with resolution 1327 (2000).<sup>750</sup> The representative of Colombia also voiced his support for reviving the Military Staff Committee, with a broadened mandate that would reflect the

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<sup>748</sup> S/PV.4223, p. 15.

<sup>749</sup> S/PV.4257, p. 11.

<sup>750</sup> S/PV.4257 (Resumption 1), p. 13.

concerns voiced by other delegations, while the representative of Mauritius concurred with India’s statement.<sup>751</sup>

#### **Wrap-up discussion on the work of the Security Council**

At its 4343rd meeting, on 29 June 2001, the Council held a wrap-up discussion on the work of the Security Council during the month of June 2001. During the debate, the representative of the Russian Federation, recalling the need to follow up implementation of the Council’s decisions, stated that the Military Staff Committee, as a mechanism which should be useful for the Council’s work on peacekeeping, had been underutilized. He further recalled that the Council, in resolutions 1327 (2000) and 1353 (2001), had already emphasized the need to study the means to make more active use of the Military Staff Committee in order to strengthen United Nations peacekeeping operations. He concluded by stating that his delegation expected the Military Staff Committee “to respond to the Council’s resolutions”.<sup>752</sup> By a letter dated 6 July 2001 addressed to the President of the Security Council,<sup>753</sup> the representative of the Russian Federation enclosed a position paper containing proposals to enhance the activities of the Military Staff Committee in the context of strengthening United Nations peacekeeping potential.

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<sup>751</sup> *Ibid.*, p. 19 (Colombia); and p. 21 (Mauritius).

<sup>752</sup> S/PV.4343 and Corr.1, p. 6.

<sup>753</sup> S/2001/671.

## **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**

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”. During the period under review, no decisions were adopted by the Council referring expressly to Article 48. In a number of instances, however, the Council adopted decisions in accordance with Chapter VII of the Charter that

underlined the mandatory nature of those measures imposed and contained provisions that might be construed as implicit references to the principle enshrined in Article 48.<sup>754</sup> In the absence of express references to the Article, it is not always possible to ascribe to the Council with any certainty decisions concerning that particular Article.

The following Council decisions may, nevertheless, help to shed light on the Council's interpretation and application of Article 48. Section A provides an overview of action required to carry out the Council's decisions adopted in accordance with the provisions of Article 41 of the Charter, while section B focuses on the action required to carry out Council's decisions imposing measures which involved the use of armed force in accordance with the provisions of Article 42 of the Charter.

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

### **A. Obligations arising pursuant to Security Council decisions adopted under Article 41**

In decisions imposing measures not involving the use of armed force under Article 41 of the Charter, the Security Council consistently called upon "all States" to comply with relevant prohibitions.<sup>755</sup> In some instances, the Council addressed its calls to comply with relevant prohibitions to "States" in general<sup>756</sup> or "all Member States".<sup>757</sup>

<sup>754</sup> In connection with Afghanistan, Angola, Bosnia and Herzegovina, Côte d'Ivoire, the Democratic Republic of the Congo, Eritrea and Ethiopia, Iraq, Liberia, Sierra Leone and Somalia.

<sup>755</sup> Resolutions 1298 (2000), paras. 6 and 8; 1306 (2000), para. 9; 1343 (2001), paras. 4, 5, 6, 7 and 21; 1356 (2001), para. 1; 1519 (2003), para. 1; 1295 (2000), para. 15; 1343 (2001), paras. 5, 6, 7 and 21; 1408 (2002), para. 18; 1478 (2003), paras. 17, 27 and 28; 1521 (2003), paras. 2, 4, 6 and 10; 1333 (2000), paras. 4, 5, 8, 10 and 11; 1363 (2001), para. 8; 1373 (2001), para. 3; 1390 (2002), para. 8; and 1455 (2003), para. 5.

<sup>756</sup> Resolutions 1306 (2000), para. 17; and 1333 (2000), para. 18.

<sup>757</sup> Resolution 1390 (2002), para. 4.

In connection with the measures imposed against Liberia and Sierra Leone, the Council expressly included "all States in the region"<sup>758</sup> and "all States in West Africa"<sup>759</sup> among the addressees of its decisions.<sup>760</sup> In one instance, in connection with the mandatory measures imposed against the Democratic Republic of the Congo, the Council explicitly decided that "all States, including the Democratic Republic of the Congo" were to take the necessary measures to comply with the relevant provisions of the resolution.<sup>761</sup> Similarly, in connection with measures imposed against Iraq, the Council urged "all States, and in particular the Government of Iraq", to provide their full cooperation in the effective implementation of the provisions of the resolution.<sup>762</sup>

In connection with the measures imposed against Angola, the Council called upon "relevant States" to take measures to ensure that members of the diamond industry abided by the measures contained in the relevant resolutions.<sup>763</sup> The Council also urged "all States, including those geographically close to Angola" to take immediate steps to ensure criminal prosecution of nationals or other individuals operating on their territory who violate the measures imposed by the Council against the União Nacional para a Independência Total de Angola (UNITA).<sup>764</sup>

When imposing measures against Afghanistan, Ethiopia and Eritrea, and Sierra Leone, the Council in each case expressly stated in its decisions that States were to act strictly in accordance with the provisions of the resolution, "notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the respective resolution".<sup>765</sup>

<sup>758</sup> Resolutions 1343 (2001), para. 4; 1408 (2002), para. 4; and 1478 (2003), para. 9.

<sup>759</sup> Resolution 1521 (2003), para. 3.

<sup>760</sup> In connection with the situation in Liberia, the Council also requested "all States, in particular arms exporting countries" to exercise the highest degree of responsibility in small arms and light weapons transactions to prevent illegal diversion and re-export. See resolution 1408 (2002), para. 19.

<sup>761</sup> Resolution 1493 (2003), para. 20.

<sup>762</sup> Resolution 1302 (2000), para. 15.

<sup>763</sup> Resolution 1295 (2000), para. 19.

<sup>764</sup> Resolution 1295 (2000), para. 27.

<sup>765</sup> In connection with the measures imposed against Afghanistan, see resolution 1333 (2000), para. 17. In

In addition, when imposing sanctions against Afghanistan, Eritrea and Ethiopia, Liberia, Sierra Leone and Somalia, the Council required “all States”,<sup>766</sup> or more generally “States”,<sup>767</sup> to report on their compliance with relevant prohibitions, and provided that implementation reports received from States were to be examined by committees specifically mandated to monitor the implementation of sanctions, and to consider any information concerning violations of relevant State obligations. To ensure full compliance with relevant prohibitions, in connection with the situation in Sierra Leone and the situation between Eritrea and Ethiopia, the Council, by the same decisions, also requested “all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties” to report to the Committee information on possible violations of the measures imposed by the Council.<sup>768</sup> In one instance, when imposing measures against Somalia, the Council called on “the neighbouring States” to report to the Committee quarterly on their efforts to implement the arms embargo.<sup>769</sup>

By a number of decisions, while setting reporting obligations on the compliance with relevant prohibitions, the Council also addressed its calls to “all States” to cooperate with the relevant Panels of Experts and sanctions committees.<sup>770</sup> In other instances, the

connection with the measures imposed against Eritrea and Ethiopia, see resolution 1298 (2000), para. 9. In connection with the measures imposed against Sierra Leone, see resolutions 1306 (2000), para. 9, and 1343 (2001), para. 22.

<sup>766</sup> In connection with the situation in Afghanistan, see resolutions 1333 (2000), para. 20; 1390 (2002), para. 6; and 1455 (2003), para. 6. In connection with the situation in Sierra Leone, see resolutions 1306 (2000), para. 8, and 1343 (2001), para. 18. In connection with the situation in Somalia, see resolution 1407 (2002), para. 8.

<sup>767</sup> In connection with the situation in Angola, see resolution 1295 (2000), para. 27. In connection with the situation between Eritrea and Ethiopia, see resolution 1298 (2000), para. 11.

<sup>768</sup> In connection with the situation between Eritrea and Ethiopia, see resolution 1298 (2000), para. 12. In connection with the situation in Sierra Leone, see resolution 1306 (2000), paras. 16 and 18.

<sup>769</sup> Resolution 1519 (2003), para. 8.

<sup>770</sup> In connection with the situation in Afghanistan, see resolution 1333 (2000), para. 19. In connection with the situation in Angola, see resolutions 1295 (2000), paras. 4 and 26; and 1439 (2002), para. 7. In connection with the situation in Liberia, see resolution 1408 (2002), para. 15.

Council explicitly called upon “all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties” to cooperate fully with the Committee and the Panel of Experts.<sup>771</sup> With regard to the measures imposed against Somalia, the Council called upon “all States, in particular those in the region” to provide the relevant Committee with all available information on violations of the arms embargo and also requested “all States and the Transitional National Government and local authorities in Somalia” to cooperate fully with the Panel of Experts in its quest for information.<sup>772</sup> By a subsequent resolution, the Council called upon “all States in the region and regional organizations, in particular the Inter-Governmental Authority on Development (IGAD), the African Union, and the League of Arab States (LAS)”, to establish focal points to enhance cooperation with the Monitoring Group and to facilitate information exchange.<sup>773</sup> By the same resolution, the Council requested that “the neighbouring States” report to the Committee quarterly on their efforts to implement the arms embargo.<sup>774</sup>

In its resolutions concerning, respectively, the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, the Council decided that “all States” should cooperate fully with the Tribunals and their organs in accordance with resolutions 827 (1993) and 955 (1994) and the Statutes of the Tribunals.<sup>775</sup> Furthermore, by resolution 1503 (2003), the Council set the “completion strategies” for the two Tribunals and called on “the international community” to assist national jurisdictions, in improving their capacity to prosecute cases transferred

In connection with the situation in Sierra Leone, see resolution 1306 (2000), para. 21.

<sup>771</sup> In connection with the situation in Liberia, see resolutions 1408 (2002), para. 21, and 1478 (2003), para. 33. By resolution 1478 (2003), the Council also called on “all member States of the Economic Community of West African States” to cooperate fully with the Panel of Experts in the identification of aircraft and vessels suspected of being used in violation of the arms embargo (para. 30). In connection with the situation in Afghanistan, see resolutions 1363 (2001), para. 7; 1390 (2002), para. 7; and 1455 (2003), para. 7.

<sup>772</sup> Resolutions 1407 (2002), paras. 4 and 9; and 1425 (2002), para. 7.

<sup>773</sup> Resolution 1519 (2003), para. 5.

<sup>774</sup> Resolution 1519 (2003), para. 8.

<sup>775</sup> Resolutions 1329 (2000), para. 5; and 1431 (2000), para. 3.

from the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda. By the same resolution, the Council also called on “all States, especially Serbia and Montenegro, Croatia, and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina” to intensify cooperation with and render all necessary assistance to the International Tribunal for the Former Yugoslavia. Similarly, the Council called on “all States, especially Rwanda, Kenya, the Democratic Republic of the Congo, and the Republic of the Congo” to intensify cooperation with and render all necessary assistance to the International Tribunal for Rwanda. Finally, by the same resolution, the Council called on “all States” to cooperate with the International Criminal Police Organization (ICPO-Interpol) in apprehending and transferring persons indicted by the Tribunals.<sup>776</sup>

## **B. Obligations arising pursuant to Security Council decisions adopted under Article 42**

While the above-mentioned decisions adopted under Article 41 were formulated to ensure universal compliance and create binding obligations for all or some States, decisions in accordance with the provisions of Article 42 of the Charter, imposing measures involving the use of armed force, frequently took the form of authorizations or calls on States willing and in a position to take such action.

In a number of decisions providing for the use of “all necessary measures”<sup>777</sup> to enforce previous resolutions, the Council addressed such authorizations to “Member States” in general,<sup>778</sup> or more specifically

<sup>776</sup> Resolution 1503 (2003), paras. 1-4.

<sup>777</sup> The phrase “all necessary measures” was used by the Security Council in connection with the situation in Afghanistan (resolution 1386 (2001), para. 3); the situation in Bosnia and Herzegovina (resolution 1305 (2000), para. 11); and the situation in Liberia (resolution 1497 (2003), para. 5). In connection with the situation in Côte d’Ivoire, reference was made to “the necessary steps” (resolution 1464 (2003), para. 9). In connection with the situation in Sierra Leone, the Council authorized UNAMSIL to “take the necessary action” to fulfil its mandate (resolution 1289 (2000), para. 10).

<sup>778</sup> In connection with the situation between Iraq and Kuwait, see resolution 1511 (2003). In connection with the situation in Liberia, see resolution 1497 (2003).

to “Member States participating”<sup>779</sup> and “Member States acting”.<sup>780</sup>

By resolution 1386 (2001) of 20 December 2001, authorizing the establishment of the International Security Assistance Force to assist the interim authority of Afghanistan in the maintenance of security in Kabul and its surrounding areas, the Council called upon Member States to contribute personnel, equipment and other resources to the Force, authorized the Member States participating in the Force to take all necessary measures to fulfil its mandate, and called on them to assist the Afghan Interim Authority in the “establishment and training of new Afghan security and armed forces”.<sup>781</sup>

By resolution 1497 (2003) of 1 August 2003, in connection with the situation in Liberia, the Council authorized “Member States” to establish a Multinational Force to “support the implementation of the 17 June 2003 ceasefire agreement”. By the terms of the resolution, the Council authorized the Member States participating in the Multinational Force, to take “all necessary measures” to fulfil its mandate. The Council also demanded that “all States in the region” refrain from any action that could contribute to instability in Liberia or on the borders between Liberia, Guinea, Sierra Leone and Côte d’Ivoire.<sup>782</sup>

By resolution 1484 (2003) of 30 May 2003, authorizing the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC, the Council authorized the “Member States participating in the Multinational Force in Bunia” to take all necessary measures to fulfil its mandate, and called upon “Member States” to contribute personnel, equipment and other necessary financial and logistic resources to the Multinational Force.<sup>783</sup>

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under unified command “to take all necessary measures” to

<sup>779</sup> In connection with the situation in Afghanistan, see resolution 1386 (2001). In connection with the situation in the Democratic Republic of the Congo, see resolution 1484 (2003).

<sup>780</sup> In connection with the situation in Bosnia and Herzegovina, see resolution 1305 (2000).

<sup>781</sup> Resolution 1386 (2001), paras. 2, 3 and 10.

<sup>782</sup> Resolution 1497 (2003), paras. 1, 5 and 9.

<sup>783</sup> Resolution 1484 (2003), paras. 3 and 4.



contribute to the maintenance of security and stability in Iraq, and urged Member States to contribute assistance under that United Nations mandate, including military forces, to the multinational force.<sup>784</sup>

Some of the decisions authorizing the use of all necessary measures, in accordance with Article 42 of the Charter, expressly envisaged possible action through regional agencies or arrangements. By resolution 1305 (2000), adopted in connection with the situation in Bosnia and Herzegovina, the Council authorized “Member States acting” through or in cooperation with the North Atlantic Treaty Organization, to fulfil the role determined in the Dayton Agreement. It further authorized “Member States” to take all necessary measures, at the request of the Stabilization Force, either in defence of SFOR or to

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<sup>784</sup> Resolution 1511 (2003), para. 14.

assist the force in carrying out its mission. By the same resolution the Council also invited “all States, in particular those in the region” to continue to provide appropriate support and facilities, including transit facilities, for the above-mentioned Member States.<sup>785</sup> In one instance, related to the situation in Côte d’Ivoire, the Council authorized “Member States participating in the ECOWAS forces deployed in accordance with Chapter VIII together with the French forces supporting them” to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure, without prejudice to the responsibilities of the Government of National Reconciliation, the protection of civilians immediately threatened with physical violence within their zones of operation.<sup>786</sup>

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<sup>785</sup> Resolution 1305 (2000), paras. 10, 12 and 16.

<sup>786</sup> Resolution 1464 (2003), para. 9.

## **Part VII**

### **Obligations of Member States under Article 49 of the Charter**

#### *Article 49*

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

#### **Note**

During the period under review, the obligation of States to join in affording mutual assistance assumed specific relevance in connection with decisions under Chapter VII of the Charter by which the Security Council authorized or called on Member States to take measures to enforce the Council’s resolutions, even though those decisions contained no explicit references to Article 49. In the absence of explicit references to the Article, it is not always possible to ascribe to the Council with any certainty decisions concerning that particular Article. The Council decisions presented in sections A and B may, however, help to shed light on the Council’s interpretation and application of Article 49. Section A provides an overview of the Council’s decisions calling upon Member States to provide mutual assistance in carrying out the decisions adopted in accordance with the provisions of Article 41 of the Charter, while section B focuses on the

Council’s decisions making similar calls in connection with the implementation of measures which involved the use of armed force in accordance with the provisions of Article 42 of the Charter.

During the period under consideration, the interpretation and application of Article 49 did not give rise to any significant constitutional discussion in the Council’s deliberations.

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

In its decisions imposing measures not involving the use of armed force, in accordance with the provisions of Article 41 of the Charter, the Security Council, in a number of instances, requested Member States in a position to do so to offer assistance to concerned States in the implementation of those measures. Such requests were made by the decisions outlined below.

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

By resolution 1343 (2001) of 7 March 2001, the Council decided that all States were to take the

necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia. In that connection, it also urged all diamond exporting countries in West Africa to establish certificate-of-origin regimes for the trade in rough diamonds and called upon “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the concerned Governments.<sup>787</sup>

#### **The situation in Sierra Leone**

By resolution 1306 (2000) of 5 July 2000, in connection with its request to all States to take the necessary measures to prohibit the import of all rough diamonds from Liberia, the Council requested “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the Government of Sierra Leone to facilitate the full implementation of an effective certificate-of-origin regime for rough diamonds.<sup>788</sup> By a subsequent resolution,<sup>789</sup> the Council reiterated its call upon “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the Government of Liberia and other diamond-exporting countries in West Africa with their certificate-of-origin regimes.

By resolution 1478 (2003) of 6 May 2006, calling upon States of the subregion to strengthen the measures they had taken to combat the spread of small arms and light weapons and mercenary activities, the Council urged “States in a position to do so to provide assistance to the Economic Community of West African States”.<sup>790</sup>

By resolution 1521 (2003) of 22 December 2003, in connection with its request to the National Transitional Government of Liberia to take urgent steps to establish an effective certificate-of-origin regime for trade in rough diamonds from Liberia, the Council called upon “States, relevant international organizations and others in a position to do so to offer assistance” to the National Transitional Government of Liberia in achieving the aforementioned objective.<sup>791</sup>

<sup>787</sup> Resolution 1343 (2001), para. 16.

<sup>788</sup> Resolution 1306 (2000), para. 6.

<sup>789</sup> Resolution 1408 (2002), para. 9.

<sup>790</sup> Resolution 1478 (2003), para. 22.

<sup>791</sup> Resolution 1521 (2003), para. 15.

#### **The situation in Somalia**

By a statement of the President dated 31 October 2001,<sup>792</sup> the Council emphasized the necessity for efforts against international terrorism in accordance with resolution 1373 (2001), and welcomed the intention of the Transitional National Government of Somalia to take steps in that regard. By the same statement, the Council urged the international community, including through the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, to “provide assistance” to Somalia for the implementation of the aforementioned resolution.

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

In its decisions imposing measures involving the use of armed force, while calling upon States willing and in a position to take relevant enforcement action, the Security Council regularly requested “all States” to provide appropriate support and assistance to those States. Such requests were made by the decisions outlined below.

#### **The situation in Afghanistan**

By resolution 1386 (2001) of 20 December 2001, authorizing the International Security Assistance Force to take “all necessary means” to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, the Council called upon Member States to “contribute personnel, equipment and other resources to the Force”, and invited those Member States to inform the leadership of the Force and the Secretary-General. The Council further encouraged neighbouring States and other Member States to provide to the Force such necessary assistance as might be requested, including overflight clearances and transit.<sup>793</sup> By subsequent resolutions extending the mandate of ISAF, the Council called upon Member States to “contribute personnel, equipment and other resources to the Force, and to

<sup>792</sup> S/PRST/2001/30.

<sup>793</sup> Resolution 1386 (2001), paras. 2 and 7.

make contributions to the Trust Fund established pursuant to resolution 1386 (2001)".<sup>794</sup>

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

By resolution 1305 (2000) of 21 June 2000, the Council paid tribute to those Member States that participated in the multinational Stabilization Force established in accordance with resolution 1088 (1996), and welcomed their willingness to assist the parties to the Peace Agreement by continuing to deploy a multinational Stabilization Force. By the same resolution, the Council also invited "all States, in particular those in the region to continue to provide appropriate support and facilities, including transit facilities, for the Member States participating in the Stabilization Force".<sup>795</sup>

#### **The situation concerning the Democratic Republic of the Congo**

By resolution 1484 (2003) of 30 May 2003, the Council, authorizing the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with the United Nations Organization Mission in the Democratic Republic of the Congo, called upon all Member States and "in particular those in the Great Lakes region" to provide all necessary support to facilitate the swift deployment in Bunia of the Multinational Force.<sup>796</sup>

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

By resolution 1497 (2003) of 1 August 2003,

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<sup>794</sup> Resolutions 1413 (2001), para. 3, and 1444 (2002), para. 3.

<sup>795</sup> Resolution 1305 (2000), paras. 8 and 16.

<sup>796</sup> Resolution 1484 (2003), para. 8.

establishing a Multinational Force in Liberia, the Council called upon Member States to "contribute personnel, equipment and other resources to the Multinational Force", and stressed that the expenses of the Multinational Force would be borne by the participating Member States and other voluntary contributions. By the same resolution, it also called upon all Liberian parties and Member States to "cooperate fully" with the Multinational Force in the execution of its mandate and to respect the security and freedom of movement of the Multinational Force, as well as to ensure the safe and unimpeded access of international humanitarian personnel to populations in need in Liberia.<sup>797</sup>

#### **The situation in Sierra Leone**

By a statement of the President dated 4 May 2000,<sup>798</sup> in connection with the situation in Sierra Leone, the Council expressed its full support for the continued efforts of the United Nations Mission in Sierra Leone in the fulfilment of its mandate, and called upon all States in a position to do so to "assist the Mission" in that regard. By resolution 1299 (2000) of 19 May 2000, the Council members expressed their appreciation to all States which, in order to expedite the rapid reinforcement of the Mission, had accelerated the deployment of their troops to the Mission, made available additional personnel and offered logistical, technical and other forms of military assistance, and called upon "all those in a position to do so to provide further support".<sup>799</sup>

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<sup>797</sup> Resolution 1497 (2003), paras. 6 and 11.

<sup>798</sup> S/PRST/2000/14.

<sup>799</sup> Resolution 1299 (2000), para. 2.

## **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 paid close attention to the issue of sanctions

and their unintended negative impact on civilian populations and third States. With a view to minimizing those effects, the Council, through a note by the President, decided to establish an Informal Working Group to develop general recommendations on how to improve the effectiveness of sanction regimes and limit their unintended negative effects.<sup>800</sup> The Council also held three meetings on the item entitled “General issues relating to sanctions” and, while considering other agenda items, also made decisions and discussed topics related to Article 50.

Section A of this part examines decisions of the Council relevant to Article 50, while section B highlights the salient issues raised in the Council’s deliberations regarding the interpretation and application of the Article. Finally, section C briefly presents material relating to the Council’s subsidiary bodies in connection with Article 50, as included in the reports of those bodies to the Council and in the reports of the Secretary-General on the “Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions”.<sup>801</sup>

## **A. Decisions of the Security Council relating to Article 50**

### **The situation in Angola**

By resolution 1295 (2000) of 18 April 2000, having noted the conclusions and recommendations of the Panel of Experts established by the Security Council pursuant to resolution 1237 (1999) of 7 May 1999, the Council requested the Secretary-General to establish a monitoring mechanism composed of up to five experts, for a period of six months, to collect additional relevant information and investigate relevant leads relating to any allegations of violations of the measures contained in resolutions 864 (1993), 1127 (1997) and 1173 (1998) concerning the situation in Angola, “including through visits to relevant countries”, and to report periodically to the relevant Committee established pursuant to resolution 864 (1993), including by providing a written report by 18 October 2000, with a view to “improving the implementation of the measures imposed against

UNITA”.<sup>802</sup> The Council further requested the Secretary-General, acting in consultation with the Committee, to appoint experts to serve on the monitoring mechanism. Following consultations with the Committee, on 11 July 2000, the Secretary-General appointed five experts to serve on the monitoring mechanism.<sup>803</sup>

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

By resolution 1483 (2003) of 22 May 2003, the Council decided to terminate, with certain exceptions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq, as established by resolution 661 (1990) and subsequent relevant resolutions. By the same resolution, the Council also decided to impose new targeted financial sanctions.<sup>804</sup> By resolution 1518 (2003) of 24 November 2003, the Council established a Committee to administer the new measures imposed by resolution 1483 (2003). In his report on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the Secretary-General observed that, as a result of the modifications made to the measures imposed on Iraq since May 2003, all of the Council’s existing sanctions regimes “were now targeted in nature and, the unintended consequences for civilian populations and third States were minimized”.<sup>805</sup>

### **The situation in Liberia**

By resolution 1478 (2003) of 6 May 2003, the Council decided to consider how best to minimize any humanitarian or socio-economic impact of the measures imposed by paragraph 17 of its resolution, and requested the Secretary-General and the Panel of Experts to submit a report in that regard.<sup>806</sup> Pursuant to the request, the Secretary-General submitted a report dated 5 August 2003 by which he provided observations and recommendations on the possible humanitarian and socio-economic impacts of the timber sanctions imposed against Liberia.<sup>807</sup> By a letter dated 7 August 2003 addressed to the President of the

<sup>800</sup> S/2000/319.

<sup>801</sup> See, for the period under consideration: A/55/295, A/56/303, A/57/165, A/58/346 and A/59/334.

<sup>802</sup> Resolution 1295 (2000), para. 3.

<sup>803</sup> A/55/295, p. 4.

<sup>804</sup> Resolution 1483 (2003), paras. 10 and 23.

<sup>805</sup> A/59/334, para. 10.

<sup>806</sup> Resolution 1478 (2003), paras. 18 and 19.

<sup>807</sup> S/2003/793.

Council,<sup>808</sup> the Acting Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) transmitted to the members of the Council the report of the Panel of Experts which, inter alia, included observations and recommendations concerning the possible humanitarian and socio-economic impact of the timber sanctions imposed on Liberia.

By resolution 1521 (2003) of 22 December 2003, the Security Council requested the Panel of Experts on Liberia to report with observations and recommendations including, inter alia, how to minimize any humanitarian and socio-economic impact of timber sanctions against Liberia.<sup>809</sup>

### **The situation in Sierra Leone**

By resolution 1306 (2000) of 5 July 2000, the Security Council requested the Committee established pursuant to resolution 1132 (1997) to hold an exploratory hearing in New York to assess the role of diamonds in the Sierra Leone conflict and the link between trade in Sierra Leone diamonds and trade in arms and related materiel in violation of resolution 1171 (1998), “involving representatives of interested States and regional organizations”, the diamond industry and other relevant experts.<sup>810</sup> The exploratory hearing was held on 31 July and 1 August 2000.<sup>811</sup>

### **General issues relating to sanctions**

#### *Establishment of an informal working group*

In a note by the President dated 17 April 2000,<sup>812</sup> the members of the Council decided to establish an informal working group to develop general recommendations on how to improve the effectiveness of United Nations sanctions. The working group was given the task of, among other things, examining the unintended impact of sanctions on third States and of assisting Member States in implementing sanctions. It was to report its findings to the Council by 30 November 2000, but the working group was unable to reach a consensus on all of the recommendations. By two subsequent notes by the President dated 15 January 2002 and 18 December 2003, respectively, the Council agreed to extend the mandate of the working group

until 31 December 2004.<sup>813</sup> The working group’s proposed outcome document thus remained under consideration, with a focus on those issues for which there was no provisional agreement.

## **B. Discussion relating to Article 50**

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

At the 4336th meeting, on 28 June 2001, the representative of India observed that the sanctions on Iraq had caused acute economic and financial hardship to other countries, including India. He complained that the request by India for relief under Article 50 was still pending with the sanctions committee.<sup>814</sup>

Similarly, by a letter dated 24 June 2002 addressed to the President of the Council,<sup>815</sup> the representative of Tunisia submitted a matter relating to the requirements of Article 50 concerning the losses incurred by his country as a result of the consequences of the embargo imposed on Iraq by the Council since 1990. He therefore requested the Council to take note “once more” of the very serious impact of the sanctions and the challenges which the Tunisian national economy continued to face since the imposition of the embargo regime on Iraq. In that connection, he insisted on the necessity for the Council to understand Tunisia’s “urgent and vital need to maintain its national interests in cooperation with Iraq on the basis of Article 50 of the Charter of the United Nations”.<sup>816</sup>

By a similar letter dated 17 July 2001 addressed to the President of the Security Council,<sup>817</sup> the representative of Malaysia brought to the attention of the Council that many countries, including Malaysia, had suffered “enormous economic losses” as a result of the implementation of the Council’s sanctions against Iraq. To address those problems in accordance with the provisions of Article 50 of the Charter, the representative asked the Council to enable Malaysia to benefit from the provisions of Article 50 in the context of its economic and trade relations with Iraq, and thus to alleviate the negative consequences the country had suffered as a result of more than a decade of sanctions imposed against Iraq.

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<sup>808</sup> S/2003/779.

<sup>809</sup> Resolution 1521 (2003), para. 22.

<sup>810</sup> Resolution 1306 (2000), para. 12.

<sup>811</sup> See A/55/295, para. 9.

<sup>812</sup> S/2000/319.

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<sup>813</sup> S/2002/70 and S/2003/1185, respectively.

<sup>814</sup> S/PV.4336 (Resumption 1), p. 5.

<sup>815</sup> S/2002/698.

<sup>816</sup> *Ibid.*, p. 2.

<sup>817</sup> S/2001/703.

### General issues relating to sanctions

The Council held three meetings on the item entitled “General issues relating to sanctions”, with much discussion focusing on issues relating to Article 50.<sup>818</sup> No decisions arose from those meetings, although progress was reported in the design and implementation of sanctions regimes.

At the 4128th meeting, on 17 April 2000, the Under-Secretary-General for Political Affairs asserted that it was essential for the United Nations system to develop a coordinated and integrated approach to minimize unintended consequences on civilian populations and third States. To that end, he recommended that the Council consider authorizing the Secretariat to dispatch assessment missions to targeted States and neighbouring countries either before sanctions were imposed or shortly thereafter. He also proposed that the Council consider including in its resolutions provisions to address the impact of sanctions on non-targeted States. He suggested that “practical assistance arising from Article 50” be addressed through special arrangements with individual neighbouring States and through donors’ conferences to identify possible forms of financial assistance and support for non-targeted States.<sup>819</sup> The representative of France stated that third States and targeted States were often not invited to speak before sanctions committees. He added that measures had been planned to that end, but had not been applied.<sup>820</sup> The representative of Namibia noted that, while he believed that parties should be heard by the Council under the terms of Article 50, solutions needed to include the provision of special assistance to compensate for economic losses and adverse social impact.<sup>821</sup> The representative of Tunisia agreed that, notwithstanding Article 50, there was still no effective mechanism to compensate for losses suffered by third countries.<sup>822</sup> Several representatives noted the negative effects that their countries had suffered as a result of sanctions placed against another country,<sup>823</sup> while others affirmed that the Council had to do more to

minimize negative consequences for third States.<sup>824</sup> The President, speaking in his capacity as the representative of Canada, suggested that donor-country conferences addressing the needs of particular Member States adversely affected by sanctions might be a measure to address concerns related to Article 50.<sup>825</sup> The representative of Malaysia stated that sanctions affected third countries since they often imposed extremely high economic costs on the major economic partners of targeted States. Emphasizing that this aspect was well recognized in Article 50 of the Charter, but very rarely invoked or seriously addressed, he regretted that assistance to disadvantaged States had been ad hoc and inadequate and, while some provisions for third-party compensation had been made, no such aid had been forthcoming in the case of the African sanctions regimes. Where little or no assistance was available, he asserted, the affected States may have had no choice but to continue surreptitiously with their traditional economic relationships to avoid economic hardship. On occasion, they had done so openly, as was clearly the case with respect to the sanctions regime on the Libyan Arab Jamahiriya, when the Organization of African Unity decided in 1998 to cease complying with the United Nations sanctions directed against the Libyan Arab Jamahiriya.<sup>826</sup> The representative of the former Yugoslav Republic of Macedonia stated that the implementation of Article 50 of the Charter had enormous political, economic, social and humanitarian importance for many Member States. His country regretted the non-implementation of Article 50 but was pleased by the decision to establish, on a temporary basis, an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions. He hoped that those recommendations would not neglect Article 50 of the Charter.<sup>827</sup> The representative of Bulgaria similarly recognized the importance of the proper implementation of Article 50 and, in that connection, of the informal working group.<sup>828</sup>

By a letter dated 17 April 2000 addressed to the President of the Security Council,<sup>829</sup> transmitting the statement that he had not been able to deliver in person

<sup>818</sup> S/PV.4128, S/PV.4394 and S/PV.4713.

<sup>819</sup> S/PV.4128, pp. 2-4.

<sup>820</sup> *Ibid.*, p. 8.

<sup>821</sup> *Ibid.*, p. 11.

<sup>822</sup> *Ibid.*, p. 19.

<sup>823</sup> *Ibid.*, p. 29 (Pakistan); p. 35 (Bulgaria); p. 44 (the former Yugoslav Republic of Macedonia); and p. 45 (Turkey).

<sup>824</sup> *Ibid.*, p. 23 (Russian Federation); p. 32 (Sweden); and p. 44 (the former Yugoslav Republic of Macedonia).

<sup>825</sup> *Ibid.*, p. 25.

<sup>826</sup> *Ibid.*, pp. 14-15.

<sup>827</sup> *Ibid.*, p. 44.

<sup>828</sup> *Ibid.*, pp. 35-36.

<sup>829</sup> S/2000/324.

at the 4128th meeting, the representative of Egypt drew the attention of the Council to the “collateral” and “large-scale damage” caused by sanctions to the interests of third States and their population, as it had been the case for his country. He invited the Council to consider establishing “more permanent mechanisms and measures” for the holding of the consultations provided for in Article 50 with third States that found or might find themselves confronted with special economic problems arising from the carrying out of enforcement measures imposed by the Council. He further noted that, in order to “implement Article 50 of the Charter in full”, the conclusions arrived at by the ad hoc expert group, convened in June 1998 in accordance with General Assembly resolution 52/162 to develop a methodology for assessing the consequences incurred by third States, constituted “an important step towards the practical implementation of the provisions of Articles 49 and 50 of the Charter”.<sup>830</sup>

At the 4394th meeting, on 22 and 25 October 2001, discussions on general issues relating to sanctions continued, with many representatives again emphasizing the need to minimize sanctions’ negative effects on third States.<sup>831</sup> In their statements, two speakers explicitly invoked Article 50 and the need to improve its implementation.<sup>832</sup> Pointing to improvements in sanctions regimes, the representative of Jamaica observed that there had been a shift by the Council in its approach to the design of sanctions. She stated that recent sanctions on Eritrea and Ethiopia, Liberia, Sierra Leone and the Taliban regime of Afghanistan had all been targeted and that, in designing those sanctions, the Council had borrowed extensively from the preliminary work and reports of the Bonn-Berlin and Interlaken processes, as well as from the work of its own working group on general issues of sanctions.<sup>833</sup>

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<sup>830</sup> Ibid., pp. 2-3.

<sup>831</sup> S/PV.4394, p. 2 (Switzerland); pp. 4-5 (Germany); and p. 8 (France); S/PV.4394 (Resumption 1) and Corr.1, p. 8 (Mali); and pp. 10-11 (China).

<sup>832</sup> S/PV.4394, p. 6 (Assistant Secretary-General for Political Affairs); S/PV.4394 (Resumption 1) and Corr.1, p. 10 (Tunisia).

<sup>833</sup> S/PV.4394 (Resumption 1) and Corr.1, p. 2. The report from the Bonn-Berlin process, under the leadership of Germany, was titled “Design and implementation of arms embargoes and travel and aviation-related sanctions”. The report issuing from the Interlaken process, under the leadership of Switzerland, was

At the 4713th meeting, on 25 February 2003, the State Secretary for Foreign Affairs of Sweden presented to the Council the results of the Stockholm Process on the Implementation of Targeted Sanctions.<sup>834</sup> He recognized that, while the use of sanctions had increased, concern had been growing over the negative effects of economic sanctions on vulnerable populations and societies in general, with the collateral effects of sanctions on third States being highlighted.<sup>835</sup> In his statement, the representative of Bulgaria informed the Council that, as an active participant in both the preparatory discussion and in the final meeting, held in Stockholm in November 2002, Bulgaria shared and supported the conclusions, guidelines and recommendations laid down in the final text of the report. He added that the inclusion of a special section dedicated to unintended consequences of sanctions implementation for third States and to the need for direct or indirect compensation for damages caused to them was backed by the experience of Bulgaria as a State severely affected by the sanctions imposed on the former Yugoslavia, the Libyan Arab Jamahiriya and Iraq. He concluded that, although the practical implementation of the provisions of Article 50 had been extensively discussed in the Sixth Committee of the General Assembly, in the Security Council and during the Stockholm Process, there were still aspects to be clarified and work on these issues should continue.<sup>836</sup>

#### **Briefing by Mr. Carl Bildt, Special Envoy of the Secretary-General for the Balkans**

At the Council’s 4164th meeting, on 23 June 2000, the representative of the former Yugoslav Republic of Macedonia suggested that if the Security Council would like to “shoulder fully its responsibility under the Charter”, it should address the implementation of Article 50 of the Charter.<sup>837</sup>

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entitled “Targeted financial sanctions: A manual for design and implementation”.

<sup>834</sup> The Stockholm Process on the Implementation of Targeted Sanctions dealt with ways to increase the efficiency of sanctions by reforming and improving their implementation, while minimizing unintentional negative consequences.

<sup>835</sup> S/PV.4713, pp. 2-3.

<sup>836</sup> Ibid., pp. 5-6.

<sup>837</sup> S/PV.4164 (Resumption 1), p. 8.

**Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

At the Council's 4288th meeting, on 7 March 2001, the representative of Egypt emphasized the hope that the Council would consistently adhere to the provisions of Article 50 and would apply it without discrimination or politicization.<sup>838</sup> At the same meeting, the representative of Tunisia indicated that reforms in the area of sanctions had to take into account the adverse impact of sanctions and the provisions of the Charter, in particular those of Article 50.<sup>839</sup>

**C. Instances arising in Security Council subsidiary bodies**

**Security Council Committee established pursuant to resolution 661 (1990) concerning the situation between Iraq and Kuwait**

At its 4673rd meeting, on 18 December 2002, the Council heard a briefing by the Chairman of the Security Council Committee established pursuant to resolution 661 (1990) concerning the situation between Iraq and Kuwait. In his statement, the Chairman reported that the Committee was devoting a great deal of time to discussing reported violations of sanctions, as well as to humanitarian exemptions under resolution 661 and application of Article 50 of the Charter and, in that regard, drew attention to the various reports submitted to the Council by the Committee.<sup>840</sup>

The Chairman reported that in its deliberations concerning issues related to Article 50, the Committee had granted permission for Member States that were not members of the Committee to address it at formal meetings concerning their special economic problems falling under Article 50.<sup>841</sup>

At its 215th meeting, on 19 March 2001, the Committee discussed how to proceed with the communications from Belarus and India concerning the application of Article 50 of the Charter. In that connection, at its 223rd meeting, on 10 September 2001, the Committee was briefed by the Secretariat on

the history of the application of Article 50 and the past practice of the Committee. At its 224th meeting, on 9 October 2001, in response to letters from Belarus and India, the Committee agreed to send letters, with attached questions on matters for which clarifications were sought, inviting the representatives of Belarus and India to present their cases to the Committee. At its 227th meeting, on 3 December 2001, the Additional Secretary of the Ministry of External Relations of India addressed the Committee regarding special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council and stated that his country estimated to have lost \$25 billion to \$30 billion as a result of United Nations sanctions against Iraq. He suggested that India be compensated through an India-Iraq "wheat for oil" programme, given India's surplus production of wheat.<sup>842</sup> By a letter from the Chairman dated 28 February 2002, the Committee informed India that it had considered the matter at several formal and informal meetings but had been unable to reach a consensus, although it would continue to study the matter. India replied in a letter dated 26 March 2002, stating its disappointment that no consensus had been reached and requesting an expeditious and positive decision on the matter.<sup>843</sup>

In a letter dated 24 June 2002 addressed to the President of the Security Council,<sup>844</sup> the representative of Tunisia brought to the attention of the Council the impact of the Iraqi sanctions regime on the Tunisian economy during the past 11 years, totalling \$7 billion as at May 2002. The members of the Council agreed to refer the letter to the Committee for its consideration.<sup>845</sup> On 31 July 2002, at its 236th meeting, the Committee agreed to have the Chairman approach the representative of Tunisia to hear what kind of response, if any, he was expecting from the Committee.<sup>846</sup>

<sup>842</sup> S/2002/647, paras. 52 and 53.

<sup>843</sup> For details, see A/57/165, para. 6.

<sup>844</sup> S/2002/698.

<sup>845</sup> See A/57/165, para. 7.

<sup>846</sup> S/2003/300, para. 67.

<sup>838</sup> S/PV.4288, p. 14.

<sup>839</sup> Ibid., (Resumption 1), p. 18.

<sup>840</sup> S/PV.4673, p. 3.

<sup>841</sup> Ibid.



**Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities**

On 15 December 2003, several Member States attended an informal meeting of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities. They addressed alleged inaccuracies contained in the second report completed by the Monitoring Group established pursuant to Security Council resolution 1363 (2001)

and mandated by the Council to monitor the implementation of the measures imposed against Al-Qaida and the Taliban.<sup>847</sup> Although the measures imposed against Al-Qaida and the Taliban and associated individuals and entities were targeted in nature and were not in themselves cited as causing special economic problems, one of the States appearing before the Committee argued that the allegations levelled against it by the Monitoring Group might result in decreased tourism, thus causing an adverse effect upon its economy.<sup>848</sup>

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<sup>847</sup> S/2003/1070 and Corr.1, annex.

<sup>848</sup> A/59/334, para. 8.

**Part IX**  
**Right of self-defence in accordance with Article 51 of the Charter**

*Article 51*

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

**Note**

During the period under review, the Security Council reaffirmed the principle set out in Article 51 in four decisions relating to “threats to international peace and security caused by terrorist acts” and “small arms”, respectively. Those cases are presented in section A.

During the same period, in the course of the deliberations in the Council, a variety of issues occasioned pertinent arguments relating to the interpretation of the principle of self-defence. Specifically, the Council debated the application and interpretation of Article 51 in connection with the following items: (a) the situation in Afghanistan; (b) the situation concerning the Democratic Republic

of the Congo; (c) the situation between Iraq and Kuwait; (d) the situation in the Middle East, including the Palestinian question; (e) letters dated 5 October 2003 from, respectively, the permanent representatives of the Syrian Arab Republic and Lebanon addressed to the President of the Security Council; (f) small arms; (g) threats to international peace and security caused by terrorist acts; (h) the role of the Security Council in the pacific settlement of disputes; and (i) the role of the Security Council in the prevention of armed conflicts. The arguments advanced during the Council’s deliberations in connection with those situations are presented in section B.

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

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

**Small arms**

By two statements of the President dated 4 September 2001 and 31 October 2002, respectively,<sup>849</sup> in connection with the Council’s consideration of the destabilizing role played by the accumulation and uncontrolled spread of small arms

and light weapons in many regions of the world, the Council members reaffirmed “the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations and, subject to the Charter, the right of each State to import, produce and retain small arms and light weapons for its self-defence and security needs”.<sup>850</sup>

#### **Threats to international peace and security caused by terrorist acts**

By resolution 1368 (2001) of 12 September 2001, the Council condemned the terrorist attacks which took place on 11 September 2001 and called on States to work together to bring to justice the perpetrators, organizers, and sponsors of the attacks, and to redouble their efforts to prevent and suppress terrorist acts. The Council also expressed its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001 and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations. By the same resolution, the Council recognized “the inherent right of individual or collective self-defence in accordance with the Charter”.<sup>851</sup>

By resolution 1373 (2001) of 28 September 2001, the Security Council decided that all States were to prevent and suppress the financing of terrorist acts and called on States to work together urgently to achieve these goals. The Council asserted that such acts constituted a threat to international peace and security and expressed its deep concern about the increase of acts of terrorism in various regions of the world. In that connection, the Council reaffirmed “the inherent right of individual or collective self-defence as recognized by the Charter”.<sup>852</sup>

## **B. Discussion relating to Article 51**

### **The situation in Afghanistan**

By a letter dated 7 October 2001 addressed to the President of the Security Council,<sup>853</sup> the representative of

the United States announced that, acting in accordance with Article 51 of the Charter of the United Nations, his Government, together with other States, would initiate actions “in the exercise of its inherent right of individual and collective self-defence following the armed attacks that were carried out against the United States on 11 September 2001”.<sup>854</sup> He reported that the United States armed forces had initiated actions against Al-Qaida terrorist training camps and military installations of the Taliban regime in Afghanistan.

Through a series of letters addressed to the President of the Security Council,<sup>855</sup> the representatives of the United Kingdom, Canada, France, Australia, Germany, the Netherlands, New Zealand and Poland reported that, in accordance with “the inherent right of individual or collective self-defence”, their respective Governments had undertaken actions involving the participation of military forces within the international efforts to combat the terrorist network responsible for the attacks against targets in the United States. By two letters addressed to the Secretary-General dated 8 and 17 October 2001, respectively,<sup>856</sup> the representative of Belgium conveyed the European Union’s solidarity with the United States and its support for the actions taken by the latter “in self-defence”.

At its 4414th meeting, on 13 November 2001, the Council held an open debate on the situation in Afghanistan, mainly focusing on the country’s future political transition. During the debate, a number of speakers made reference to the actions taken by the United States armed forces in Afghanistan initiated on 7 October 2001. The representative of Norway emphasized the necessity of breaking the cycle of war and misrule in Afghanistan and argued that the Taliban regime in Afghanistan had ignored binding Security Council resolutions demanding it to stop harbouring and supporting terrorists. He therefore concluded that there was “no alternative but to use military force — in accordance with the right of self-defence”.<sup>857</sup> The representative of Egypt recalled that military operations were pursued in Afghanistan in connection with the Council’s commitment to “the inherent right

<sup>849</sup> S/PRST/2001/21 and S/PRST/2002/30.

<sup>850</sup> S/PRST/2001/21, fourth paragraph., and S/PRST/2002/30, third para.

<sup>851</sup> Resolution 1368 (2001), third preambular paragraph, and paras. 1, 3 and 5.

<sup>852</sup> Resolution 1373 (2001), fourth preambular paragraph.

<sup>853</sup> S/2001/946.

<sup>854</sup> *Ibid.*, p. 1.

<sup>855</sup> S/2001/947, S/2001/1005, S/2001/1103, S/2001/1104, S/2001/1127, S/2001/1171, S/2001/1193 and S/2002/275.

<sup>856</sup> S/2001/967 and S/2001/980.

<sup>857</sup> S/PV.4414, p. 13.

of individual or collective self-defence” as expressed in resolution 1368 (2001) of 12 September 2001.<sup>858</sup> By contrast, the representative of Malaysia cautioned that although the use of military force was “a legitimate course of action as an act of self-defence”, it was not “the only course of action, the most effective or politically wise”, given the consequences of the military action on the Afghan people.<sup>859</sup>

By a letter dated 16 November 2001 addressed to the Secretary-General,<sup>860</sup> the representative of Chile transmitted the statement on international terrorism issued by the Ministers for Foreign Affairs of the Rio Group on the subject of international terrorism at their meeting on 14 November 2001. The statement reaffirmed the strong support by the Rio Group for the action taken to combat terrorism, “in exercise of the right of self-defence, in the framework of the Charter of the United Nations”, following the “appalling attacks in New York and Washington, D.C.”.<sup>861</sup>

By a letter dated 20 November 2001 addressed to the Secretary-General,<sup>862</sup> the representative of Belgium presented the conclusions of the General Affairs Council of the European Union on Afghanistan. The General Affairs Council welcomed the recent developments on the ground which contributed to achieving the objectives of the international coalition against terrorism, and confirmed its unreserved support for the coalition’s action “undertaken in self-defence and in conformity with Security Council resolution 1368 (2001) of 12 September 2001”.

### **The situation concerning the Democratic Republic of the Congo**

At its 4092nd meeting, on 24 January 2000, the Council debated the conflict in the Democratic Republic of the Congo and the necessity of implementing the Lusaka Ceasefire Agreement. The representative of Argentina acknowledged that the conflict in the Democratic Republic of the Congo could not be analysed or effectively resolved without consideration of other key principles of international law, such as respect for the territorial integrity and political independence of the Democratic Republic of

the Congo, non-interference in its internal affairs, the withdrawal of all foreign forces that were on its territory without its explicit consent, the inalienable right to individual or collective self-defence and the illegality of the acquisition of territory by force”.<sup>863</sup>

At the 4273rd meeting, on 7 February 2001, the representative of the United States pointed out that the human rights situation in areas under Rwandan occupation or under the control of the Congolese Rally for Democracy (Rassemblement congolais pour la démocratie) was deeply troubling. He noted that Rwanda’s claims to the right of self-defence were “badly undercut by the numerous Congolese civilian victims”.<sup>864</sup>

At its 4317th meeting, on 3 May 2001, the Council discussed the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of the Congo. During the debate, the representative of Zimbabwe stated that the military intervention by Angola, Namibia and Zimbabwe came as a result of the appeal by the Government of the Democratic Republic of the Congo. He explained that the Democratic Republic of the Congo’s request to the Southern African Development Community was in line with Article 51 of the Charter regarding the right of a State to ask for military assistance when its security, sovereignty and territorial integrity were threatened.<sup>865</sup>

At the Council’s 4437th meeting, on 14 December 2001, the representative of the Democratic Republic of the Congo emphasized that no army of a SADC member country would have been brought into his country without the consent of the Government. He insisted that the Congolese Government viewed the condemnation of an initiative that enabled it to defend its national sovereignty as amounting to “depriving a State of its basic right under Article 51” of the Charter “to resort to individual or collective self-defence to preserve its sovereignty and territorial integrity”.<sup>866</sup> Similarly, the representative of Zimbabwe pointed out that the Government of the Democratic Republic of the Congo had invited the SADC countries to come to its assistance in fending off aggression against its territory in exercise of its right to

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<sup>858</sup> S/PV.4414 (Resumption 1), p. 22.

<sup>859</sup> *Ibid.*, p. 23.

<sup>860</sup> S/2001/1091.

<sup>861</sup> *Ibid.*, p. 2.

<sup>862</sup> S/2001/1101.

<sup>863</sup> S/PV.4092 (Resumption 1), p. 20.

<sup>864</sup> S/PV.4273, p. 5.

<sup>865</sup> S/PV.4317 (Resumption 1), p. 22.

<sup>866</sup> S/PV.4437, p. 7.

self-defence as enshrined in Article 51 of the United Nations Charter.<sup>867</sup>

By a letter dated 18 July 2001 addressed to the President of the Security Council,<sup>868</sup> the representative of the Democratic Republic of the Congo commented on the situation in Kisangani, following the refusal by Rwanda and its allies to demilitarize the city. He stressed that the reported abuses in the occupied territories could not be blamed on the Government, as such clashes were initiated by the Congolese resistance. He invoked peoples' right to resist foreign occupation and domination and characterized the situation in the Democratic Republic of the Congo as a "case of self-defence by the Congolese in the face of aggression".<sup>869</sup>

By a letter dated 25 February 2002 addressed to the President of the Security Council,<sup>870</sup> the representative of the Democratic Republic of the Congo warned that troops of the Rwandan Patriotic Army had flagrantly violated the ceasefire by attacking troops based in Muliro, in the vicinity of Lake Tanganyika. In response, faced with a "situation of self-defence", the Forces armées congolaises had put up fierce resistance to the attackers, and had succeeded in driving the enemy troops beyond Kamamba. By a subsequent letter dated 28 February 2002 addressed to the President of the Security Council,<sup>871</sup> the representative of the Democratic Republic of the Congo reiterated that the Congolese armed forces had acted in self-defence when resisting Rwandan armed forces and had pushed them back beyond Kamamba.

By another letter dated 18 March 2002 addressed to the President of the Security Council,<sup>872</sup> the representative of the Democratic Republic of the Congo underlined his Government's duty to safeguard the territorial integrity and national sovereignty of the Democratic Republic of the Congo, "as authorized by the Charter of the United Nations, above all Article 51" against attacks from Rwanda and the Rassemblement congolais pour la démocratie (RCD)-Goma.<sup>873</sup>

By a letter dated 15 April 2002 addressed to the President of the Security Council,<sup>874</sup> the representative of Rwanda reported that the Government of the Democratic Republic of the Congo had "allied itself with the planners and perpetrators of the Rwandan genocide". He asked the members of the Council to re-examine the circumstances which had led Rwanda "to intervene militarily in the Democratic Republic of the Congo, in exercise of the inherent right of self-defence, pursuant to Article 51 of the Charter of the United Nations".<sup>875</sup>

At the Council's 4634th meeting, on 24 October 2002, the representative of the Democratic Republic of the Congo reaffirmed his Government's conviction that it was within its legitimate rights to take all necessary measures to respond to the Rwandese armed aggression "in accordance with Article 51 of the Charter, including seeking assistance from the States members of the Southern Africa Development Community by invoking their natural right to collective and individual self-defence".<sup>876</sup>

#### The situation between Iraq and Kuwait

In a series of letters addressed to the Secretary-General and the President of the Security Council between 2000 and 2001,<sup>877</sup> the representative of Iraq,

<sup>874</sup> S/2002/420.

<sup>875</sup> At the 4532nd meeting, on 14 May 2002, in connection with the situation in the Great Lakes region, the representative of Rwanda stated that his country had intervened militarily in the Democratic Republic of the Congo "by virtue of its natural right of legitimate defence under Article 51 of the Charter of the United Nations" (S/PV.4532, p. 13).

<sup>876</sup> S/PV.4634, p. 8.

<sup>877</sup> S/2000/12, S/2000/45, S/2000/58, S/2000/85, S/2000/104, S/2000/134, S/2000/159, S/2000/191, S/2000/259, S/2000/291, S/2000/308, S/2000/341, S/2000/383, S/2000/439, S/2000/471, S/2000/507, S/2000/540, S/2000/571, S/2000/614, S/2000/628, S/2000/652, S/2000/694, S/2000/776, S/2000/735, S/2000/754, S/2000/774, S/2000/775, S/2000/795, S/2000/802, S/2000/820, S/2000/826, S/2000/848, S/2000/849, S/2000/850, S/2000/851, S/2000/895, S/2000/924, S/2000/968, S/2000/997, S/2000/1012, S/2000/1069, S/2000/1128, S/2000/1155, S/2000/1165, S/2000/1208, S/2000/1229, S/2000/1248, S/2001/37, S/2001/79, S/2001/116, S/2001/122, S/2001/141, S/2001/161, S/2001/168, S/2001/227, S/2001/248, S/2001/297, S/2001/316, S/2001/369, S/2001/484, S/2001/536, S/2001/620, S/2001/638, S/2001/650 and S/2001/692.

<sup>867</sup> *Ibid.*, p. 38.

<sup>868</sup> S/2001/709.

<sup>869</sup> *Ibid.*, p. 3.

<sup>870</sup> S/2002/198.

<sup>871</sup> S/2002/217.

<sup>872</sup> S/2002/286.

<sup>873</sup> *Ibid.*, p. 2.

denouncing the violations of Iraq's airspace by United States and United Kingdom aircraft based in Kuwait, Saudi Arabia and Turkey, informed the Council that the Iraqi air forces, "acting in self-defence", had engaged the aircraft and had driven them off.

At its 4152nd meeting, on 8 June 2000, the Council unanimously adopted resolution 1302 (2000), by which it reaffirmed the commitment of all Member States to the sovereignty and territorial integrity of Iraq and renewed the oil-for-food programme intended to alleviate the humanitarian impact of the sanctions imposed on Iraq. Responding to assertions made by the representative of the Russian Federation that the United States and United Kingdom aircraft had targeted civilian sites and the economic infrastructure in Iraq, the representative of the United States stated that the limited military operations of the United States aircraft were carried out "in self-defence" against military targets that threatened them and that they did not impact the overall humanitarian situation.<sup>878</sup>

By a letter dated 17 February 2001 addressed to the Secretary-General,<sup>879</sup> the representative of Iraq pointed out that the right of self-defence could not justify the military actions initiated by the United States against Iraq, which could be qualified as "a unilateral use of armed force against the sovereignty of an independent State". In a subsequent letter dated 20 February 2001 addressed to the Secretary-General,<sup>880</sup> the representative of Iraq reaffirmed his country's "legitimate and inherent right of self-defence under Article 51 of the Charter and its inherent right under international law to compensation for the damage, in both human and material terms", that was caused by military acts against its territory undertaken by the United States and the United Kingdom.<sup>881</sup> By the same letter, the representative of Iraq urged the Council to put an end to the aggression and to ensure that the aggressors would be made responsible. In identical letters dated 16 August 2001 addressed to the Secretary-General and the President of the Security Council,<sup>882</sup> the representative of Iraq replied to allegations by the United States that its military attacks were a response to provocation on the part of Iraqi air defence personnel. He cautioned that such a view

would mean that Iraq would be denied the right to self-defence affirmed by Article 51 of the Charter of the United Nations.<sup>883</sup>

At its 4531st meeting, on 14 May 2002, the Council debated a number of proposals by the Syrian Arab Republic with a view to amending the draft resolution before the Council extending the provisions of the oil-for-food programme.<sup>884</sup> In that connection, the representative of the Syrian Arab Republic affirmed that the proposals were intended to ensure that Iraq was not denied "its natural right to acquire means for self-defence, in accordance with Article 51 of the Charter, provided they did not include weapons of mass destruction".<sup>885</sup>

By a letter dated 28 May 2002 addressed to the Secretary-General,<sup>886</sup> the representative of Iraq reaffirmed that the Iraqi army and people would continue "to exercise the right to legitimate self-defence" against the attacks by the United States and urged the international community "to endeavour to halt this aggression and bring its perpetrators to account".<sup>887</sup> By a subsequent letter dated 11 June 2002 addressed to the Secretary-General,<sup>888</sup> the representative of Iraq declared that the United States had violated resolutions 255 (1968) and 984 (1995) by threatening to use nuclear weapons against States that did not have nuclear weapons. He made reference to the advisory opinion of the International Court of Justice of 8 July 1996<sup>889</sup> that held as unlawful the threat or use of force by means of nuclear weapons that was contrary to Article 2 (4) of the Charter and that failed to meet all the requirements of Article 51.<sup>890</sup> By a subsequent letter dated 15 August 2002 addressed to the Secretary-General,<sup>891</sup> the representative of Iraq reported on the effects of the United States-led military action against Iraq and requested the Council to recognize Iraq's right to defend itself under Article 51 of the Charter of the United Nations, and to reconsider

<sup>878</sup> S/PV.4152, p. 5.

<sup>879</sup> S/2001/146.

<sup>880</sup> S/2001/152.

<sup>881</sup> *Ibid.*, p. 2.

<sup>882</sup> S/2001/805.

<sup>883</sup> *Ibid.*, p. 2.

<sup>884</sup> S/2002/532. At the 4531st meeting, on 14 May 2002, the draft resolution was put to the vote and adopted as resolution 1409 (2002).

<sup>885</sup> S/PV.4531, p. 2.

<sup>886</sup> S/2002/589.

<sup>887</sup> *Ibid.*, p. 2.

<sup>888</sup> S/2002/659.

<sup>889</sup> A/51/218.

<sup>890</sup> S/2002/659, p. 2.

<sup>891</sup> S/2002/939.

its decisions that prevented Iraq from exercising its right of self-defence.

At its 4625th meeting, on 16 October 2002, the Council debated the question of Iraq's compliance with the norms of international law and relevant Security Council resolutions. The representative of the Islamic Republic of Iran noted that the concept of "pre-emptive strike" distorted the "conventional understanding of the right of self-defence as clearly enshrined in customary international law and codified in the United Nations Charter".<sup>892</sup> The representative of Cuba concurred that the collective security system should be based on cooperation and not on doctrines that "constitute a violation of the spirit and letter of the Charter of the United Nations and that distort the inherent right of legitimate self-defence, as recognized by Article 51 of the Charter".<sup>893</sup> During the course of the debate, several speakers made reference to the Secretary-General's address to the General Assembly on 12 September 2002 in which he emphasized that, while Article 51 of the Charter provided States with the right of self-defence, if attacked, when it came to addressing the broader threats to international peace and security, there was no substitute for the unique legitimacy provided by the United Nations.<sup>894</sup>

At the 4644th meeting on 8 November 2002, the representative of the United States, welcoming the adoption of resolution 1441 (2002), and affirming that the resolution did not contain any "hidden triggers" or "automaticity", noted that, "in one way or another", Iraq should be disarmed. He added that if the Council failed to act decisively in the event of further Iraqi violations, the resolution would "not constrain any Member State from acting to defend itself against the threat posed by Iraq or to enforce relevant United Nations resolutions and protect world peace and security".<sup>895</sup>

At its 4709th meeting, on 18 February 2003, the Council discussed the issue of disarmament in connection with Iraq. The representative of Cuba remarked that the doctrine of pre-emptive attack advocated the right to use, or threaten to use, force and to take unilateral military action against other States, in

advance and in the face of indeterminate and vague threats. He asserted that this interpretation was a violation of the spirit and the letter of the Charter of the United Nations and turned "the inherent right of legitimate self-defence into a blank cheque".<sup>896</sup> The representative of the Gambia argued that the position taken by African Governments on the issue was clear and fully consistent with the provisions of the Charter of the United Nations. Article 51 permitted the use of force only if an armed attack occurred and, even then, only until the Council had taken "measures necessary to maintain international peace and security".<sup>897</sup> Meanwhile, the representative of Zimbabwe reminded the Council that a Member State could engage in individual and collective measures of self-defence even without the United Nations but, as shown by the Iraq case, Security Council authority had "assisted United States policy by adding the teeth of economic sanctions, extending a broad political umbrella and authorizing on-site monitoring on foreign-State territory".<sup>898</sup>

At its 4717th meeting, on 11 March 2003, the Council continued its deliberations on Iraq's compliance with Council resolutions and, specifically, on the alleged possession by Iraq of weapons of mass destruction. The representative of Cuba emphasized that, in the absence of evidence from inspections by the United Nations Monitoring, Verification and Inspection Commission and the International Atomic Energy Agency, a war against Iraq would be "unjust and totally unnecessary". Consequently, he concluded that Iraq did not pose a credible threat or risk to the national security of the United States and war against Iraq could not be seen as "an act of self-defence".<sup>899</sup> In the continuation of the debate, the representative of the Sudan highlighted that the conventional view in international law was that the Charter prohibited war except in the case of self-defence, pursuant to Article 51 and to Chapter VII on the basis of Security Council resolutions".<sup>900</sup>

By a letter dated 16 March 2003 addressed to the Secretary-General,<sup>901</sup> the representative of Iraq declared that in view of the escalation of threats of

<sup>892</sup> S/PV.4625 (Resumption 1), p. 2.

<sup>893</sup> *Ibid.*, p. 23.

<sup>894</sup> S/PV.4625 (Resumption 2), p. 10 (India); and p. 12 (Viet Nam).

<sup>895</sup> S/PV.4644 and Corr.1, p. 3.

<sup>896</sup> S/PV.4709, p. 11.

<sup>897</sup> *Ibid.*, p. 18.

<sup>898</sup> S/PV.4709 (Resumption 1) and Corr.1, p. 33.

<sup>899</sup> S/PV.4717, p. 26.

<sup>900</sup> S/PV.4717 (Resumption 1), p. 3.

<sup>901</sup> S/2003/327.

aggression against Iraq and the increased massing of United States and British military in Kuwait, Iraq would take the necessary steps to exercise its legitimate right of self-defence, pursuant to Article 51 of the Charter of the United Nations, to protect the area of the port and city of Umm Qasr, the lives and property of Iraqi citizens and public property.

In the aftermath of the United States-led military action against Iraq initiated on 20 March 2003, by a letter dated 24 March 2003 addressed to the President of the Security Council,<sup>902</sup> the Permanent Observer of the League of Arab States to the United Nations transmitted a resolution adopted by the League that condemned the United States-led military action against Iraq, in conformity with Article 51 of the Charter.

At its 4726th meeting, on 26 March 2003, the Council convened in response to letters dated 24 March 2003 from the representatives of Iraq and Malaysia addressed to the President of the Council,<sup>903</sup> and discussed, *inter alia*, the issue of the use of force in connection with the right of self-defence. The representative of Yemen stressed that using force against others for reasons other than self-defence and without a Council mandate constituted a flagrant violation of the principles of international law and the Charter.<sup>904</sup> The representative of the Islamic Republic of Iran held that the unilateral war against Iraq did not meet any standard of international legitimacy and that it was not waged in self-defence against any prior armed attack nor could Iraq be considered an imminent threat against the national security of “belligerent Powers”.<sup>905</sup> Along the same lines, the representative of Lebanon cautioned that the invocation of the right to self-defence was an invalid argument, “since Article 51 of the Charter recognizes the inherent right of individual or collective self-defence only if an armed attack occurs against a Member of the United Nations”,<sup>906</sup> a condition not met in the case of Iraq. Finally, the representative of Iraq reiterated his country’s commitment to the Geneva Conventions and the provisions of international humanitarian law, which his country would not disobey except in “self-defence

of its people, its dignity, sovereignty and independence”.<sup>907</sup>

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

At its 4506th meeting, on 3 April 2002, the Council debated the situation in the occupied Palestinian territory, including Jerusalem. During the discussion, the representative of South Africa stressed that Israel’s decision “to destroy Palestinian infrastructure, to humiliate and humble Palestinian civilians and to threaten the life of the legitimate, elected and internationally recognized leader of the Palestinian people” could not be justified “as acts of counter-terrorism or even self-defence”.<sup>908</sup> The representative of Saudi Arabia concurred that Israel’s “state terrorism” was “not being undertaken in self-defence or as a means of protecting its citizens”, but as a means of protecting its occupation and of consecrating its usurpation of Palestinian territory.<sup>909</sup> Referring to the humanitarian situation in the occupied territories, the representative of Singapore acknowledged Israel’s right to “exercise self-defence” but emphasized that, under international law, Israel must allow immediate medical access to the occupied areas by international humanitarian agencies such as the International Committee of the Red Cross.<sup>910</sup> The representative of Cuba asserted that the “right of self-defence” could not justify the illegal occupation of territories or the forced exile of Palestinians from their land of birth.<sup>911</sup> The representative of Iraq warned that Israel and the United States sought to transform the right of self-defence into a political means to justify acts of aggression.<sup>912</sup> Similarly, the representative of the Sudan qualified as unacceptable Israel’s justification for its actions as aiming to combat terrorism or providing self-defence.<sup>913</sup> That point of view was reinforced by the representative of Qatar, who insisted that the “Israeli onslaught” could not be categorized as self-defence.<sup>914</sup> However, the representative of Canada expressed his Government’s recognition for “Israel’s right to exist within secure and

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<sup>902</sup> S/2003/365.

<sup>903</sup> S/2003/362 and S/2003/363, respectively.

<sup>904</sup> S/PV.4726, p. 13.

<sup>905</sup> *Ibid.*, p. 33.

<sup>906</sup> *Ibid.*, p. 35.

<sup>907</sup> S/PV.4726 (Resumption 1), p. 36.

<sup>908</sup> S/PV.4506 and Corr.1, p. 16.

<sup>909</sup> *Ibid.*, p. 17.

<sup>910</sup> *Ibid.*, p. 17.

<sup>911</sup> S/PV.4506 (Resumption 1) and Corr.1, p. 2.

<sup>912</sup> *Ibid.*, p. 10.

<sup>913</sup> *Ibid.*, p. 17.

<sup>914</sup> *Ibid.*, p. 20.

recognized borders and its right to self-defence against terrorist acts". Nonetheless, he recalled that the continuing Israeli incursions into Palestinian towns and cities fed the spiral of violence.<sup>915</sup> The representative of the Syrian Arab Republic insisted that Israel was misleading the world by claiming to commit its acts of aggression under "the guise of self-defence".<sup>916</sup> The representative of Mexico endorsed that view, declaring that his country was contesting Israel's invocation of the right to self-defence to explain its military incursions into Palestinian cities and the siege and kidnapping of the President of the Palestinian National Authority. He declared that, on the contrary, Israel was "not acting in accordance with the principles of legitimate self-defence recognized by Article 51 of the Charter of the United Nations".<sup>917</sup> The Secretary-General cautioned that the Israeli actions since the adoption of Security Council resolution 1402 (2002) did not help to stabilize the situation in the region and emphasized that Israel could not use the right to self-defence as a "blank cheque".<sup>918</sup> He added that there was an urgent need to comply with all provisions of international law, particularly those that ban indiscriminate and disproportionate use of force as well as the humiliating treatment of the civilian population.<sup>919</sup>

At the 4510th meeting, on 8 April 2002, speakers echoed the Secretary-General's position that Israel's right to self-defence was not a "blank cheque" and did not entitle it not to comply with the principles of international law.<sup>920</sup> The representative of the United Arab Emirates called for the international community to distinguish between "the terrorism pursued by the Israeli Government and the legitimate right of the Palestinian people to self-defence and to resist occupation" until their territories had been liberated and an independent State had been established in independent Palestine.<sup>921</sup>

<sup>915</sup> Ibid, p. 24.

<sup>916</sup> Ibid, p. 27.

<sup>917</sup> Ibid., p. 37.

<sup>918</sup> S/PV.4506 (Resumption 2), p. 5.

<sup>919</sup> Similarly, at the 4525th meeting, on 3 May 2002, the representative of Mauritius recognized Israel's right to protect its people from terrorist attacks, but stressed that Israel should be aware that self-defence was not a "blank cheque" (S/PV.4525 (Resumption 1) and Corr.1, p. 28).

<sup>920</sup> S/PV.4510, p. 21 (South Africa); and p. 23 (Kuwait).

<sup>921</sup> S/PV.4510 (Resumption 1), p. 22.

At the 4515th meeting, on 18 April 2002, the representative of Brazil made reference to the Secretary-General's comment regarding the right of self-defence not constituting a "blank cheque" for aggression when stressing that Israel must allow full freedom of movement for humanitarian agencies in the Palestinian territories.<sup>922</sup> In reference to the humanitarian crisis in the occupied territories, the representative of India also contended that the right of self-defence could not be used as justification for the crisis.<sup>923</sup> In response, the representative of Israel declared that the "Israeli actions in Jenin and elsewhere were undertaken reluctantly and in self-defence against an unrelenting campaign of violence and terrorism incited, supported and financed by the Palestinian Authority". He added that those actions were taken only after the Palestinian Authority was given ample opportunity to fulfill its commitment and after Israel had exercised restraint in the face of a wave of suicide-bombing massacres.<sup>924</sup>

At its 4588th meeting, on 24 July 2002, the Council met to discuss the escalation of military acts carried out by Israel in the Palestinian territory, and specifically the attack in the area of Yarmuk in the northern Gaza Strip. The representative of the Syrian Arab Republic reminded the Council that this was not the first time Israel had committed "massacre against the Palestinian people". He noted that Israel was pursuing "a systematic policy of destruction in a show of senseless force", for the sole purpose of preventing the Palestinian people from exercising their right to self-determination. He further added that Israeli actions perpetrated against the "defenceless Palestinian people" could not be regarded as acts of self-defence since Israel's nuclear weapons and weapons of mass destruction would be satisfactory for its defence, should it decide to withdraw to the lines it held prior to 4 June 1967.<sup>925</sup> Other speakers agreed that the international community should not consider the recent Israeli aggression to be an act of self-defence.<sup>926</sup> The President of the Council, speaking in his capacity as the representative of the United Kingdom, emphasized that, according to the norms of international law, actions taken by Israel in self-defence "must be

<sup>922</sup> S/PV.4515, p. 21.

<sup>923</sup> Ibid., p. 26.

<sup>924</sup> S/PV.4515 (Resumption 1), p. 21.

<sup>925</sup> S/PV.4588, pp.13-14.

<sup>926</sup> Ibid., p.21 (Egypt); and p. 28 (Iraq).



proportionate” and that Israel must avoid civilian casualties and avoid damaging civilian property and infrastructure.<sup>927</sup>

At its 4722nd meeting, on 19 March 2003, the Council was briefed on the situation in the Middle East by the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General. In his statement, he emphasized the obligation of Israel under international law to minimize the harm to innocent civilians but stressed that, like every other State, Israel had a “right to self-defence” which should be “exercised with caution, using reasonable means”.<sup>928</sup> Similarly, at the 4741st meeting, on 16 April 2003, the Assistant Secretary-General for Political Affairs recognized Israel’s right to self-defence, but cautioned that it should be exercised within the boundaries of international law.<sup>929</sup> At the 4846th meeting, on 21 October 2003, the Under-Secretary-General for Political Affairs reiterated that while “Israel’s right to defend itself against terrorist attacks” was recognized, the right of self-defence was neither unconditional nor unlimited and should be exercised in proportionate terms and in keeping with Israel’s obligations under international law.<sup>930</sup>

At its 4841st meeting, on 14 October 2003, the Council discussed the recent Israeli actions in the Rafah area. During the debate, the representative of France recognized “Israel’s inalienable right to security, its right to self-defence and its right to combat terrorist attacks”, but insisted that the struggle against terrorism could not justify everything and had to be

carried out with respect for the law.<sup>931</sup> A similar point was made by the representative of Italy, on behalf of the European Union and associated countries<sup>932</sup>, and by the representative of Norway.<sup>933</sup> By contrast, the representative of Saudi Arabia argued that the international community viewed as terrorists those who resisted occupation, while the “unjust occupier and oppressor” who had usurped all the rights of others was “allowed to enjoy the right of self-defence to further its colonialism and entrench its occupation”.<sup>934</sup> In response, the representative of Israel questioned whether “the energy of the Security Council should be expended debating security measures adopted in self-defence, or addressing the terrorism that made such measures necessary”.<sup>935</sup>

**Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939)**

**Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943)**

At its 4836th meeting, on 5 October 2003, the Council discussed two letters dated 5 October 2003 from the representatives of the Syrian Arab Republic and Lebanon, respectively.<sup>936</sup> By the two letters, the aforementioned representatives requested the Council to convene an emergency meeting to consider Israel’s military action targeting a site situated inside the territory of the Syrian Arab Republic. During the debate, the representative of Israel insisted that Israel’s response to the suicide bombings against a terrorist training facility in the Syrian Arab Republic was “a clear act of self-defence in accordance with Article 51 of the Charter”.<sup>937</sup> A series of speakers, however, contended that Israel’s actions did not qualify as an

<sup>927</sup> *Ibid.*, p. 20.

<sup>928</sup> S/PV.4722, p. 3. At the 4757th meeting, on 19 May 2003, the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General highlighted “Israel’s right to self-defence in the face of repeated terrorist attacks”. He maintained, however, that the United Nations must “repeat the call on the Israeli authorities to abandon the use of excessive force in densely populated areas and to protect the safety of civilians and preserve their property in keeping with Israel’s obligations under international humanitarian law” (S/PV.4757, p. 3).

<sup>929</sup> S/PV.4741 and Corr.1, p. 2. At the 4773rd meeting, on 13 June 2003, the Under-Secretary-General for Political Affairs reaffirmed Israel’s “right to self-defence in the face of repeated terrorist attacks”, but cautioned that it was “incumbent upon Israel to pursue its security and self-defence in a manner that minimizes the suffering of Palestinian civilians” (S/PV.4773, p. 4).

<sup>930</sup> S/PV.4846, p. 3.

<sup>931</sup> S/PV.4841, p. 18.

<sup>932</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia; Bulgaria, Romania and Turkey; and Iceland and Liechtenstein.

<sup>933</sup> *Ibid.*, p. 42 (Italy, on behalf of the European Union and associated countries); and p. 43 (Norway).

<sup>934</sup> *Ibid.*, p. 36.

<sup>935</sup> *Ibid.*, p. 50.

<sup>936</sup> S/2003/939 and S/2003/943.

<sup>937</sup> S/PV.4836 and Corr.1, p. 7.

exercise of the right to self-defence.<sup>938</sup> The Permanent Observer of the League of Arab States to the United Nations reaffirmed its support of the Syrian Arab Republic and any measures that it might adopt in “self-defence against such aggression”.<sup>939</sup> Similar views were expressed by other representatives in their statements.<sup>940</sup> The representative of Egypt referred to the similarities between the present situation and that of 30 years ago when Egypt and the Syrian Arab Republic took military action against Israel to regain Egyptian territory in the Sinai which at the time was occupied by Israel. He asserted that Egypt’s actions at that point in time were in conformity with the right of self-defence and had taken place on Egyptian territory.<sup>941</sup>

### Small arms

At its 4355th meeting, on 2 August 2001, the Council discussed the consequences of the illicit trafficking of small arms and light weapons, especially in conflict situations. The representative of the Russian Federation spoke in favor of a responsible policy in the supply of weapons to the international market, while expressing his support for the right to acquire weapons legally based on “the provisions of Article 51 of the United Nations Charter on the legitimate right of States to self-defence”.<sup>942</sup> The representative of Tunisia concurred that any action designed to cope with the problems of small arms and light weapons must take into account “the legitimate right of self-defence of States, in accordance with Article 51 of the Charter, and the right of peoples to self-determination”.<sup>943</sup> Several speakers endorsed the necessity of finding a solution for the problem of small arms that would respect States’ and peoples’ right to self-defence in conformity with Article 51 of the Charter.<sup>944</sup>

At its 4623rd meeting, on 11 October 2002, the Council debated the Secretary-General’s report on small arms.<sup>945</sup> Several speakers reminded the Council

of the importance of respecting the right to self-defence when considering a solution to the problem of small arms and emphasized that States should have the right to acquire and produce small arms for self-defence and national security.<sup>946</sup>

At its 4720th meeting, on 18 March 2003, the Council discussed the proliferation of small arms and light weapons and the phenomenon of mercenaries in view of their negative effects on West Africa. In that connection, the representative of the Syrian Arab Republic confirmed the need to respect international law and the purposes and principles of the Charter of the United Nations, in particular respect for national sovereignty, non-interference in the internal affairs of Members States and the right to individual or collective self-defence as stipulated by Article 51 of the Charter.<sup>947</sup>

### Threats to international peace and security caused by terrorist acts

At its 4413th meeting, on 12 November 2001, the Council discussed the threats to international peace and security caused by terrorist acts in the context of the attacks of 11 September 2001 against the United States. The representative of France argued that the armed response by the United States against Osama bin Laden, the Al-Qaida network and the Taliban system that supported them, was taken “in exercise of its right of self-defence” and therefore expressed “solidarity with that action”.<sup>948</sup> The representative of Norway concurred that resolution 1368 (2001) made it clear that the attacks on 11 September 2001 against the United States constituted a threat to international peace and security, and thus “triggered the right to self-defence”. He added that the pursuit of terrorists and their backers in Afghanistan was being carried out in the exercise of that right, and that his Government fully supported the action by the United States<sup>949</sup>

At the Council’s 4512th meeting, on 15 April 2002, in relation to the terrorist acts of 11 September 2001, the representative of Mexico noted that the fight against terrorism should conform to the provisions of

<sup>938</sup> Ibid., p. 8 (Pakistan); p. 17 (Morocco); and p. 18 (Jordan).

<sup>939</sup> Ibid., p. 14.

<sup>940</sup> Ibid., p. 23 (Libyan Arab Jamahiriya); and p. 24 (the Sudan).

<sup>941</sup> Ibid., p. 18.

<sup>942</sup> S/PV.4355, p. 13.

<sup>943</sup> Ibid., p. 16.

<sup>944</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 15 (Venezuela); p. 17 (Sudan); and p. 19 (Egypt).

<sup>945</sup> S/2002/1053.

<sup>946</sup> S/PV.4623, pp. 14-15 (Syrian Arab Republic); S/PV.4623 (Resumption 1), p. 5 (Egypt); p. 9 (Philippines); p. 15 (Israel); and p. 37 (Pakistan).

<sup>947</sup> S/PV.4720 (Resumption 1), p. 15.

<sup>948</sup> S/PV.4413, p. 7.

<sup>949</sup> Ibid., p. 10.

the Charter and of international law and that the use of force “must be governed by a valid interpretation of the legitimate right of self-defence and must in all circumstances conform to the principle of proportionality”.<sup>950</sup> The representative of Israel reiterated the provisions of resolutions 1373 (2001) and 1368 (2001), which recognized that terrorism constituted a threat to international peace and security and that States had “an inherent right to individual and collective self-defence against it”.<sup>951</sup>

At its 4618th meeting, on 4 October 2002, the Council continued its debate on ways to combat terrorism internationally. In that context, the representative of Egypt cautioned that terrorism should not be confused with “the legitimate right to self-defence against foreign occupation”.<sup>952</sup>

#### **The role of the Security Council in the pacific settlement of disputes**

At its 4753rd meeting, on 13 May 2003, the Council discussed the role of the Security Council in the pacific settlement of disputes. In his statement, the representative of India maintained that no State could permit aggression against its own territory. He added that nothing in the Charter could “impair the inherent right of each Member State to take all necessary measures for its self-defence” if there were an armed attack against it.<sup>953</sup> Referring to the conflict in Nagorny-Karabakh, and responding to the representative of Azerbaijan who stated that “one fifth” of his country’s territory remained “under Armenian occupation”,<sup>954</sup> the representative of Armenia argued that the conflict was not the result of armed aggression, as Azerbaijan tried to present it, “but the forced resort to self-defence of the Karabakh population”.<sup>955</sup>

#### **Role of the Security Council in the prevention of armed conflicts**

At its 4174th meeting, on 20 July 2000, the Council discussed the role of the Security Council in the prevention of armed conflicts. In that connection, the representative of Pakistan declared that the concept

of preventive disarmament needed further “discussion and elaboration, because such a concept would militate against the inherent right to self-defence sanctified by the Charter of the United Nations”.<sup>956</sup>

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

At its 4445th meeting, on 21 December 2001, the Council held a wrap-up discussion of the work of the Security Council during the year 2001. Referring to Afghanistan as a successful case, the representative of Singapore noticed that after 11 September 2001, the “decisive intervention of the United States-led military coalition, exercising the right of self-defence under Article 51 of the Charter, paved the way for a new Afghanistan to emerge” in which the humanitarian situation of the Afghan people had improved.<sup>957</sup>

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

#### **Communication concerning relations between Burundi and the Democratic Republic of the Congo**

By a letter dated 11 May 2001 addressed to the President of the Security Council,<sup>958</sup> the representative of Burundi reported that the Burundian rebellion in the Democratic Republic of the Congo, and the threat it posed to Burundian trade on Lake Tanganyika, led Burundi to deploy a military self-defence operation covering the part of the territory of the Democratic Republic of the Congo along Lake Tanganyika. He noted that the purpose of the Burundian military operation was “strictly confined to self-defence”, and that Burundi had never had “political, territorial or economic designs on the Democratic Republic of the Congo”.<sup>959</sup>

#### **Communications concerning the situation in Côte d’Ivoire**

By a letter dated 28 April 2003 addressed to the President of the Security Council,<sup>960</sup> the representative of Côte d’Ivoire informed the Council of the progress

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<sup>950</sup> S/PV.4512, p. 14.

<sup>951</sup> S/PV.4512 (Resumption 1), p. 12.

<sup>952</sup> S/PV.4618 (Resumption 1), p. 17.

<sup>953</sup> S/PV.4753 (Resumption 1), p. 7.

<sup>954</sup> *Ibid.*, p. 8.

<sup>955</sup> *Ibid.*, p. 14.

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<sup>956</sup> S/PV.4174 (Resumption 1), p. 5.

<sup>957</sup> S/PV.4445, p. 17.

<sup>958</sup> S/2001/472.

<sup>959</sup> *Ibid.*, p. 12.

<sup>960</sup> S/2003/510.

made in the implementation of the Linas-Marcoussis Agreement. He decried the international community's condemnation of the Government of Côte d'Ivoire when it exercised "its right to self-defence, as provided for in Article 51 of the Charter of the United Nations",<sup>961</sup> in response to the atrocities and violations of the Agreement.

#### **Communications concerning the situation between Eritrea and Ethiopia**

By a letter dated 7 April 2000 addressed to the President of the Security Council,<sup>962</sup> the representative of Ethiopia presented the state of affairs of the conflict between Eritrea and Ethiopia. He described the "liberation" of Badme by the Ethiopian forces in February 1999 as an "exercise of Ethiopia's right of legitimate self-defence under international law enshrined in Article 51 of the Charter of the United Nations".<sup>963</sup>

In response, the representative of Eritrea, by a letter dated 12 May 2000 addressed to the President of the Security Council,<sup>964</sup> called upon the Council to support the right of Eritrea to self-defence "in the wake of the war of aggression" carried out by Ethiopia.

By a letter dated 2 June 2000 addressed to the President of the Security Council,<sup>965</sup> the representative of Ethiopia asserted that his Government had exercised its right of self-defence, and that they had verified that its territories had been cleared of invading forces.

In response, the representative of Eritrea, by a letter dated 9 June 2000 addressed to the President of the Security Council,<sup>966</sup> argued that Ethiopia's offensive deep inside sovereign Eritrean territory was a flagrant act of invasion. He observed that while Eritrea had the right to self-defence, it could not engage in military activities in an area where it had redeployed "voluntarily from deep into its own sovereign territory".<sup>967</sup>

<sup>961</sup> Ibid., p. 2.

<sup>962</sup> S/2000/296.

<sup>963</sup> Ibid., p. 2.

<sup>964</sup> S/2000/420.

<sup>965</sup> S/2000/523.

<sup>966</sup> S/2000/554.

<sup>967</sup> Ibid., p. 2.

#### **Communications concerning relations between Georgia and the Russian Federation**

By a letter dated 11 September 2002 addressed to the Secretary-General,<sup>968</sup> the representative of the Russian Federation cautioned Georgia to establish a security zone in the area of the Georgia-Russian Federation border and respect Security Council resolution 1373 (2001) of 28 September 2001. If Georgia failed to comply, and did not put an end to "the bandit sorties and attacks on adjoining areas in the Russian Federation", the Russian Federation would reserve the right to act in accordance with Article 51 of the Charter of the United Nations.<sup>969</sup>

By a letter dated 13 September 2002 addressed to the Secretary-General,<sup>970</sup> the representative of Georgia expressed his Government's distress regarding the Russian Federation's threat to use force against Georgia. He conveyed his Government's willingness to cooperate in fighting global terrorism and qualified as unacceptable the Russian Federation's interpretation of Article 51 of the Charter<sup>971</sup> in a manner that would justify its aggressive intentions.

By identical letters dated 15 September 2002 addressed to the Secretary-General and the President of the Security Council,<sup>972</sup> the representative of Georgia reiterated the "unaptness" of Article 51 of the Charter to explain the Russian Federation's actions towards Georgia, considering that Georgia did not attack the Russian Federation.

#### **Communications concerning relations between India and Pakistan**

By a letter dated 23 January 2000 addressed to the Secretary-General,<sup>973</sup> the representative of Pakistan reported that, on 22 January 2000, Indian forces had crossed the border and attacked a Pakistani post between the two channels of the Tawi River. In response, he declared that the Pakistani forces "fought gallantly in self-defence and succeeded in repelling the Indian attack". He also announced that the Pakistan Armed Forces would "exercise their right of self-

<sup>968</sup> S/2002/1012.

<sup>969</sup> Ibid., p. 3.

<sup>970</sup> S/2002/1035.

<sup>971</sup> Ibid., p. 2.

<sup>972</sup> S/2002/1033.

<sup>973</sup> S/2000/48.

defence with their well-known sense of commitment and determination".<sup>974</sup>

By a letter dated 22 May 2002 addressed to the President of the Security Council,<sup>975</sup> the representative of Pakistan announced his Government's readiness to join the international coalition against terrorism. He added that Pakistan would nevertheless be ready to meet resolutely any aggression by India, in the exercise of its inherent right to self-defence, against the territory of Pakistan or the territories in Kashmir.

#### **Communications concerning relations between Iran and Iraq**

By a letter dated 15 February 2000 addressed to the Secretary-General,<sup>976</sup> the representative of the Islamic Republic of Iran reported that terrorist groups from the Iraqi territory were operating along the Iranian border. He noted that Iran reserved its legitimate right to self-defence and would respond to such hostile acts if they continued.

In a series of letters addressed to the Secretary-General,<sup>977</sup> the representative of the Islamic Republic of Iran reported that members of the terrorist Mojahedin Khalq Organization, authorized by the Government of Iraq to be based on Iraqi soil, engaged in acts of sabotage against Iran. He stated that Iran considered intolerable the continuation of such hostile acts and reserved its right to legitimate self-defence and removal of any threats.

By a letter dated 18 April 2001 addressed to the President of the Security Council,<sup>978</sup> the representative of the Islamic Republic of Iran informed the Council that in response to the acts of terrorism committed by members of the terrorist Mojahedin Khalq Organization based in Iraq, the armed forces of Iran, in accordance with Article 51, took a "limited and proportionate defensive measure" against a number of that entity's bases in Iraq. If the Government of Iraq were "to take appropriate measures" to put an end to the use of Iraqi territory for cross-border attacks and terrorist operations against Iran, it would render

unnecessary the measures taken in accordance with Article 51 by the Government of Iran.<sup>979</sup>

#### **Communications concerning relations between Iraq and Saudi-Arabia**

By identical letters dated 29 May 2001 addressed to the Secretary-General and the President of the Security Council,<sup>980</sup> the representative of Saudi Arabia reported that, on 23 May 2001, an Iraqi patrol crossed the Saudi-Iraqi international boundary. In response, members of the Saudi Frontier Force "were forced to respond to the fire in self-defence, and in the exchange between the Force and the members of the Iraqi patrol a number of Saudi soldiers were wounded".<sup>981</sup>

#### **Communications concerning the situation in Liberia**

By a letter dated 11 May 2001 addressed to the Secretary-General,<sup>982</sup> the representative of Liberia indicated that the arms embargo imposed against Liberia had impaired the country's capacity adequately to exercise its right of self-defence under Article 51 of the Charter and announced that his Government reserved the right to defend itself in that connection.

By a letter dated 4 June 2001 addressed to the President of the Security Council,<sup>983</sup> the representative of Liberia informed the Council of the armed attacks against Liberia from the territory of Guinea. He reasserted his Government's right to self-defence in the wake of armed aggression.

In a subsequent letter dated 6 September 2001 addressed to the President of the Security Council,<sup>984</sup> the representative of Liberia asked the Council "to grant a limited waiver of the arms embargo imposed by resolution 1343 (2001) to permit the importation of essential military supplies under United Nations monitoring to be used for the sole purpose of self-defence". He argued that Liberia had an inherent right to self-defence and a "constitutional responsibility to provide for the protection of its sovereign territory, and the life and property of its citizens".

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<sup>974</sup> Ibid., p. 2.

<sup>975</sup> S/2002/571.

<sup>976</sup> S/2000/128.

<sup>977</sup> S/2000/216, S/2000/271, S/2000/912, S/2000/1036 and S/2001/271.

<sup>978</sup> S/2001/381.

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<sup>979</sup> Ibid., p. 2.

<sup>980</sup> S/2001/547.

<sup>981</sup> Ibid., p. 1.

<sup>982</sup> S/2001/474.

<sup>983</sup> S/2001/562.

<sup>984</sup> S/2001/851.

By a letter dated 31 October 2001 addressed to the Secretary-General,<sup>985</sup> the representative of Liberia reiterated that the Liberian nation had been under attack from dissidents in Lofa County, in northern Liberia, since April 1999. He declared that the Government of Liberia, acting under Article 51 of the Charter of the United Nations, would utilize “every available means to defend its sovereignty, protect its territorial integrity and preserve its people”.<sup>986</sup>

At the 4405th meeting, on 5 November 2001, the representative of Liberia asked the Council to remove any constraints imposed on Liberia so that the country could defend its territory and sovereignty, “as is the inherent right of every Member of this Organization under its constitution and Article 51 of the Charter of the United Nations”.<sup>987</sup>

By a letter dated 20 March 2002 addressed to the President of the Security Council,<sup>988</sup> the representative of Liberia informed the Council that Liberia had “taken measures to provide for its legitimate self-defence in the wake of persistent armed attacks against its territory”. He further assured the Council that these measures were without prejudice to Security Council resolution 1343 (2001), and that his Government would continue to comply with the demands outlined in resolution 1343 (2001).

#### **Communications concerning violations of the Lusaka Agreement**

By a letter dated 8 November 2000 addressed to the President of the Security Council,<sup>989</sup> the

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<sup>985</sup> S/2001/1035.

<sup>986</sup> Ibid., p. 4.

<sup>987</sup> S/PV.4405, p. 27.

<sup>988</sup> S/2002/310.

<sup>989</sup> S/2000/1076.

representative of Zimbabwe dismissed the Rwandan allegations of repeated violations of the Lusaka Ceasefire Agreement by Southern African Development Community allied forces. He urged the Security Council to “see through Rwanda’s subterfuge. The so-called right to self-defence is nothing more than an excuse by Rwanda to launch an offensive”.<sup>990</sup>

#### **Communications concerning relations between the Sudan and Eritrea**

By a letter dated 7 October 2002 addressed to the President of the Security Council,<sup>991</sup> the representative of the Sudan drew attention to the Eritrean attacks on eight Sudanese locations along the Sudanese boundary with Eritrea. He noted that, at a time when Eritrea’s aggression against his country continued, the Sudan affirmed “its natural and legal right to defend its territory, its citizens and its installations, in accordance with the provisions of Article 51 of the Charter of the United Nations”<sup>992</sup> to repel the aggression.

#### **Communication concerning relations between Uganda and Rwanda**

By a letter dated 15 June 2000 addressed to the President of the Security Council,<sup>993</sup> the representative of Uganda reported repeated violations of the ceasefire in Kisangani by the Rwandan Patriotic Army which had forced the Ugandan People’s Defence Forces to “take self-defence measures, including the securing of Tshopo Bridge and establishment of a defence at Sotexki junction”.<sup>994</sup>

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<sup>990</sup> Ibid., p. 2.

<sup>991</sup> S/2002/1117.

<sup>992</sup> Ibid., p. 4.

<sup>993</sup> S/2000/596.

<sup>994</sup> Ibid., p. 4.



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## **Chapter XII**

### **Consideration of the provisions of other Articles of the Charter**



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## **Introductory note**

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. It consists of four parts: part I covers material pertaining to the purposes and principles of the United Nations, namely Articles 1 (2), 2 (4), 2 (5), 2 (6) and 2 (7). In part II, Articles 24 and 25 are considered in relation to the functions and powers of the Security Council. Part III deals with the practice of the Security Council in connection with the provisions of Chapter VIII of the Charter, Articles 52 to 54, concerning regional arrangements. Part IV considers miscellaneous provisions of the Charter, including material relating to Article 103.

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## Part I

### Consideration of the purposes and principles of the United Nations (Articles 1 and 2 of the Charter)

#### A. Article 1, paragraph 2

*Article 1, paragraph 2*

*[The Purposes of the United Nations are:]*

*To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.*

#### Note

During the period under review, there was one explicit reference to Article 1 (2) of the Charter in a resolution in connection with the situation in Western Sahara: by resolution 1359 (2001) of 29 June 2001, the Council reaffirmed the provisions contained in Article 1 (2) of the Charter.<sup>1</sup> There were also implicit references to the principle enshrined in Article 1 (2) in a number of resolutions and presidential statements.<sup>2</sup>

Article 1 (2) was explicitly invoked twice in the deliberations of the Council, without giving rise to a constitutional discussion. In the first instance, at the 4841st meeting, on 14 October 2003, concerning the situation in the Middle East, including the Palestinian question, the Article was invoked by the Permanent

Observer of Palestine in connection with the construction of a “separation wall” by Israel.<sup>3</sup> In the second instance, at the 4625th meeting, on 16 October 2002 concerning the situation between Iraq and Kuwait, the representative of Iraq argued that the United Nations sanctions against his country were “a violation of Article 1, paragraph 2 of the Charter, which deals with respect for the principle of equality among peoples — their equal rights and their right to self-determination”, since no sanctions should be imposed that would “cause international disagreements that are incompatible with the legal rights of the State or that prejudice the people’s right to self-determination”.<sup>4</sup>

The principle of self-determination was frequently invoked without giving rise to a constitutional discussion in the consideration of the agenda items entitled “The situation in East Timor”,<sup>5</sup> “The situation in Western Sahara”,<sup>6</sup> “The situation in the Middle East”,<sup>7</sup> and “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)”.<sup>8</sup> While there were also other references to the principle of self-determination, they were often incidental and too numerous to be listed here. The Council also called for, welcomed, or otherwise expressed support for the holding of elections in a number of cases, including those relating to Bosnia and Herzegovina,<sup>9</sup> Central African Republic,<sup>10</sup> Côte d’Ivoire,<sup>11</sup> East Timor,<sup>12</sup> Guinea-Bissau,<sup>13</sup> Haiti,<sup>14</sup> Liberia,<sup>15</sup> Sierra Leone,<sup>16</sup> Somalia,<sup>17</sup>

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<sup>1</sup> Resolution 1359 (2001), third preambular paragraph.

<sup>2</sup> In connection with the situation in Western Sahara, see resolutions 1292 (2000), fifth preambular paragraph; 1301 (2000), fifth preambular paragraph; 1309 (2000), fourth preambular paragraph; 1324 (2000), fourth preambular paragraph; 1342 (2001), fourth preambular paragraph; 1349 (2001), fourth preambular paragraph; 1359 (2001), sixth and eighth preambular paragraphs; 1429 (2002), sixth preambular paragraph and para. 1; and 1495 (2003), para. 1. In connection with the situation between Iraq and Kuwait, see resolution 1483 (2003), fifth preambular paragraph. In connection with the situation concerning the Democratic Republic of the Congo, see resolution 1291 (2000), second and third preambular paragraphs. In connection with the situation in East Timor, see resolutions 1366 (2001), fourth preambular paragraph; 1392 (2002), second and fifth preambular paragraphs; and 1410 (2002), second, third and sixth preambular paragraphs; S/PRST/2002/13, first paragraph; and S/PRST/2001/32, third, fifth and sixth paragraphs.

<sup>3</sup> S/PV.4841, p. 5 (Palestine).

<sup>4</sup> S/PV.4625 and Corr.1, p.7.

<sup>5</sup> See, for example, S/PV.4537, pp. 3, 8, 10, 17, 18, 22, 26, 31 and 33.

<sup>6</sup> See, for example, S/PV.4149, pp. 2, 3 and 5.

<sup>7</sup> See, for example, S/PV.4231, p. 4, 6, 14 and 25 or S/PV.4478 pp. 9, 25, 26, 29 and 35.

<sup>8</sup> See, for example, S/PV.4403, pp. 8 and 22.

<sup>9</sup> See, for example, S/PRST/2001/11.

<sup>10</sup> See, for example, S/PRST/2000/5.

<sup>11</sup> See, for example, S/PRST/2003/20.

<sup>12</sup> See, for example, resolutions 1338 (2001), fifth preambular paragraph; S/PRST/2000/26; and S/PRST/2000/39.

<sup>13</sup> See, for example, S/PRST/2000/11 and S/PRST/2000/37.

<sup>14</sup> See, for example, S/PRST/2000/8.

Tajikistan<sup>18</sup> and Kosovo, Federal Republic of Yugoslavia.<sup>19</sup>

The cases that follow reflect instances in which the Council dealt with questions relating to the principle enshrined in Article 1 (2), in connection with the situation in East Timor (case 1); Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999) (case 2); and the situation between Iraq and Kuwait (case 3).

### Case 1

#### The situation in East Timor

On 20 May 2002, the Security Council convened the 4537th meeting, on the occasion of the independence of East Timor. At that meeting, several speakers congratulated the people of East Timor for their efforts to attain independence by democratic means, including by exercising their right to self-determination.<sup>20</sup> The Deputy Secretary-General noted the courageous contribution made in 1999 by Indonesia and Portugal in the signing of the 5 May Agreement,<sup>21</sup> allowing the people of East Timor to express their will for self-determination.<sup>22</sup> The representative of Portugal congratulated East Timor which had “exerted the right of self-determination and affirmed its independence”.<sup>23</sup> The representative of Indonesia commemorated the milestone event of the “birth of East Timor as a fully-fledged sovereign and independent nation”.<sup>24</sup> Several

speakers noted the role played by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and that the General Assembly, through its adoption of resolution 56/282, had removed East Timor from the list of non-self-governing territories.<sup>25</sup>

At the same meeting, in a statement by the President, the Council welcomed the attainment of independence by East Timor, which marked the “culmination of a process of self-determination” and transition that had begun in May 1999, and looked forward to the day when East Timor would join as a State Member of the United Nations. The Council also affirmed its commitment to the sovereignty, political independence, territorial integrity and national unity of East Timor within its internationally recognized boundaries.<sup>26</sup>

Following its consideration of the application of East Timor for admission to the United Nations<sup>27</sup> at the 4542nd meeting on 23 May 2002, the Council adopted resolution 1414 (2002), by which it recommended to the General Assembly that East Timor be admitted to membership of the United Nations.<sup>28</sup>

### Case 2

#### Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)

As part of the political process designed to determine the future status of Kosovo, Federal Republic of Yugoslavia, in accordance with resolution 1244 (1999),<sup>29</sup> the Secretary-General, in his report of 22 April 2002, noted the need for a political roadmap for both the United Nations Interim Administration Mission in Kosovo (UNMIK), whose duties included facilitating such a process, and for the provisional institutions of self-government in Kosovo. He informed the Council that he had asked his Special Representative to develop benchmarks against which progress in the critical areas of the rule of law, functioning of democratic institutions, the economy,

<sup>15</sup> See resolutions 1408 (2002), seventh preambular paragraph and 1509 (2003), para. 3 (f).

<sup>16</sup> See resolutions 1346 (2001), fourth preambular paragraph; 1370 (2001), fifth preambular paragraph; 1389 (2002), fifth preambular paragraph; 1400 (2002), eighth preambular paragraph; and 1436 (2002), third preambular paragraph.

<sup>17</sup> See, for example, S/PRST/2001/1.

<sup>18</sup> See, for example, S/PRST/2000/17.

<sup>19</sup> See, for example, S/PRST/2001/8 and S/PRST/2001/34.

<sup>20</sup> S/PV.4537, pp. 10-11 (Costa Rica, on behalf of the Rio Group); p. 13 (Philippines); pp. 14-15 (Brazil); pp. 16-17 (Venezuela); pp. 18-19 (Jamaica, on behalf of the Caribbean Community); pp. 22-23 (Syrian Arab Republic); pp. 23-24 (Russian Federation); pp. 25-26 (Guinea); pp. 30-31 (Mexico); and pp. 31-32 (Colombia).

<sup>21</sup> Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor (S/1999/513, annex I).

<sup>22</sup> S/PV.4537., pp. 2-3.

<sup>23</sup> *Ibid.*, pp. 8-9.

<sup>24</sup> *Ibid.*, pp. 19-20.

<sup>25</sup> *Ibid.*, p. 7 (Spain); p. 14 (Cuba); p. 17 (Venezuela); and p. 27 (Bulgaria).

<sup>26</sup> S/PRST/2002/13, first and ninth paragraphs.

<sup>27</sup> S/2002/558.

<sup>28</sup> For details, see chapter VII.

<sup>29</sup> Resolution 1244 (1999), para. 11 (e).

freedom of movement, the return of internally displaced persons and refugees and contributions to regional stability could be measured.<sup>30</sup> In his report of 9 October 2002, the Secretary-General informed the Council that the benchmarks process was being publicized in Kosovo under the slogan of “Standards before Status”.<sup>31</sup>

By a presidential statement dated 6 February 2003, the Council reiterated its full support for the Standards before Status policy, which postulated targets in the eight key areas: functioning of the democratic institutions, the rule of law, freedom of movement, the return of refugees and internally displaced persons, economy, property rights, dialogue with Belgrade, and the Kosovo Protection Corps. The Council welcomed the presentation of a detailed plan for its implementation that would provide the appropriate baseline against which progress could be measured and stated that the fulfilment of those targets was “essential to commencing a political process designed to determine Kosovo’s future, in accordance with resolution 1244 (1999)”.<sup>32</sup>

At the 4742nd meeting, on 23 April 2003, most speakers reiterated their support for the Standards before Status approach to the situation in Kosovo reflected in resolution 1244 (1999).<sup>33</sup> The representative of the United Kingdom condemned unilateral statements on Kosovo’s final status from either side and agreed that there was considerable work to be done to fulfil the benchmarks. He also underlined the need for democratic governance to take hold in Kosovo before there could be a settlement of Kosovo’s status.<sup>34</sup> The representative of China expressed concern that, according to the report of the Secretary-General,<sup>35</sup> from time to time comments were made regarding the status of Kosovo. He reiterated the belief that Security Council resolution 1244 (1999) remained the international community’s policy basis with respect to the question of Kosovo.<sup>36</sup> The representative of

Pakistan, while supporting the full implementation of resolution 1244 (1999), noted that it considered the Standards before Status approach to be unique and applicable only in the case of Kosovo and expressed the view that the resolution of the status question should be the primary focus of the work of the Council in “all but the most exceptional cases”.<sup>37</sup> The representative of Albania reiterated the position that the processes underway in Kosovo were paving the way for the final status of Kosovo, which should “reflect and respect the right and will of all the people there to determine their future”.<sup>38</sup>

By a presidential statement dated 12 December 2003, the Council expressed support for the prospect of a comprehensive review of the progress of the Provisional Institutions of Self-Government in meeting the standards. The Council stressed that further advancement towards a process to determine the future status of Kosovo in accordance with resolution 1244 (1999) would depend on the positive outcome of that comprehensive review.<sup>39</sup>

### **Case 3** **The situation between Iraq and Kuwait**

At the 4726th meeting, on 26 March 2003, which was convened following the commencement of the military action against Iraq, the Secretary-General regretted that the intense efforts to achieve a peaceful solution, through the Security Council, had not succeeded and that the earlier inability of the Council to agree on a collective course of action placed an even greater burden on the Council. In that context, he emphasized that the Council should consider two guiding principles which should underpin all the efforts by the Council and its future decisions on Iraq: respect for the sovereignty, territorial integrity and independence of Iraq and respect for the right of the Iraqi people to determine their own political future and control their own natural resources.<sup>40</sup> During the debate, a number of speakers reiterated the importance of the two principles in finding a solution to the situation in Iraq.<sup>41</sup>

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<sup>30</sup> S/2002/436, para. 54.

<sup>31</sup> S/2002/1126, para. 2.

<sup>32</sup> S/PRST/2003/1.

<sup>33</sup> S/PV.4742, p. 5 (Chile); pp. 7-8 (Germany); pp. 9-10 (Bulgaria); pp. 10-11 (Russian Federation); pp. 11-12 (France); pp. 14-15 (United States); pp. 15-16 (Angola); and pp. 20-21 (Greece, on behalf of the European Union).

<sup>34</sup> *Ibid.*, pp. 16-17.

<sup>35</sup> S/2003/421, para. 44.

<sup>36</sup> S/PV.4742, p. 10.

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<sup>37</sup> *Ibid.*, pp. 6-7. This position was reiterated in subsequent meetings (see S/PV.4770, p. 13; S/PV.4853, p. 7; and S/PV.4886, p. 13).

<sup>38</sup> *Ibid.*, pp. 21-23.

<sup>39</sup> S/PRST/2003/26, fifth paragraph.

<sup>40</sup> S/PV.4726, pp. 3-4.

<sup>41</sup> *Ibid.*, pp. 17-18 (Libyan Arab Jamahiriya); pp. 20-21

By resolution 1472 (2003) of 28 March 2003, the Council, *inter alia*, reaffirmed the respect for the right of the Iraqi people “to determine their own political future and to control their own natural resources”.<sup>42</sup>

By resolution 1483 (2003) of 22 May 2003, the Council stressed the right of the Iraqi people freely to determine their own political future and control their own natural resources, expressed resolve that the day when Iraqis governed themselves had to come quickly, and encouraged efforts by the people of Iraq to form a representative government based on the rule of law that afforded equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender.<sup>43</sup> By the same resolution, the Council also noted the letter of 8 May 2003 from the representatives of the United States and the United Kingdom to the President<sup>44</sup> and recognized the specific authorities, responsibilities and obligations under applicable international law of those States as occupying Powers under unified command (the “Authority”). The Council called upon the Authority, consistent with the Charter and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people could freely determine their own political future.<sup>45</sup>

At the 4808th meeting, on 14 August 2003, the Council adopted resolution 1500 (2003), by which it welcomed the establishment of the broadly representative Governing Council of Iraq on 13 July 2003, as an important step towards the formation by the people of Iraq of an internationally recognized, representative government that would exercise the sovereignty of Iraq.<sup>46</sup> Following the vote, a number of speakers welcomed the establishment of the Governing Council as a first step towards a sovereign, stable and

democratic Iraq.<sup>47</sup> The representative of the United States maintained that in its expression of support for the Governing Council of Iraq, the resolution hastened the day when the people of Iraq would be in full command of their own affairs.<sup>48</sup> The representative of Pakistan wished that the resolution had contained the reaffirmation of other principles, including the right of the Iraqi people to choose their own political destiny and form of government and to exercise their right of self-determination.<sup>49</sup> The representative of Mexico held that, while his delegation associated itself with the consensus on welcoming the establishment of the interim Governing Council as a first logical step towards establishing a genuinely representative government that exercised the sovereignty of the Iraqi people, such welcome did not constitute legal recognition or endorsement, because the Governing Council was still under the authority of the occupying Powers.<sup>50</sup> The representative of the Syrian Arab Republic, which had abstained in the voting, stressed that the formation of the interim Governing Council of Iraq would gain credibility only from the fact that it was paving the way for the formation of a national government that represented the full spectrum of Iraqi society and was capable of fulfilling the aspirations of the Iraqi people. Therefore, only the Iraqi people could lend legitimacy to the Governing Council. He expressed the hope that the Council would work to, *inter alia*, establish an elected national government that enjoyed the support of the Iraqi people and was recognized by the international community.<sup>51</sup>

At the 4844th meeting, on 16 October 2003, the Council adopted resolution 1511 (2003), by which it reaffirmed the right of the Iraqi people freely to determine their own political future and control their own natural resources, and reiterated its resolve that the day when Iraqis govern themselves must come quickly. By the same resolution, the Council also underscored the temporary nature of the exercise by the Coalition Provisional Authority of the specific responsibilities, authorities and obligations under applicable international law recognized and set forth in resolution 1483 (2003), which would cease when an

(South Africa); pp. 23-24 (India); pp. 24-25 (Poland); and pp. 40-41 (the former Yugoslav Republic of Macedonia); S/PV.4726 (Resumption 1), pp. 26-27 (Russian Federation); pp. 28-29 (France); pp. 29-30 (Spain); pp. 30-31 (Chile); pp. 31-32 (Bulgaria); and pp. 33-34 (Germany).

<sup>42</sup> Resolution 1472 (2003), seventh preambular paragraph.

<sup>43</sup> Resolution 1483 (2003), fourth and fifth preambular paragraphs.

<sup>44</sup> S/2003/538.

<sup>45</sup> Resolution 1483 (2003), thirteenth preambular paragraph and para. 4.

<sup>46</sup> Resolution 1500 (2003), para. 1.

<sup>47</sup> S/PV.4808, p. 4 (Spain); pp. 4-5 (Germany); pp. 5-6 (Russian Federation); and p. 6 (China).

<sup>48</sup> *Ibid.*, pp. 2-3.

<sup>49</sup> *Ibid.*, pp. 3-4.

<sup>50</sup> *Ibid.*, p. 5.

<sup>51</sup> *Ibid.*, pp. 6-7.

internationally recognized, representative government established by the people of Iraq was sworn in and assumed the responsibilities of the Authority.<sup>52</sup>

Following the vote, the representative of the Russian Federation stated that it was essential that international efforts be united in the search for a long-term and stable political settlement that would enable the Iraqi people to take the leadership of their country into their own hands through a legitimately elected government. Regarding resolution 1511 (2003), he noted that the functions of the multinational force were subordinate to the tasks of promoting the restoration of the sovereignty of Iraq,<sup>53</sup> and as soon as that happened, the mandate of the multinational force would expire. If the legitimately elected government of Iraq requested some form of assistance to maintain security, then the Council would consider such a request.<sup>54</sup> The representative of Germany stated that his delegation would have wished for clearer guidelines with regard to timing of the transfer of sovereignty to the Iraqis, because only in that way could it be made clear that the current political status of Iraq was a temporary one. The representative of France also maintained that it would have been desirable for a clear text to set nearer and stricter deadlines for the transfer of responsibilities and the political transition. In particular, his country remained convinced that the sovereign assumption by the Iraqis of their own destiny was a necessary starting point to allow for the reconstruction and stabilization of Iraq; to marginalize those in Iraq who had chosen violence; and to mobilize the international community on behalf of Iraq.<sup>55</sup> The representative of Pakistan commented that the resolution would have gained considerably in clarity and credibility if it had clearly stipulated the principles which should guide the political transition in Iraq: respect for political independence, unity and territorial integrity of Iraq; the right of the Iraqi people to choose their own political destiny and form of Government; permanent sovereignty and control over their natural resources;

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<sup>52</sup> Resolution 1511 (2003), second preambular paragraph.

<sup>53</sup> By para. 13 of resolution 1511 (2003), the Council authorized a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq.

<sup>54</sup> S/PV.4844, pp. 2-3.

<sup>55</sup> *Ibid.*, p. 4.

and non-intervention and non-interference in their internal affairs.<sup>56</sup>

At the same meeting, the representative of the United Kingdom noted that, while resolution 1511 (2003) was clear about giving control of Iraq to its people as quickly as possible, it did not prescribe to the Iraqis artificial schedules for the transfer of power. Instead it put the people of Iraq in the driving seat through the Iraqi interim administration and reaffirmed the temporary nature of the Coalition's powers.<sup>57</sup> The representative of the United States maintained that resolution 1511 (2003) confirmed Iraqi leadership in establishing a political horizon for the transfer of power and made clear that the interim Iraqi leadership embodied Iraqi sovereignty during the transition. He stressed that the Coalition would not waver from its stated objectives of transferring governing responsibilities and authorities to the people of Iraq as soon as practicable.<sup>58</sup>

## B. Article 2, paragraph 4

### *Article 2, paragraph 4*

*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*

### Note

The practice of the Security Council touching upon the provisions of Article 2 (4), as illustrated by its decisions and deliberations, is captured below. In addition, there were a few communications containing explicit references to Article 2 (4) during the reporting period.<sup>59</sup>

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<sup>56</sup> *Ibid.*, pp. 6-8.

<sup>57</sup> *Ibid.*, pp. 4-5.

<sup>58</sup> *Ibid.*, pp. 9-10.

<sup>59</sup> See, for example, letter dated 5 October 2000 from the representative of Yugoslavia addressed to the President (S/2000/961); letters dated 14 February 2001, 12 April 2001 and 29 May 2001 from the representative of Cyprus addressed to the Secretary-General (S/2001/136, S/2001/395 and S/2001/541); letters dated 11 June 2002, 20 December 2002 and 9 March 2003 from the representative of Iraq addressed to the Secretary-General (S/2002/659, S/2002/1400 and S/2003/296); identical

### Decisions of the Security Council relating to Article 2 (4)

During the reporting period, the Council adopted no decisions which included an explicit reference to Article 2 (4). However, a number of decisions adopted by the Council contained references which might be considered to have a bearing on the principle enshrined in Article 2 (4). In dealing with a number of situations, the Council called upon the parties to refrain from any actions involving acts of violence and to exercise restraint,<sup>60</sup> called for parties to cease hostilities,<sup>61</sup> and

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letters dated 11 June 2002 from the representative of Mali addressed to the Secretary-General and the President (S/2002/657); and letter dated 24 March 2003 from the representative of the League of Arab States addressed to the President (S/2003/365).

<sup>60</sup> In connection with the situation in Georgia, see S/PRST/2000/32. In connection with Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999), see S/PRST/2000/35 and S/PRST/2001/8. In connection with the situation in Burundi, see resolution 1375 (2001), para. 2 and S/PRST/2003/30. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1399 (2002), para. 9; and 1493 (2003), para. 8. In connection with the situation in the Middle East, see resolutions 1337 (2001), para. 8; 1365 (2001), para. 9; 1391 (2002), para. 9; 1428 (2002), para. 9; 1461 (2003), para. 8; and 1496 (2003), para. 7; and S/PRST/2000/3. In connection with the situation between Eritrea and Ethiopia, see resolution 1430 (2002), para. 6. In connection with the situation in Somalia, see S/PRST/2001/30 and S/PRST/2003/2. In connection with the situation in Liberia, see resolution 1478 (2003), para. 9.

<sup>61</sup> In connection with the situation in Burundi, see resolutions 1286 (2000), para. 3; and 1375 (2001), para. 3; S/PRST/2000/29; S/PRST/2001/17; S/PRST/2001/26; S/PRST/2001/33; S/PRST/2001/35; and S/PRST/2002/40. In connection with Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999), see S/PRST/2000/40. In connection with the letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council, see S/PRST/2001/7. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1468 (2003), para. 8; and 1484 (2003), para. 5; S/PRST/2002/27; and S/PRST/2003/6. In connection with the situation in the Middle East, including the Palestinian question, see resolutions 1322 (2000), para. 4; 1397 (2002), para. 1; 1402 (2002), para. 2; and 1435 (2002), para. 1.

deplored and condemned violations of ceasefire agreements, and demanded respect for the ceasefire agreements.<sup>62</sup> Furthermore, the Council, in its decisions, reaffirmed the principle of non-threat or non-use of force in international relations, reiterated its position against interference by States in internal affairs of others and condemned hostile action across the border of a Member State, as elaborated below.

### Affirmation of the principle of non-threat or non-use of force

By a number of its decisions, the Council reaffirmed the principle of non-threat or non-use of force in international relations enshrined in Article 2 (4).

On the occasion of the Security Council meeting at the level of heads of State and Government, held on 7 September 2000 in the course of the Millennium Summit,<sup>63</sup> by resolution 1318 (2000), the Council adopted the declaration on ensuring an effective role for the Council in the maintenance of international peace and security, particularly in Africa, in which it reaffirmed the importance of adhering to the principles of non-threat or non-use of force in international relations in any manner inconsistent with the purposes of the United Nations, and the peaceful settlement of international disputes.<sup>64</sup>

In connection with the situation concerning the Democratic Republic of the Congo, by a series of resolutions,<sup>65</sup> the Council reaffirmed the obligation of

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<sup>62</sup> In connection with the situation in Georgia, see resolutions 1339 (2001), para. 10; 1364 (2001), para. 15; 1393 (2002), para. 8; 1427 (2002), para. 8; 1462 (2003), para. 10; and 1494 (2003), para. 19. In connection with the situation in the former Yugoslav Republic of Macedonia, see S/PRST/2001/20. In connection with the situation in Burundi, see S/PRST/2003/4. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1304 (2000), para. 3; 1332 (2000), fifth preambular paragraph; and 1493 (2003), para. 14; and S/PRST/2001/15. In connection with the situation in Liberia, see resolutions 1497 (2003), para. 12; and 1509 (2003), para. 4; and S/PRST/2003/14.

<sup>63</sup> S/PV.4194.

<sup>64</sup> Resolution 1318 (2000), annex, section I, second paragraph.

<sup>65</sup> Resolutions 1291 (2000), second preambular paragraph; 1304 (2000), third preambular paragraph; 1332 (2000), third preambular paragraph.; 1341 (2001), third preambular paragraph; 1355 (2001), third preambular



all States to “refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations”.

In connection with the situation in the Middle East, by a presidential statement,<sup>66</sup> the Council reaffirmed its commitment to the full sovereignty, political independence, territorial integrity and national unity of Lebanon within its internationally recognized boundaries and, in that context, it asserted that all States should refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations.”

#### **Reiteration of the principle of non-interference by States in internal affairs of others**

In some cases, the Council reiterated its position against interference by States in the internal affairs of other States. For example, in connection with the situation in Afghanistan, by a presidential statement of 7 April 2000,<sup>67</sup> the Council reiterated that “outside interference in the internal affairs of Afghanistan, including the involvement of foreign combatants and military personnel and the supply of weapons and other materials used in the conflict, should cease immediately.” It also called upon all States to take resolute measures to prohibit their military personnel from planning and participating in combat operations in Afghanistan, and immediately to withdraw their personnel and to assure that the supply of ammunition and other war-making materials was halted. The Council also expressed its deep concern at the continuing involvement in the fighting in Afghanistan, on the side of the Taliban forces, of thousands of non-Afghan nationals. By a presidential statement of 17 June 2003,<sup>68</sup> the Council expressed the belief that constructive and mutually supportive bilateral and regional relations between Afghanistan and all States, and in particular its neighbours, “based on the principles of mutual respect and non-interference in

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paragraph; 1376 (2001), second preambular paragraph; 1417 (2002), third preambular paragraph; 1445 (2002), third preambular paragraph; and 1493 (2003), third preambular paragraph.

<sup>66</sup> S/PRST/2000/3.

<sup>67</sup> S/PRST/2000/12.

<sup>68</sup> S/PRST/2003/7.

each others affairs,” were important for stability in Afghanistan.

Furthermore, in connection with the situation in Somalia, the Council, in a series of its decisions,<sup>69</sup> reiterated its insistence that all States, in particular those of the region, should “not interfere in the internal affairs of Somalia” and that such interference could jeopardize the sovereignty, territorial integrity, political independence and unity of that State.

In addition, in connection with the situation in Côte d’Ivoire, by a presidential statement of 20 December 2002, the Council stressed the need to respect the sovereignty, political unity and territorial integrity of that country and called upon all States in the region to “refrain from any interference in Côte d’Ivoire”.<sup>70</sup> Furthermore, by resolution 1464 (2003) of 4 February 2003, the Council called upon all States neighbouring Côte d’Ivoire to support the peace process by preventing “any action that might undermine the security and territorial integrity” of that country.<sup>71</sup> The appeal was renewed in a subsequent resolution.<sup>72</sup>

#### **Condemnation of hostile action across the border of a Member State**

In several situations under consideration, the Council called for cessation of involvement by foreign Governments in the conflicts and demanded the withdrawal of foreign forces from the territories of others. For example, in connection with the situation concerning the Democratic Republic of the Congo, the Council, by its decisions, repeatedly called for the withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo.<sup>73</sup> By resolution 1304 (2000) of 16 June 2000, the Council reiterated its

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<sup>69</sup> Resolutions 1425 (2002), third preambular paragraph; 1474 (2003), fourth preambular paragraph; and 1519 (2003), third preambular paragraph; S/PRST/2001/1; S/PRST/2001/30; S/PRST/2002/8; and S/PRST/2002/35.

<sup>70</sup> S/PRST/2002/42.

<sup>71</sup> Resolution 1464 (2003), para. 11.

<sup>72</sup> Resolution 1479 (2003), para. 13.

<sup>73</sup> Resolutions 1291 (2000), sixth preambular paragraph; 1304 (2000), para. 4; 1332 (2000), para. 10; 1341 (2001), para. 2; 1355 (2001), para. 3; 1376 (2001), para. 2; 1417 (2002), para. 11; 1445 (2002), para. 2; and 1468 (2003), paras. 11-12; S/PRST/2000/2; S/PRST/2001/29; and S/PRST/2002/5. In connection with ensuring an effective role of the Security Council in the maintenance of international peace and security, see S/PRST/2000/28.

unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani “in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo”; demanded that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani; and further demanded that Uganda and Rwanda, which had “violated the sovereignty and territorial integrity of the Democratic Republic of the Congo,” withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay.<sup>74</sup>

In other instances, the Council demanded cessation of military action and further use of force and called for withdrawal of troops. In connection with the situation between Eritrea and Ethiopia, the Council, in its resolutions, reaffirming the commitment of all Member States to the sovereignty, independence and territorial integrity of Eritrea and Ethiopia, demanded that both parties cease immediately all military action and refrain from the further use of force.<sup>75</sup>

In connection with the situation in the Middle East, including the Palestinian question, the Council, by resolution 1402 (2002) of 30 March 2002, called for the withdrawal of Israeli troops from Palestinian cities, including Ramallah,<sup>76</sup> and by resolution 1435 (2002) of 24 September 2002, it demanded the expeditious withdrawal of the Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000.<sup>77</sup>

Furthermore, on a number of occasions, the Council condemned incursions by States into other States, demanded that States, in particular, the neighbouring States, end military and financial support for armed groups and parties engaged in conflict, or insisted that the territory of a State should not be used to undermine stability in the area in question.

In connection with the situation in Somalia, the Council insisted, in its decisions, that the territory of Somalia should not be used to undermine stability in the subregion.<sup>78</sup>

In connection with the situation in Sierra Leone, by resolution 1470 (2003) of 28 March 2003, the Council noted with concern the instability on the border between Sierra Leone and Liberia, and demanded that the armed forces of Liberia and any armed groups “refrain from illegal incursions into the territory of Sierra Leone”.<sup>79</sup>

In connection with the situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone, the Council, by a presidential statement of 21 December 2000, condemned the incursion into Guinea by rebel groups coming from Liberia and Sierra Leone. The Council reaffirmed its commitment to the sovereignty, political independence and territorial integrity of Guinea, expressed its serious concern over reports that “external military support” was being provided to those rebel groups, and called upon “all States, particularly Liberia, to refrain from providing any such military support and from any act that might contribute to further destabilization of the situation on the borders between Guinea, Liberia and Sierra Leone.” The Council further called upon all States in the region to prevent armed individuals from using their national territory to prepare and commit attacks in neighbouring countries.<sup>80</sup>

In connection with the situation in Liberia, by resolution 1343 (2001) of 7 March 2001, the Council demanded that the Government of Liberia immediately cease its support for the Revolutionary United Front in Sierra Leone and for other armed rebel groups in the region.<sup>81</sup> Furthermore, in a number of resolutions, the Council demanded that all States in the region cease military support for armed groups in neighbouring countries and take action to prevent armed individuals and groups from using their territory to prepare and commit attacks on neighbouring countries, and refrain from any action that might contribute to further destabilization of the situation in the region.<sup>82</sup>

In connection with the situation concerning the Democratic Republic of the Congo, by resolution 1468 (2003) of 30 March 2003, the Council demanded that all Governments in the Great Lakes region immediately

<sup>74</sup> Resolution 1304 (2000), paras. 2, 3 and 4.

<sup>75</sup> Resolutions 1297 (2000), third preambular paragraph and para. 2; and 1298 (2000), fifth preambular paragraph and para. 2.

<sup>76</sup> Resolution 1402 (2002), para. 1.

<sup>77</sup> Resolution 1435 (2002), para. 3.

<sup>78</sup> S/PRST/2001/1 and S/PRST/2001/30.

<sup>79</sup> Resolution 1470 (2003), para. 14.

<sup>80</sup> S/PRST/2000/41.

<sup>81</sup> Resolution 1343 (2001), para. 2.

<sup>82</sup> *Ibid.*, para. 4; resolutions 1408 (2002), para. 4; 1478 (2003), para. 9; 1497 (2003), para. 9; 1509 (2003), para. 13; and 1521 (2003), para. 3.

cease military and financial support to all parties engaged in armed conflict in the Ituri region.<sup>83</sup> That demand was extended to all States in resolution 1493 (2003) of 28 July 2003, by which the Council demanded that “all States, in particular those in the region, including the Democratic Republic of the Congo” ensure that no direct or indirect assistance, especially military or financial assistance, was given to the movements and armed groups present in the Democratic Republic of the Congo.<sup>84</sup>

#### **Deliberations of the Security Council relating to Article 2 (4)**

During the period under review, there were instances in the deliberations of the Council in which explicit references were made to Article 2 (4).<sup>85</sup>

Three cases included below depict the debates and decisions relevant to the principle enshrined in Article 2 (4), in connection with (a) the situation concerning the Democratic Republic of the Congo (case 4); (b) the situation between Iraq and Kuwait (case 5); and (c) the letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council, and the letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (case 6).

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<sup>83</sup> Resolution 1468 (2003), para. 11.

<sup>84</sup> Resolution 1493 (2003), para. 18.

<sup>85</sup> See, for example, in connection with the situation concerning the Democratic Republic of the Congo, S/PV.4092, p. 12 (Democratic Republic of the Congo); in connection with the situation between Eritrea and Ethiopia, S/PV.4227, p. 8 (Argentina); in connection with the situation between Iraq and Kuwait, S/PV.4726, p. 5 (Iraq); in connection with the role of the Security Council in the pacific settlement of disputes, S/PV.4753, p. 10 (Mexico); in connection with the letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939) and the letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943), S/PV.4836, p. 17 (Morocco) and p. 18 (Jordan); and in connection with the situation in the Middle East, including the Palestinian question, S/PV.4841, p. 5 (Palestine).

#### **Case 4 The situation concerning the Democratic Republic of the Congo**

At the 4092nd meeting, on 24 January 2000, the Secretary-General, in his briefing, stressed as a top priority the need for an understanding of the limits of the use of force.<sup>86</sup> The President of the Democratic Republic of the Congo expressed his hope that the Council would be able to achieve agreement to “end the occupation” of a part of his country’s national territory by the “occupying armies of Rwanda, Uganda and Burundi,” in conformity with resolution 1234 (1999). He further recalled that Article 2 (3) and (4) of the Charter required Members to settle their international disputes by peaceful means and called on them to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.<sup>87</sup>

The President of Zimbabwe noted that the meeting was devoted to the preservation of the territorial integrity of the Democratic Republic of the Congo, as enshrined in Chapter I, Article 2, of the Charter. He added that the Southern African Development Community (SADC) allied forces had no territorial or other hidden agendas in that country and stressed that SADC was there, at the invitation of the sovereign Government of the Democratic Republic of the Congo, to uphold one of the most fundamental principles of the Charter, namely, respect for the sovereignty and territorial integrity of States and non-interference in the domestic affairs of a sovereign country.<sup>88</sup> Similarly, the representative of Namibia emphasized that his country was in the Democratic Republic of the Congo at the express invitation of that Government and in response to the request by a SADC member State. While reiterating the adherence of Namibia to the Ceasefire Agreement signed at Lusaka on 10 July 1999, he pointed out that there was the problem of interference by some of the other interlocutors who were not being too helpful because they seemed to have their own hidden agendas and pursued an outcome that was a blatant violation of the sovereignty, territorial integrity and political

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<sup>86</sup> S/PV.4092, p. 5.

<sup>87</sup> *Ibid.*, p. 12.

<sup>88</sup> *Ibid.*, p. 16.

independence and unity of the Democratic Republic of the Congo.<sup>89</sup>

The President of Uganda, for his part, argued that his country and the other neighbouring countries of the Democratic Republic of the Congo had legitimate security concerns, which had been recognized by the region and by the international community in the Lusaka Ceasefire Agreement. He also asked for the Council to be cognizant of the terrorist role played by the Sudan, sometimes using the territory of the Democratic Republic of the Congo, with or without cooperation from Kinshasa, to destabilize the neighbouring countries. The issue, according to him, was not the territorial integrity of the Congo, as his country supported the territorial integrity of all the countries in Africa. He expected all foreign troops to withdraw in accordance with a timetable to be worked out according to the Ceasefire Agreement, by the United Nations and the Organization of African Unity (OAU), under the supervision of the United Nations interpositional force.<sup>90</sup> After touching on the genocide in Rwanda and arguing its linkage to the situation concerning the Democratic Republic of the Congo, the President of Rwanda declared his country's commitment to the principles of the Ceasefire Agreement, stating that Rwanda had faithfully respected the ceasefire. Furthermore, he added that fundamental to them was article II of the Agreement, which addressed the security of the Democratic Republic of the Congo and its neighbouring countries.<sup>91</sup> A few speakers acknowledged that the lasting solution to the conflict would require taking into account the legitimate security concerns of neighbouring States.<sup>92</sup>

In his statement, the Secretary-General of the Organization of African Unity underscored the attachment of OAU to the principles enshrined in its Charter, of respect for the sovereignty, unity and territorial integrity of its member States and the peaceful settlement of disputes. Since those same principles had been under serious threat in the Democratic Republic of the Congo owing to the internal and external dimensions of that conflict, OAU, in tandem with the region and other partners, had

worked assiduously to bring an end to the conflict.<sup>93</sup> The Facilitator of the Inter-Congolese Dialogue, echoing the views expressed by the Secretary-General of OAU concerning the inviolability of the national sovereignty and territory integrity of the country in question, explained that the origins of the conflict in the Democratic Republic of the Congo reflected the internal political, economic and social problems within the country itself, as well as an external dimension relating to the security concerns of that country and of the neighbouring countries.<sup>94</sup>

A number of speakers stressed, *inter alia*, the importance of respect for the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for orderly withdrawal of all foreign forces.<sup>95</sup> In addition, the representative of Argentina argued that consideration of other key principles of international law was needed, including non-interference in the internal affairs of the Democratic Republic of the Congo, the inalienable right to individual or collective self-defence, the illegality of the acquisition of territory by force and the inviolability of boundaries.<sup>96</sup> The representative of the Russian Federation observed that, owing to the complex nature of the conflict in question, any settlement would also be complex, which would need to ensure security and the inviolability of the borders of all the States in the region and strengthen cooperation between those States on the basis of the principles of "non-intervention in the internal affairs of other States and the non-use of force, in accordance with the Charter".<sup>97</sup>

At the same meeting, the Council issued a presidential statement by which it reaffirmed the territorial integrity and national sovereignty of the Democratic Republic of the Congo, including over its natural resources, in accordance with the principles of the Charter of the United Nations and the Charter of OAU and in that regard, reiterated its call for the immediate cessation of hostilities and the orderly

<sup>89</sup> *Ibid.*, pp. 29-30.

<sup>90</sup> *Ibid.*, pp. 19-22.

<sup>91</sup> *Ibid.*, pp. 21-22.

<sup>92</sup> S/PV.4092 (Resumption 1), p. 20 (Argentina); S/PV.4092 (Resumption 2), p. 2 (Netherlands); and p. 8 (Malaysia).

<sup>93</sup> S/PV.4092, p. 24.

<sup>94</sup> *Ibid.*, p. 27.

<sup>95</sup> S/PV.4092 (Resumption 1), p. 9 (Mali); p. 11 (Canada); p. 17 (Bangladesh); and p. 18 (Tunisia); S/PV.4092 (Resumption 2), p. 3 (China); p. 5 (Jamaica); and p. 8 (Malaysia).

<sup>96</sup> S/PV.4092 (Resumption 1), p. 20.

<sup>97</sup> S/PV.4092 (Resumption 2), p. 9.

withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo, in accordance with the Ceasefire Agreement.<sup>98</sup>

At the 4104th meeting, on 24 February 2000, prior to the adoption of resolution 1291 (2000), the representative of Ukraine remarked that his Government attached particular significance to the fact that the draft resolution<sup>99</sup> was accompanied by the explicit reaffirmation of the purposes and principles of the Charter, and the emphasis on the obligation of all States to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the Organization.<sup>100</sup> By resolution 1291 (2000), the Council reaffirmed the above-mentioned principles and reiterated its call for the orderly withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo in accordance with the Ceasefire Agreement.<sup>101</sup>

By resolution 1304 (2000) of 16 June 2000, the Council, acting under Chapter VII of the Charter, reiterated its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, demanded that those forces and those allied to them desist from further fighting, and further demanded that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani. The Council also demanded the following: (a) that Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the Kampala Disengagement Plan; (b) that each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties, in conformity with the same timetable; and (c) that all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end, in conformity with the provisions of the Ceasefire

Agreement. The Council demanded, in that context, that all parties abstain from any offensive action during the process of disengagement and withdrawal of foreign forces.<sup>102</sup>

By resolution 1332 (2000) of 14 December 2000, the Council called for the withdrawal of Ugandan and Rwandan forces, and all other foreign forces, from the territory of the Democratic Republic of the Congo, in compliance with resolution 1304 (2000) and the Ceasefire Agreement, and urged the forces to take urgent steps to accelerate that withdrawal.<sup>103</sup>

At the 4271st meeting, on 2 February 2001, the Secretary-General, recalling the provisions of resolution 1304 (2000), looked forward to the early withdrawal of all foreign forces, as provided by the Ceasefire Agreement.<sup>104</sup> The President of the Democratic Republic of the Congo invited the authorities in Rwanda, Uganda and Burundi to return to a better sense of good-neighbourliness, with a view to achieving a peaceful settlement of differences. He further underscored the commitment of his country to relaunch the Ceasefire Agreement so that it would, among others, preserve the fundamental attributes of his country, including independence, sovereignty, territorial integrity and unity, which the Council had continuously reconfirmed. He also appealed to the international community to support the Congolese people as they moved towards the dialogue of peace which must be among them “without any interference”.<sup>105</sup>

A number of speakers considered it imperative for foreign forces to withdraw in order to establish peace in the Democratic Republic of the Congo.<sup>106</sup> The representative of the United States held that the Government of the Democratic Republic of the Congo had a right, under the Charter, to demand that uninvited foreign forces depart its territory. At the same time, he maintained that the Governments of Rwanda and Uganda had a right, under the Charter, to demand that the Congolese territory not be used as a launching pad for attacks against their countries. He further argued

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<sup>98</sup> S/PRST/2000/2.

<sup>99</sup> S/2000/143.

<sup>100</sup> S/PV.4104, p. 2.

<sup>101</sup> Resolution 1291 (2000), second, third and sixth preambular paras.

<sup>102</sup> Resolution 1304 (2000), eighteenth preambular paragraph and paras. 2-5.

<sup>103</sup> Resolution 1332 (2000), para. 10.

<sup>104</sup> S/PV.4271, p. 3.

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

<sup>106</sup> *Ibid.*, p. 8 (France); p. 15 (Columbia); p. 16 (Mauritius); p. 17 (Ukraine); p. 18 (Norway); p. 20 (Russian Federation); and p. 21 (Singapore).

that just as the international community was justified in calling for the withdrawal of Rwandan and Ugandan forces from the Democratic Republic of the Congo, so too must they call on all the Lusaka signatories to abandon support for former members of the Rwandese Armed Forces (ex-FAR) and Interahamwe.<sup>107</sup>

The President of the Democratic Republic of the Congo, in responding to various statements made in the meeting, added that the final objective of democratization would come about only if the forces that had “invaded” his country were one way or the other forced to get out of it so that the country regained its national territorial integrity. He highlighted that his country was “under foreign occupation” which must end as soon as possible.<sup>108</sup>

By a letter dated 13 July 2001 addressed to the Secretary-General, the representative of the Democratic Republic of the Congo expressed his concern over the “openly proclaimed desire” of Rwanda and the Rassemblement congolais pour la démocratie (RCD-Goma) to “create a secessionist State” in the eastern Democratic Republic of the Congo, which was in violation of the principle of the charter of OAU regarding the inviolability of the borders that had emerged from decolonization, and of the purposes and principles of the Charter of the United Nations, as well as of the relevant provisions of all the resolutions by which the Council reaffirmed the sovereignty, territorial integrity and political independence of his country and all the States in the region.<sup>109</sup> In response, the representative of Rwanda, in a letter dated 19 July 2001 addressed to the President, rejected the claim made by the Democratic Republic of the Congo, by, inter alia, recalling the issue of nationality in the Democratic Republic of the Congo, which, according to him, affected neighbouring countries such as Rwanda.<sup>110</sup>

At the 4348th meeting, on 24 July 2001, the representative of the Democratic Republic of the Congo commented that all the leaders of the region had been able to confirm their willingness to withdraw from the territory of his country in accordance with resolution 1304 (2000). However, while certain parties were indeed withdrawing some of their contingents,

others showed reluctance to do so, combining withdrawal with rotation and redeployment and expressing their willingness to maintain troops in the border towns that happened to be rich in natural resources. With respect to the security concerns raised by certain parties and in particular by Rwanda, the representative maintained that those concerns represented yet another pretext aimed at maintaining the Rwandan occupation of his country. Recalling that from 1997 to 1998 his country had benefited from technical military assistance with Rwanda, with a view to helping to reorganize the Congolese armed forces, he pointed out that throughout that entire period, no one had mentioned any security concerns nor any relating to activities of former members of the Rwandese Armed Forces or Interahamwe. He argued that it had taken months for Rwanda to recognize the extent of its intervention, and that Rwanda then used as a justification the need to defend those Congolese whose nationality had been supposedly questioned and who had been reportedly persecuted by the Congolese authority. Referring to the 4273rd meeting,<sup>111</sup> the representative argued that the President of Rwanda did not answer convincingly the questions addressed to him “concerning the presence of forces of aggression on the Congolese territory, the permeability of common borders and the need to build a free, secure and democratic Rwandan society based on human rights, equality and respect for diversity”. He stressed that his country had no hidden agenda in Rwanda and that his country, which bore “no responsibility for the Rwandan genocide of 1994”, would not tolerate its territory being used as a base for the launching of operations aimed at destabilizing neighbouring countries with which it wished to be on good terms. Furthermore, he argued that the security guarantees in the Great Lakes region should not come at the expense of the sovereignty of the Democratic Republic of the Congo nor interfere with its territorial integrity.<sup>112</sup>

By a presidential statement dated 24 July 2001,<sup>113</sup> the Council reiterated its demand that all parties accelerate the finalization and the implementation of comprehensive plans for the orderly withdrawal of all foreign troops from the territory of the Democratic Republic of the Congo and the disarmament,

<sup>107</sup> Ibid., pp. 6-8.

<sup>108</sup> Ibid., p. 22.

<sup>109</sup> S/2001/694, p. 1.

<sup>110</sup> S/2001/716.

<sup>111</sup> S/PV.4273, under the agenda item entitled “The situation in the Great Lakes region”.

<sup>112</sup> S/PV.4348, pp. 29-30.

<sup>113</sup> S/PRST/2001/19, seventh and ninth paragraphs.

demobilization, reintegration, repatriation and resettlement of all armed groups referred to in chapter 9.1 of annex A to the Lusaka Ceasefire Agreement. Concerning the Inter-Congolese Dialogue, the Council emphasized the importance of an open, representative and inclusive dialogue, free from outside interference, leading to a consensus settlement.

By resolution 1376 (2001) of 9 November 2001, the Council reaffirmed the obligation of all States to refrain from the use of force against the territorial integrity and political independence of any State or in any other manner inconsistent with the purposes of the United Nations, and reaffirmed also the political independence, territorial integrity and sovereignty of the Democratic Republic of the Congo, including over its natural resources. It further welcomed the withdrawal of some foreign forces from the Democratic Republic of the Congo, including the full Namibian contingent, as a positive step towards the full withdrawal of all foreign forces, and requested all States that had not yet done so to begin to implement, without delay, their full withdrawal in accordance with resolution 1304 (2000) of 16 June 2000.<sup>114</sup>

By resolution 1417 (2002) of 14 June 2002, the Council, reaffirming the obligation of all States to refrain from the use of force against the territorial integrity and political independence of any State or in any other manner inconsistent with the purposes and principles of the United Nations, welcomed the commitments made by the President of the Democratic Republic of the Congo, during the Security Council mission to the Great Lakes, not to support the armed groups referred to in the Lusaka Ceasefire Agreement, and urged the Government of the Democratic Republic of the Congo urgently to take all necessary steps to ensure that its territory was not used to support those armed groups.<sup>115</sup>

At the 4596th meeting, on 8 August 2002, held following the signing of the Peace Agreement between the Governments of the Democratic Republic of the Congo and the Republic of Rwanda on the Withdrawal of the Rwandan Troops from the Territory of the Democratic Republic of the Congo and the Dismantling of the ex-FAR and Interahamwe Forces in

the Democratic Republic of the Congo, signed in Pretoria on 30 July 2002,<sup>116</sup> the representative of the Democratic Republic of the Congo thanked the Council for having convened a meeting to welcome the “recent and very significant advances made to put an end to the war of aggression” that had been waged against his country for more than four years. He affirmed that the Pretoria Agreement fell within the framework of the Lusaka Ceasefire Agreement and was in conformity with the provisions of relevant resolutions calling for the orderly withdrawal of all foreign troops. The representative stated that among the countries that had come to the assistance of his country in “defending its national sovereignty and its territorial integrity”, Namibia had totally withdrawn and Angola and Zimbabwe had repatriated a large number of their contingents. On the other hand, withdrawal movements of the uninvited forces had been observed only on the part of Uganda and Burundi. Rwanda had considerably increased its forces and remained the only country engaged in large-scale military operations on Congolese soil, he added. He asserted that the Pretoria Agreement was “the most serious opportunity for peace” since the beginning of war on 2 August 1998 and provided a response to security concerns expressed by Rwanda, although it was his country that had been experiencing total insecurity for four years. He believed that the Pretoria Agreement also envisaged the restoration of the national sovereignty and territorial integrity of his country, which had been gravely imperiled by the Rwandan presence, and embodied the ingredients for a return to normality for the Great Lakes region. The representative maintained that it was urgent that his country conclude with the Governments of Uganda and Burundi agreements similar to the Pretoria Agreement.<sup>117</sup>

The representative of Rwanda also praised the signing of the Pretoria Agreement which he considered was an “unprecedented” step towards the resolution of the conflict. He observed that for a long time the Council had urged Rwanda and the Democratic Republic of the Congo to work together to resolve the root causes of the conflict, that is, to find how to dissuade the ex-FAR and Interahamwe forces from carrying out attacks on Rwanda from bases in the Democratic Republic of the Congo. In his opinion, the disarmament, demobilization and repatriation of the

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<sup>114</sup> Resolution 1376 (2001), second preambular paragraph and para. 2.

<sup>115</sup> Resolution 1417 (2002), third preambular paragraph and para. 10.

<sup>116</sup> S/2002/914, annex.

<sup>117</sup> S/PV.4596, pp. 4-7.

armed forces in the Lusaka Ceasefire Agreement was not effectively implemented, and therefore, the security threat to affected countries, principally Rwanda, had not been reduced. What the Pretoria Agreement brought to the process was a solemn commitment by the Government of the Democratic Republic of the Congo to track, assemble and disarm former members of the Rwandese Armed Forces and Interahamwe forces. He stated that his country had undertaken to withdraw its troops from the Democratic Republic of the Congo as soon as the above-mentioned process got under way and was judged to be irreversible. The representative further stated that Rwanda fully recognized the problems caused by the presence and activities of their nationals in the Democratic Republic of the Congo and welcomed the decision of the Government of the Democratic Republic of the Congo to negotiate the Pretoria Agreement.<sup>118</sup>

By a presidential statement of 15 August 2002,<sup>119</sup> the Council welcomed the Peace Agreement between the Governments of the Democratic Republic of the Congo and Rwanda and the Programme of Implementation of the Peace Agreement between the Governments of the Democratic Republic of the Congo and the Republic of Rwanda on the Withdrawal of the Rwandan Troops from the Territory of the Democratic Republic of the Congo and the Dismantling of the ex-Rwandese Armed Forces and Interahamwe Forces in the Democratic Republic of the Congo, signed in Pretoria on 30 July 2002. The Council also welcomed the commitment of the Government of Rwanda, under the Pretoria Agreement, regarding the withdrawal of its troops from the territory of the Democratic Republic of the Congo, and took note of the submission by Rwanda of its initial troop withdrawal plan to the "Third Party".

By a presidential statement of 18 October 2002,<sup>120</sup> the Council welcomed the progress on withdrawal of foreign forces from the territory of the Democratic Republic of the Congo and stressed that the withdrawals must be completed. The Council called upon all parties to the conflict to cease hostilities immediately and without preconditions, and called upon the Government of the Democratic Republic of the Congo and all Governments in the region to exert their influence on all the parties to that effect and to refrain from any action which would further exacerbate

the situation or undermine the peace process. The Council further stressed that no Government, military force or organization or individual should provide military or other supplies or any other form of support to any of the groups involved in the fighting in the east of the Democratic Republic of the Congo and in Burundi.

By resolution 1445 (2002) of 4 December 2002, the Council welcomed the signature of the Luanda Agreement on 6 September 2002 by the Democratic Republic of the Congo and Uganda,<sup>121</sup> The Council also welcomed the decision taken by all foreign parties to withdraw fully their troops from the territory of the Democratic Republic of the Congo, as well as progress in the implementation of those processes, including the withdrawals by Angola, Rwanda, Uganda and Zimbabwe. The Council noted the commitment of Uganda under the Luanda Agreement to complete the withdrawal of its forces no later than 15 December 2002, welcomed the positive interaction between the Governments of the Democratic Republic of the Congo and Uganda since the signing of the Agreement, and called upon both parties to work, together and with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), towards conditions that would allow the Agreement to be implemented in full. The Council reiterated that no Government, military force or organization or individual should provide military or any other form of support to any of the groups involved in the fighting in the east of the Democratic Republic of the Congo, in particular in Ituri. The Council encouraged the Governments of the Democratic Republic of the Congo and, respectively, Rwanda and Uganda to take steps to normalize their relations and to cooperate to ensure mutual security along their borders, as provided for in the Pretoria Agreement and the Luanda Agreement, and also encouraged the Governments of the Democratic Republic of the Congo and Burundi to take similar steps.<sup>122</sup>

By a presidential statement of 16 May 2003,<sup>123</sup> the Council called upon all parties in the region to end

<sup>118</sup> Ibid., pp. 8-9.

<sup>119</sup> S/PRST/2002/24.

<sup>120</sup> S/PRST/2002/27.

<sup>121</sup> Treaty on the withdrawal of Ugandan troops from the Democratic Republic of the Congo, cooperation and normalization of relations between the Democratic Republic of the Congo and the Republic of Uganda (S/2003/213, annex).

<sup>122</sup> Resolution 1445 (2002), paras. 1, 2, 16, 17 and 20.

<sup>123</sup> S/PRST/2003/6.



all support to armed groups and to refrain from any action that might compromise the restoration of peace in Ituri, in particular the work of the Ituri interim administration, and reaffirmed its strong commitment to the sovereignty of the Democratic Republic of the Congo over all its territory.

By resolution 1484 (2003) of 30 May 2003, the Council, acting under Chapter VII of the Charter, demanded that all Congolese parties and all States in the Great Lakes region refrain from any military activity or from any activity that could further destabilize the situation in Ituri, and in that regard demanded also the cessation of all support, in particular weapons and any other military materiel, to the armed groups and militias, and demanded further that all Congolese parties and all States in the region actively prevent the supply of such support.<sup>124</sup>

#### **Case 5 The situation between Iraq and Kuwait**

The Security Council convened the 4726th meeting, on 26 March 2003, in connection with the situation between Iraq and Kuwait, in response to letters dated 24 March 2003 from the representatives of Iraq and Malaysia addressed to the President of the Council.<sup>125</sup> The letter from the representative of Iraq, in particular, requested the convening of an urgent meeting with a view to “halting American-British aggression and the immediate withdrawal of the invading forces outside the international boundaries” of Iraq, reconfirming the sovereignty, political independence and territorial integrity of Iraq and preventing all States from interfering in its internal affairs.<sup>126</sup>

At the meeting, the representative of Iraq argued that his country was subject to the American-British full-scale military aggression since 20 March 2003, which constituted a violation of international law and the Charter, in particular Article 2 (4) and (7). He emphasized that the Council had not authorized the use of force by those two States and that resolution 1441 (2002) did not allow the use of force.<sup>127</sup> The latter argument was supported by the Libyan Arab

Jamahiriya.<sup>128</sup> Similarly, pointing out that there was no authorization by the Council of the military action, the representative of Malaysia underlined that the pre-emptive use of force threatened the foundation of international law.<sup>129</sup> The representative of Yemen stressed that using force against others for reasons other than self-defence and without a Council mandate constituted a flagrant violation of the principles of international law and the Charter.<sup>130</sup> The representatives of Yemen and the Libyan Arab Jamahiriya further regarded the declared policy to change the Iraqi regimens “an act of aggression” carried out against a sovereign, independent State that was a State Member of the Organization, and as interference in the domestic affairs of Iraq.<sup>131</sup> A number of other speakers concurred that the military action was a violation of the Charter, calling it a “unilateral action,” “act of aggression” and “unilateral attack.”<sup>132</sup> Furthermore, the representative of the Islamic Republic of Iran held that the unilateral war against Iraq did not meet any standard of international legitimacy and that it was not waged in self-defence against any prior armed attack nor could Iraq be considered an imminent threat against the national security of the “belligerent Powers”.<sup>133</sup>

According to the representatives of Argentina and Morocco, the use of force should be the last resort, once all peaceful means had been exhausted, and the use of force should be authorized by the Security Council.<sup>134</sup> The representative of Venezuela maintained that the Council must categorically reject the use of force, and therefore it should direct its efforts toward achieving an immediate ceasefire and ending the use of force.<sup>135</sup>

In contrast, the representative of Poland regretted that Iraq had not abided by the provisions of resolution 1441 (2002) and held that the resolution contained “a warning of grave consequences in case of non-compliance, based on Chapter VII” of the Charter.

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<sup>124</sup> Resolution 1484 (2003), ninth preambular paragraph and para. 7.

<sup>125</sup> S/2003/362 and S/2003/363, respectively.

<sup>126</sup> S/2003/362.

<sup>127</sup> S/PV.4726, pp. 4-5.

<sup>128</sup> *Ibid.*, p. 17.

<sup>129</sup> *Ibid.*, p. 8.

<sup>130</sup> *Ibid.*, p. 13.

<sup>131</sup> S/PV.4726, p. 13 (Yemen); and p. 16 (Libyan Arab Jamahiriya).

<sup>132</sup> *Ibid.*, p. 19 (Indonesia); pp. 21-22 (Cuba); p. 28 (Brazil); p. 32 (Viet Nam); and S/PV.4726 (Resumption 1), p. 9 (United Republic of Tanzania).

<sup>133</sup> S/PV.4726, p. 33.

<sup>134</sup> *Ibid.*, p. 37 (Argentina); and p. 44 (Morocco).

<sup>135</sup> *Ibid.*, p. 46.

He continued that the use of force remained the only option when the peaceful means for the resolution of the Iraqi crisis had been exhausted as Council decisions, particularly those relating to weapons of mass destruction, were not abided by and the Iraqi regime constituted a threat to international peace and security.<sup>136</sup> The representative of Australia noted that existing Security Council resolutions, including resolutions 678 (1990), 687 (1991) and 1441 (2002), provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region.<sup>137</sup> The representative of the United Kingdom stressed that the action of his country with its coalition partners, to uphold United Nations resolutions, was both legitimate and multilateral and that the use of force was authorized in the circumstances under resolutions 678 (1990), 687 (1991) and 1441 (2002).<sup>138</sup> The representative of the United States underscored that the actions the coalition forces were undertaking were an appropriate response, legitimate and not unilateral, arguing that resolution 1441 (2002) explicitly found Iraq in continuing material breach and in view of additional material breaches by Iraq, the basis for the existing ceasefire had been removed and the use of force was authorized under resolution 678 (1990).<sup>139</sup>

#### Case 6

**Letter dated 5 October 2003 from the  
Permanent Representative of the Syrian Arab  
Republic to the United Nations addressed to the  
President of the Security Council (S/2003/939)**

**Letter dated 5 October 2003 from the  
Permanent Representative of Lebanon to the  
United Nations addressed to the President of the  
Security Council (S/2003/943)**

On 5 October 2003, the Security Council convened the 4836th meeting in response to the request contained in a letter dated 5 October 2003 from the representative of the Syrian Arab Republic addressed to the President of the Council.<sup>140</sup> By that letter, the representative of the Syrian Arab Republic requested a meeting to consider the “violations of Syrian and

Lebanese airspace committed on that date by the Israeli air force and the missile attack carried out by the latter on the same day against a civilian site situated inside Syrian territory”.

At the meeting, the representative of the Syrian Arab Republic condemned the “unwarranted aggression” in flagrant violation of the Charter and of the Agreement on Disengagement between Israeli and Syrian forces, signed at Geneva in May 1974.<sup>141</sup> The representative of Lebanon argued that excessive violations by Israel of his country’s air space and of the Blue Line arrangements sponsored by the United Nations in southern Lebanon led to an act of aggression against a Member State. He further argued that the Charter and the norms of international law “warn[ed]” against any act of aggression by any Member State against another irrespective of the reason and also held that a State should first resort to the Council to argue its case.<sup>142</sup>

However, the representative of Israel argued that its “measured defensive response to the horrific suicide bombings against a terrorist training facility” in the Syrian Arab Republic was a clear act of self-defence in accordance with Article 51 of the Charter. He underscored that those actions came after Israel had exercised tremendous restraint despite countless acts of terrorism that had claimed hundreds of innocent lives, for which the Syrian Arab Republic was responsible, and after his country and the international community had repeatedly called on the Syrian Arab Republic to end its support of terrorism and comply with international law. He further argued that like any State faced with a critical and prolonged threat, Israel needed to exercise its inherent right and obligation to defend its citizens.<sup>143</sup> The representative of the United States called on all sides to avoid heightening the tension in the Middle East and to think carefully about the consequences of their actions. He added that it was in the interest of the Syrian Arab Republic and in the broader interests of Middle East peace that the Syrian Arab Republic stop harbouring and supporting the groups that perpetrated terrorist acts such as the one that had occurred in Haifa.<sup>144</sup>

<sup>136</sup> Ibid., pp. 24-25.

<sup>137</sup> Ibid., p. 27.

<sup>138</sup> S/PV.4726 (Resumption 1), p. 23.

<sup>139</sup> Ibid., pp. 25-26.

<sup>140</sup> S/2003/939.

<sup>141</sup> S/PV.4836 and Corr.1, p. 3.

<sup>142</sup> Ibid., pp. 15-16.

<sup>143</sup> Ibid., p. 7.

<sup>144</sup> Ibid., pp. 13-14.

A number of speakers condemned the air attack by Israel against the Syrian Arab Republic as a violation of the norms of international law and the Charter and/or called on parties to exercise restraint and restore the political process;<sup>145</sup> some strongly opposed the attack, calling it an act of aggression against a Member State and echoing the argument made by the representative of the Syrian Arab Republic.<sup>146</sup>

The representative of Pakistan observed that the Charter prescribed strict rules for the use of force by Member States, which was envisaged in only two circumstances: the first was in exercise of the right of self-defence against a direct act of aggression or use of force and the second was the collective use of force under Article 42 of the Charter, with the explicit authorization of the Council. He continued to argue that the attack by Israel against the territory of the Syrian Arab Republic had not met those strict requirements set out in the Charter and considered it an arbitrary attack in violation of the Charter and the relevant Council resolutions concerning the Middle East.<sup>147</sup> The representative of Morocco expressed the view that the Syrian Arab Republic had been a victim of Israeli recourse to the use of force, in violation of the Charter: Article 2 (4) called on all Member States to refrain from the use of force against the territorial integrity or the political independence of any State. He contended that the Israeli attack had been a flagrant violation of the sovereignty and territorial integrity of the Syrian Arab Republic, and that it could not be the object of the sole legal justification envisaged in the Charter, legitimate self-defence.<sup>148</sup> The representative of Jordan made it clear that no party could act outside the jurisdiction of Article 2 (4) of the Charter, which prohibited the use of force except in two cases. The first case was the use of force under Article 51 of the Charter, which reflected the principle of self-defence. However, the exercise of that right on the part of any State was conditioned on a prior armed attack against it. The second case was authorization by the Council of the use of force under Chapter VII of the Charter.

<sup>145</sup> Ibid., p. 9 (Spain); p. 9 (United Kingdom); p. 10 (Russian Federation); p. 10 (Germany); p. 11 (Bulgaria); p. 11 (Chile); and p. 11 (Mexico).

<sup>146</sup> Ibid., p. 14 (League of Arab States); pp. 16-17 (Algeria); p. 19 (Palestine); pp. 21-22 (Islamic Republic of Iran); pp. 22-23 (Bahrain); p. 23 (Yemen); and p. 24 (Qatar).

<sup>147</sup> Ibid., p. 8.

<sup>148</sup> Ibid., p. 17.

Neither case applied in the case of the aerial attack by Israel against the Syrian Arab Republic, he argued.<sup>149</sup>

### C. Article 2, paragraph 5

#### *Article 2, paragraph 5*

*All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.*

#### Note

During the period under review, there were no explicit references to Article 2 (5) in the decisions or deliberations of the Security Council. However, in the report of the Panel on United Nations Peacekeeping Operations, Article 2 (5) was explicitly cited in the context of conflict prevention. As one of its key recommendations on preventive action, The Panel supported the Secretary-General's more frequent use of fact-finding missions to the areas of tensions, and stressed obligations of Member States, under Article 2 (5) of the Charter, to give "every assistance" to such activities of the United Nations.<sup>150</sup>

In addition, the Council adopted several resolutions and issued a number of presidential statements which might have an implicit bearing on the principle enshrined in Article 2 (5). The following examples including calls for assistance relating to the good offices of the Secretary-General; measures imposed within the framework of Article 41 of the Charter; peacekeeping operations; enforcement actions of regional arrangements authorized by the Council; and multinational forces authorized by the Council, can be considered representative of the practice of the Council during the period under review concerning the principle enshrined in Article 2 (5).

#### **Assistance relating to the good offices of the Secretary-General**

With regard to the good offices of the Secretary-General and his representatives, for example, by a presidential statement of 26 January 2000, in connection with the situation concerning the

<sup>149</sup> Ibid., p. 18.

<sup>150</sup> S/2000/809, para. 34.

Democratic Republic of the Congo, the Council urged all parties to provide the Special Representative of the Secretary-General in the Democratic Republic of the Congo with “the assistance and cooperation” he would require to carry out his functions.<sup>151</sup>

**Assistance relating to measures imposed within the framework of Article 41 of the Charter**

During the period under review, implicit references to Article 2 (5) were frequently made in decisions of the Security Council in connection with the measures imposed by the Council under Chapter VII of the Charter. In a number of cases, the Council called on States to take action or otherwise strengthen their efforts in support of sanctions or other measures that had been imposed by the Council. In addition, in some cases, the Council explicitly requested Member States to cooperate with the relevant Committees and the monitoring and expert bodies established to oversee the implementation of the sanctions measures and with inspection bodies.

For instance, with regard to the situation in Liberia, by resolution 1343 (2001) of 7 March 2001, the Council called on all States to take the appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations embargoes, in particular those established by resolutions 1171 (1998) and 1306 (2000), and to take the necessary judicial and administrative action to end any illegal activities by those individuals and companies.<sup>152</sup>

In connection with the situation in Angola, by resolution 1295 (2000) of 18 April 2000, the Council requested the Secretary General to establish a monitoring mechanism, and called on all States to cooperate fully with it in the discharge of its mandate.<sup>153</sup> Furthermore, in a presidential statement dated 15 November 2001,<sup>154</sup> the Council called on Member States to comply fully with the implementation of the sanctions regime against the União Nacional para a Independência Total de Angola (UNITA) and to cooperate fully with the Security Council Committee established pursuant to resolution

864 (1993) and the monitoring mechanism on sanctions against UNITA.

In connection with the situation in Somalia, by resolution 1407 (2002) of 3 May 2002, the Council called on “all States, the Transitional National Government and local authorities in Somalia” to cooperate fully with the Chairman of the Committee established pursuant to resolution 751 (1992) and the Team of Experts to be established by the same resolution in their quests for information in accordance with the resolution. It also requested all States to report to the Committee on measures they had in place to ensure the full implementation of the arms embargo and called upon all States, particularly those in the region, to provide the Committee with all available information on violations of the embargo.<sup>155</sup> In addition, by resolution 1519 (2003) of 16 December 2003, the Council called on all States in the region to cooperate with the Monitoring Group set up by that resolution, by establishing the focal points to enhance its cooperation and to facilitate information exchange.<sup>156</sup>

In connection with the situation between Iraq and Kuwait, by resolution 1302 (2000) of 8 June 2000 and subsequent resolutions, while extending the oil-for-food programme established by resolution 986 (1995), the Council appealed to all States to continue to facilitate the transit of humanitarian supplies to Iraq authorized by the Committee established pursuant to resolution 661 (1990), and to take all other appropriate measures to ensure that urgently needed humanitarian supplies reached the Iraqi people as rapidly as possible. The Council further urged all States, specifically the Government of Iraq, to provide their full cooperation in the “effective implementation” of the relevant resolution.<sup>157</sup>

Furthermore, also with regard to the situation between Iraq and Kuwait, by resolution 1441(2002) of 8 November 2002, recalling that the effective operation of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) established pursuant to resolution 1284 (1999) and the International Atomic Energy Agency (IAEA) was

<sup>151</sup> S/PRST/2000/2.

<sup>152</sup> Resolution 1343 (2001), para. 21.

<sup>153</sup> Resolution 1295 (2000), paras. 3 and 4.

<sup>154</sup> S/PRST/2001/36.

<sup>155</sup> Resolution 1407 (2002), paras. 4, 8 and 9.

<sup>156</sup> Resolution 1519 (2003), para. 5.

<sup>157</sup> Resolutions 1302 (2000), para. 16; 1330 (2000), paras. 16 and 21; 1360 (2001), paras. 10 and 13; and 1454 (2002), para. 4.

essential for the implementation of resolution 687 (1991) and other relevant resolutions, the Council requested all Member States “to give their full support” to UNMOVIC and IAEA “in the discharge of their mandates”.<sup>158</sup>

#### **Assistance relating to peacekeeping operations**

In a number of decisions of the Council, Member States were requested to provide assistance to peacekeeping operations, including the provision of troops and material support.<sup>159</sup> For example, in connection with the situation between Eritrea and Ethiopia, by resolution 1312 (2000) of 31 July 2000, the Council called upon the parties to provide the United Nations Mission in Ethiopia and Eritrea (UNMEE) “with access, assistance, support and protection required for the performance of its duties”.<sup>160</sup>

#### **Assistance relating to enforcement actions by regional arrangements authorized by the Security Council**

In some cases, the Security Council called upon Member States to assist enforcement actions taken by the regional arrangements which were authorized by the Security Council. For instance, in connection with the situation in Côte d’Ivoire, by a presidential statement of 25 July 2003,<sup>161</sup> the Council called upon Member States to provide logistic and financial support to the Economic Community of West African States Mission in Côte d’Ivoire, authorized under Chapter VII of the Charter by resolution 1464 (2003) of 4 February 2003, so that it could continue to fulfill its mandate.

#### **Assistance relating to multinational forces authorized by the Security Council**

On occasion, the Security Council called for assistance to be provided to the multinational forces it had authorized. For example, in connection with the situation concerning the Democratic Republic of the Congo, by resolution 1501 (2003) of 26 August 2003,

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<sup>158</sup> Resolution 1441 (2002), twelfth preambular paragraph and para. 10.

<sup>159</sup> For the provisions in resolutions adopted under Chapter VII of the Charter requesting Member States to provide assistance to peacekeeping operations, see chapter XI, part V, section A.

<sup>160</sup> Resolution 1312 (2000), para. 3.

<sup>161</sup> S/PRST/2003/11.

the Council, acting under Chapter VII of the Charter, authorized the States members of the Interim Emergency Multinational Force that had been authorized by resolution 1484 (2003) to provide assistance to the United Nations Organization Mission in the Democratic Republic of the Congo deployed in and the immediate surroundings of Bunia, if requested and if exceptional circumstances demanded it.<sup>162</sup>

In other instances, the Council, by its resolutions,<sup>163</sup> requested full cooperation of Member States with the multinational forces. For instance, in connection with the situation in Afghanistan, by resolution 1386 (2001) of 20 December 2001, the Council encouraged neighbouring States and other Member States to “provide to the International Security Assistance Force such necessary assistance” as might be requested, “including overflight clearances and transit”.<sup>164</sup>

#### **Other activities of the United Nations**

During the period under review, the Council called upon Member States to support the efforts by the United Nations in the areas of counter-terrorism, conflict resolution and humanitarian assistance.

For example, in connection with threats to international peace and security caused by terrorist acts, by resolution 1373 (2001) of 28 September 2001, the Council, acting under Chapter VII of the Charter, decided that all States should “refrain from providing any form of support,” active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.<sup>165</sup>

In respect of humanitarian assistance, the Council, in connection with the situation between Iraq

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<sup>162</sup> Resolution 1501 (2003), para. 2.

<sup>163</sup> In connection with the situation in Bosnia and Herzegovina, see resolutions 1305 (2000), para. 16; 1357 (2001), para. 16; 1423 (2002), para. 16; and 1491 (2003), para. 16. In connection with the situation in Afghanistan, see resolution 1386 (2001), para. 7. In connection with the situation concerning the Democratic Republic of the Congo, see resolution 1484 (2003), para. 8. In connection with the situation in Liberia, see resolution 1497 (2003), para. 11. In connection with the situation between Iraq and Kuwait, see resolution 1511 (2003), para. 14.

<sup>164</sup> Resolution 1386 (2001), para. 7. See also chapter XI, part VI, section B.

<sup>165</sup> Resolution 1373 (2001), para. 2 (a).

and Kuwait, by resolution 1483 (2003) of 22 May 2003, called upon “all Member States in a position to do so to respond immediately to the humanitarian appeals by the United Nations and other international organizations for Iraq”.<sup>166</sup>

#### D. Article 2, paragraph 6

##### *Article 2, paragraph 6*

*The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.*

##### **Note**

During the period under review, there was no explicit reference to Article 2 (6) in the decisions of the Security Council. Furthermore, no decisions included a reference to “States not Members of the United Nations” that might be described as an implicit reference to the principle enshrined in Article 2 (6). The Security Council in its decisions tended to refer to “all States” or simply to “States” when it made calls for States to take specific actions.<sup>167</sup> There were no explicit references to Article 2 (6) during the Council’s deliberations, nor did any constitutional discussion arise in connection with that Article.

#### E. Article 2, paragraph 7

##### *Article 2, paragraph 7*

*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*

<sup>166</sup> Resolution 1483 (2003), para. 2.

<sup>167</sup> For references to “all States” or “States” contained in the decisions of the Council adopted under Chapter VII of the Charter, see chapter XI, part VI entitled “Obligations of Member States under Article 48 of the Charter”.

##### **Note**

During the period under review, there was no explicit reference to Article 2 (7) contained in the decisions adopted by the Council.

Article 2 (7) was explicitly referred to in several communications<sup>168</sup> during the reporting period. In addition, in a letter dated 16 September 2002<sup>169</sup> from the Secretary-General addressed to the President, transmitting a letter of the same date from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General, the Minister drew attention to the decision of his Government to allow the return of the United Nations weapons inspectors to Iraq without conditions, and reiterated the importance of the commitment of all States Members of the Council and the United Nations to respect the sovereignty, territorial integrity and political independence of Iraq, as stipulated in the relevant Council resolutions and “in Article 2 of the Charter”.

During the deliberations of the Security Council, the principle enshrined in Article 2 (7), while not always invoked explicitly, was touched upon frequently, as illustrated by the cases presented below. The first two cases deal with the thematic debates on the humanitarian aspects of issues before the Security Council (case 7) and on the protection of civilians in armed conflict (case 8). Case 9 captures the relevant deliberations of the Council in two meetings held in connection with the situation between Iraq and Kuwait: one meeting was held following the decision by the Government of Iraq to allow the return of the United Nations weapons inspectors to Iraq without conditions, contained in the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq, addressed to the Secretary General,<sup>170</sup> and the other following the military action against Iraq by the United States, the United Kingdom and their allies which commenced on 20 March 2003.

<sup>168</sup> See, for example, the letter dated 5 October 2000 from the representative of Yugoslavia addressed to the President (S/2000/961); the letter dated 26 May 2001 from the representative of Iraq addressed to the Secretary-General (S/2001/532); and the letter dated 20 December 2002 from the representative of Iraq addressed to the Secretary-General (S/2002/1400).

<sup>169</sup> S/2002/1034.

<sup>170</sup> Ibid.

**Case 7**

**Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At the 4109th meeting, on 9 March 2000, the Council held a thematic debate on the agenda item entitled “Maintaining peace and security: humanitarian aspects of issues before the Security Council.” In the course of the debate, speakers engaged in discussing the role and responsibility of the Security Council in dealing with humanitarian crises and providing humanitarian assistance. In particular, the representative of France argued that humanitarian crises could reach such degrees of seriousness that the response could only be a political one and, in certain circumstances, one that would also require the use of force to end large-scale violations of human rights and international humanitarian law, as those violations in themselves threatened international peace and security, and therefore fully justified the use of such action, in accordance with the Charter. He continued that such was the case in Kosovo and that under those circumstances the Council could not but exercise the responsibilities assigned to it under the Charter.<sup>171</sup>

While acknowledging that humanitarian activities were necessary in armed conflicts as a basic and undisputed duty of the international community, and in particular, of the Security Council, the representative of Tunisia underscored that the conduct of such humanitarian assistance “must of necessity strictly comply with the principles of sovereignty of States, their political independence, their territorial integrity and non-interference in their internal affairs”, as stipulated by the Charter of the United Nations and the international conventions in force.<sup>172</sup>

The representative of Pakistan pointed out that the prospects of preventive action must be studied within the five fundamental parameters, one of which was respect for the principle of State sovereignty and non-interference and non-intervention in the internal affairs of States, although that principle could not be extended to situations where people under colonial rule, foreign occupation or alien domination were struggling for their inalienable right to self-determination.<sup>173</sup> The representative of India, explicitly referring to Article 2 (7), argued that it was the

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<sup>171</sup> S/PV.4109, p. 7.

<sup>172</sup> *Ibid.*, pp. 12-13.

<sup>173</sup> S/PV.4109 (Resumption 1), p. 9.

sovereign right of a State to determine whether it needed humanitarian assistance. According to him, if the State chose not to seek assistance, coercion or use of force by the Council or any other body would violate that Article.<sup>174</sup>

**Case 8**

**Protection of civilians in armed conflict**

At the 4130th meeting, on 19 April 2000, the Council held a thematic debate on the protection of civilians in armed conflict. Various speakers referred to the need to observe the purposes and principles of the United Nations, in particular, respect for the sovereignty, political independence and territorial integrity of States and non-interference in their internal affairs.<sup>175</sup>

The representative of China held that the Government of a country in armed conflict tended to decide on the measures necessary to protect civilians in accordance with the nature and characteristics of the conflict and the circumstances of civilians in the area of conflict, and, in that regard, the positions of sovereign States should be respected by the Security Council, as action taken without the understanding and cooperation of the countries involved might lead those countries to resist. He also pointed out that any attempts to politicize humanitarian concerns, wantonly interfere in other countries’ internal affairs or worse yet, overturn a legitimate Government under the pretext of protecting civilians, ran counter to the purposes and principles of the Charter.<sup>176</sup> The representative of Tunisia also believed it essential, when dealing with the protection of civilians in armed conflict, to respect the principles of the sovereignty, political independence and territorial integrity of States and non-interference in their internal affairs, as well as to secure the consent and cooperation of the parties, in particular the Governments of the countries concerned.<sup>177</sup>

In a similar vein, the representative of Egypt expressed the belief that the provision of humanitarian assistance to civilians in time of war, under the

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<sup>174</sup> *Ibid.*, p. 13.

<sup>175</sup> S/PV.4130 and Corr.1, p. 14 (China); p. 17 (Tunisia); and p. 22 (Ukraine); S/PV.4130 (Resumption 1) and Corr.1, p. 12 (Egypt); and p. 14 (Bahrain).

<sup>176</sup> S/PV.4130 and Corr.1, p. 14.

<sup>177</sup> *Ibid.*, p. 17.

auspices of the United Nations or the International Committee of the Red Cross, should be conducted with the consent of or at the request of the countries concerned and that the sovereignty, territorial integrity and political independence of States should be respected. He further insisted that humanitarian assistance must not be used as a cover for action in support of the political interests of any particular State or group of States.<sup>178</sup>

At the same meeting, the Council adopted resolution 1296 (2000), in which the Council reaffirmed its commitment to the purposes of the Charter as set out in Article 1, paragraphs 1 to 4, and to the principles of the Charter as set out in Article 2, paragraphs 1 to 7, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States.<sup>179</sup>

#### **Case 9** **The situation between Iraq and Kuwait**

At the 4625th meeting, on 16 October 2002, in connection with the situation between Iraq and Kuwait, speakers touched upon the principle enshrined in Article 2 (7), in conjunction with the discussion on the sanctions regime against Iraq and on the role of the Council in resolving the situation.

Throughout the deliberations, a number of speakers reaffirmed their respect for the sovereignty, territorial integrity and political independence of Iraq.<sup>180</sup> The representative of the United Arab Emirates drew attention to the provisions of relevant Council resolutions calling for respect for the sovereignty and territorial integrity of Iraq and non-interference in its internal affairs.<sup>181</sup>

In his intervention, the representative of Iraq maintained that the sanctions regime was in violation of numerous Articles of the Charter, including Article 2 (7), which did not “allow the United Nations to intervene” in matters that were “essentially within the domestic jurisdiction of any State”.<sup>182</sup>

The representative of Malaysia argued that the focus in the Council should be on promoting United Nations diplomacy to resolve the problem through effective inspections and weapons destruction, not on “legitimizing war against Iraq to effect regime change”. He held that removing the Head of State or Government of a sovereign State was “illegal and against the Charter”.<sup>183</sup> A similar argument was also made by the representative of Viet Nam.<sup>184</sup>

At the 4726th meeting, held on 26 March 2003 in response to the request contained in letters dated 24 March 2003 from the representatives of Iraq and Malaysia addressed to the President of the Council,<sup>185</sup> the Secretary-General stressed that respect for the sovereignty, territorial integrity and independence of Iraq should be a guiding principle in the future decisions by the Council on Iraq.<sup>186</sup> The representative of Iraq emphasized that the full-scale Anglo-Saxon military invasion and the aggressive war against his country constituted a blatant material breach of international law and the Charter, particularly Articles 2 (4) and 2 (7).<sup>187</sup> The representative of Pakistan underlined the principles prescribed in the Charter, including the principle of non-intervention and non-interference in internal affairs of a State, in containing the conflict and restoring the rule of law in Iraq.<sup>188</sup>

<sup>178</sup> S/PV.4130 (Resumption 1) and Corr.1, pp. 12-13.

<sup>179</sup> Resolution 1296 (2000), sixth preambular paragraph.

<sup>180</sup> S/PV.4625 and Corr.1, p. 16 (Egypt); p. 19 (Pakistan); and pp. 23-24 (Tunisia); S/PV.4625 (Resumption 1), p. 23 (Cuba); S/PV.4625 (Resumption 2), p. 3 (Morocco); p. 11 (India); p. 13 (Djibouti); p. 21 (Organization of the Islamic Conference); and p. 26 (Nepal); and S/PV.4625 (Resumption 3) and Corr.1, p. 10 (China).

<sup>181</sup> S/PV.4625 and Corr.1, p. 20.

<sup>182</sup> *Ibid.*, p. 7.

<sup>183</sup> S/PV.4625 (Resumption 2), p. 7.

<sup>184</sup> *Ibid.*, p. 12.

<sup>185</sup> S/2003/362 and S/2003/363, respectively.

<sup>186</sup> S/PV.4726, p. 4.

<sup>187</sup> *Ibid.*, p. 5.

<sup>188</sup> S/PV.4726 (Resumption 1), p. 22.



## Part II

### Consideration of the functions and powers of the Security Council (Articles 24 and 25 of the Charter)

#### A. Article 24

##### Article 24

1. *In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.*

2. *In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.*

3. *The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.*

##### Note

During the period under review, none of the decisions adopted by the Council contained an explicit reference to Article 24 of the Charter.<sup>189</sup> However, Article 24, the provision by which the Members of the United Nations conferred on the Council primary responsibility for the maintenance of peace and security, was implicitly referred to in a number of resolutions and presidential statements, mostly in the context of the agenda items dealing with thematic and cross-cutting issues. By such decisions, the Council reaffirmed, reiterated, recalled or bore in mind its “primary responsibility” under the Charter for the maintenance of international peace and security.<sup>190</sup>

<sup>189</sup> Article 24 (3), in connection with the annual report of the Security Council to the General Assembly, is dealt with in chapter VI, part I, section E.

<sup>190</sup> For example, in connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1291 (3000), second preambular paragraph; 1304 (2000), second preambular paragraph; 1341 (2001), ninth preambular paragraph; and 1355 (2001), ninth preambular paragraph. In connection with ensuring an effective role of the Security Council in the maintenance

of international peace and security, particularly in Africa, see resolution 1318 (2000), annex, section I, third paragraph. In connection with the protection of civilians in armed conflict, see resolution 1296 (2000), fifth preambular paragraph, and S/PRST/2002/6. In connection with children and armed conflict, see resolutions 1314 (2000), fourth preambular paragraph; and 1379 (2001), fourth preambular paragraph. In connection with women and peace and security, see resolution 1325 (2000), third preambular paragraph. In connection with strengthening cooperation with troop-contributing countries, see resolution 1353 (2001), fifth preambular paragraph. In connection with the responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations, see resolution 1308 (2000), fifteenth preambular paragraph, and S/PRST/2001/16. In connection with the role of the Security Council in the prevention of armed conflicts, see resolution 1366 (2001), sixth preambular paragraph, and S/PRST/2000/25. In connection with the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones, see resolution 1502 (2003), first preambular paragraph. In connection with promoting peace and security: humanitarian assistance to refugees in Africa, see S/PRST/2000/1. In connection with maintaining peace and security: humanitarian aspects of issues before the Security Council, see S/PRST/2000/7. In connection with the maintenance of peace and security and post-conflict peacebuilding, see S/PRST/2000/10. In connection with peacebuilding: towards a comprehensive approach, see S/PRST/2001/5. In connection with small arms, see S/PRST/2001/21. In connection with the situation in Africa, see S/PRST/2002/2.

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<sup>191</sup> For instance, in connection with the situation in Africa, see S/PV.4087 (Resumption 1), p. 20 (South Africa); S/PV.4460, p. 33 (South Africa); and S/PV.4538 (Resumption 1), p. 10 (South Africa). In connection with the situation concerning the Democratic Republic of the Congo, see S/PV.4092 (Resumption 1), p. 2 (South Africa); and S/PV.4143 (Resumption 1), p. 10 (Zimbabwe). In connection with general issues relating to sanctions, see S/PV.4128, p. 43 (Iraq). In connection with strengthening cooperation with troop-contributing countries, S/PV.4257, p. 12 (India); and S/PV.4257 (Resumption 1), p. 13 (Ireland). In connection with ensuring an effective role of the Security Council in the

references to Article 24 were also found in several communications of the Council.<sup>192</sup>

maintenance of international peace and security, particularly in Africa, see S/PV.4288, p. 12 (Egypt). In connection with role of the Security Council in the prevention of armed conflicts, see S/PV.4334 (Resumption 1), p.18 (Nigeria). In connection with the situation between Iraq and Kuwait, see S/PV.4336 (Resumption 1), p. 14 (Canada); and p. 18 (Iraq); S/PV.4625 and Corr. 1, p. 3 (Deputy Secretary-General); p. 7 (Iraq); p. 21 (Jordan); S/PV.4625 (Resumption 2), p. 2 (Morocco); and p. 22 (Jamaica); S/PV.4625 (Resumption 3), p. 16 (Singapore); p. 20 (Ireland); and p. 25 (Bulgaria); S/PV.4709, p. 8 (Kuwait); and p. 16 (Jordan); and S/PV.4726, p. 32 (Jamaica). In connection with the situation in the Middle East, including the Palestinian question, see S/PV.4357 (Resumption 1) and Corr. 1, p. 13 (Bahrain); S/PV.4506 (Resumption 1) and Corr. 1, p. 18 (United Republic of Tanzania); and S/PV.4515 (Resumption 1), p. 14 (Singapore). In connection with the situation in East Timor, see S/PV.4403, p. 15 (Singapore). In connection with the situation in Bosnia and Herzegovina, see S/PV.4568, p. 15 (Islamic Republic of Iran); p. 16 (Jordan); and p. 19 (Mongolia); and S/PV.4568 (Resumption 1), and Corr. 1 p. 2 (Fiji). In connection with small arms, see S/PV.4623 (Resumption 1), p. 5 (Egypt). In connection with wrap-up discussions on the work of the Security Council for the current month, see S/PV.4677, p. 9 (Singapore). In connection with the role of the Security Council in the pacific settlement of disputes, see S/PV.4753, p. 27 (Cameroon). In connection with United Nations peacekeeping, S/PV.4772, p. 10 (Islamic Republic of Iran); p. 17 (Nigeria); and p. 21 (Pakistan). In connection with justice and the rule of law: the United Nations role, see S/PV.4835, p. 35 (Bahrain).

<sup>192</sup> In connection with the situation between Eritrea and Ethiopia, see the letter dated 7 April 2000 from the representative of Ethiopia to the President of the Council (S/2000/296, p. 4). In connection with the situation between Iraq and Kuwait, see identical letters dated 22 January 2001, 4 November 2002, 2 December 2002, 31 December 2002 and 27 January 2003 from the representative of Iraq to the Secretary-General and to the President of the Council (S/2001/68, p. 8; S/2002/1222, p. 3; S/2002/1316, p. 3; S/2002/1439, p. 3; and S/2003/108, p. 4). In connection with peacebuilding: towards a comprehensive approach, see the letter dated 25 January 2001 from the representative of Tunisia to the Secretary-General (S/2001/82, p. 5). In connection with the letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America, see the letter dated 14 February 2001 from the representative of Mali to the President of the Council (S/2001/140,

In order to illustrate the interpretation and application of Article 24 by the Council, a number of cases were drawn from deliberations in which Council members engaged in discussing the role and responsibilities of the Council.

Cases 10 to 16 relate to thematic debates in which Member States touched upon the question of the mandate of the Security Council vis-à-vis other United Nations bodies in accordance with the Charter.

Case 17 reviews discussions in connection with the agenda items entitled “The situation in Bosnia and Herzegovina” and “United Nations peacekeeping”. In which the Council dealt with the issue of exemption from prosecution in cases involving personnel from States not Parties to the Rome Statute of the International Criminal Court. Finally, relevant debates are set out concerning the situation in the Middle East, including the Palestinian question (case 18), and the situation between Iraq and Kuwait (case 19).

#### **Case 10 Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At the outset of the 4109th meeting, on 9 March 2000, the President reaffirmed that the Charter of the United Nations conferred upon the Security Council the primary responsibility for the maintenance of international peace and security and stressed that the Council, in discharging such functions, needed a broad, more proactive approach. Furthermore, he expressed the view that the Council had a responsibility to address humanitarian issues relating to situations of conflict and take appropriate action.<sup>193</sup>

At the same meeting, the representative of Canada pointed out that while advocating for the implementation of a comprehensive approach to conflict prevention, the Council must be prepared to respond quickly to situations in which populations were in grave need, by supporting their access to

p. 2). In connection with threats to international peace and security caused by terrorist acts, see the letter dated 22 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism to the President of the Council, transmitting the third report from Angola submitted pursuant to para. 6 of resolution 1373 (2001) (S/2003/1210, p. 4).  
<sup>193</sup> S/PV.4109, p. 2.

protection and assistance and by identifying political solutions to resolve the underlying causes of humanitarian crises. He argued that given that humanitarian actions did not respond to the causes of conflict but to the needs of victims, humanitarian efforts should be matched by corresponding actions enabling political actors, and in particular the Council, to address and resolve conflict.<sup>194</sup> The representative of France stated that the Council had the primary responsibility to deal with situations in which violations of international humanitarian law and human rights threatened international peace and security, as in East Timor. Therefore, the Council also had the responsibility for continuing to deal with humanitarian situations in all aspects of its activities, as in the case of Iraq. The representative further stressed that although relieving civilian suffering was the task of United Nations agencies and humanitarian organizations, it should not absolve the Council of its responsibilities for dealing with crises.<sup>195</sup> The representative of Tunisia argued that the Security Council should shoulder its responsibility in the field of humanitarian activities as the duty of the international community.<sup>196</sup>

The representative of China was of the view that the Security Council, in fulfilling its primary responsibility of maintaining international peace and security, and in reviewing situations of armed conflict, should also pay attention to humanitarian issues caused by conflicts and especially take into consideration factors such as humanitarian assistance, in order to help eliminate or alleviate humanitarian crises, while respecting the sovereignty of a recipient State.<sup>197</sup> The representative of the Russian Federation considered that, while not equating the functions of the Council with those of humanitarian organizations, the Council must lend active political support to the activities of those organizations which in general must be backed up by the authority of the Council.<sup>198</sup> Others also considered it essential that the Council, in dealing with specific situations, ensure the protection of civilians and consider humanitarian aspects of conflicts.<sup>199</sup>

In that context, many speakers emphasized the importance of strengthening the coordination mechanisms in humanitarian activities among the relevant bodies of the United Nations system and others.<sup>200</sup> At the same time, several speakers stressed the need to respect the mandate of all organs of the United Nations in accordance with the Charter.<sup>201</sup> For example, the representative of Egypt warned that the delicate balance established in the Charter between the responsibilities and functions of the primary bodies of the United Nations should be maintained, so that each could fulfil its respective tasks without encroaching upon the responsibilities of the other. He urged the Council, in fulfilling its tasks, to act in compliance with all the provisions of the Charter and in conformity with the specific role and responsibility assigned to it, in order to address all threats to international peace and security.<sup>202</sup> The representative of Colombia expressed concern that if the Council assumed the role, outside the scope of the Charter, of directing the response of the entire United Nations system to humanitarian emergencies, it would be unable properly to fulfil its mission of preserving international peace and security. He contended that the matter of humanitarian emergencies should be addressed by the General Assembly where the “proper guidance” to the humanitarian action could be given by all Member States.<sup>203</sup> The representative of Brazil considered that the role of the Council was to add to the work of the other bodies of the United Nations, including the Economic and Social Council and the General Assembly, without trying to replace them.<sup>204</sup>

At the same meeting, the representative of India pointed out that the Council was a creature of the Charter, in which Article 24 conferred on the Council primary responsibility for the maintenance of international peace and security. In that regard, he argued that nowhere did the Charter speak of humanitarian action or its aspects. The representative maintained that the membership of the United Nations, on behalf of which the Council acted in accordance with Article 24, agreed

<sup>194</sup> *Ibid.*, p. 5.

<sup>195</sup> *Ibid.*, pp. 6-7.

<sup>196</sup> *Ibid.*, p. 12.

<sup>197</sup> *Ibid.*, p. 16.

<sup>198</sup> *Ibid.*, p. 15.

<sup>199</sup> *Ibid.*, p. 8 (Jamaica); p. 10 (Malaysia); p. 11 (Mali); and p. 17 (Ukraine); S/PV.4109 (Resumption 1), p. 15 (Bulgaria); and p. 17 (Brazil).

<sup>200</sup> S/PV.4109, p. 5 (Canada); p. 9 (Jamaica); p. 12 (Mali); p. 13 (Tunisia); p. 14 (Namibia); p. 15 (Russian Federation); and p. 17 (Netherlands); S/PV.4109 (Resumption 1), p. 16 (Bulgaria); and p. 17 (Brazil).

<sup>201</sup> S/PV.4109, p. 19 (Argentina); and p. 21 (Egypt); S/PV.4109 (Resumption 1), p. 9 (Pakistan).

<sup>202</sup> S/PV.4109, pp. 20-21.

<sup>203</sup> S/PV.4109 (Resumption 1), pp. 7-8.

<sup>204</sup> *Ibid.*, p. 17.

on the one hand that peacekeeping, another activity not mentioned in the Charter, was set up as a practical instrument. On the other hand, there was no agreement on the humanitarian aspect, and whether the Council should have a role in it.<sup>205</sup>

By a presidential statement dated 9 March 2000,<sup>206</sup> the Council, recalling its primary responsibility under the Charter for the maintenance of international peace and security, recognized the importance of the humanitarian dimension to the maintenance of international peace and security and to its consideration of humanitarian issues relating to the protection of all civilians and other non-combatants in situations of armed conflict. It also recognized that humanitarian crises could be both causes and consequences of conflicts and that they could affect the Council's efforts to prevent and end conflicts and to deal with other threats to international peace and security. By the same presidential statement, the Council also underlined the importance of effective coordination among relevant United Nations organs and agencies as well as other organizations and actors in the field in situations of ongoing conflict and peacebuilding, and expressed its willingness to consider ways to improve such coordination.

#### Case 11

##### **The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations**

By resolution 1308 (2000) of 17 July 2000, the Council emphasized the important role of the General Assembly and the Economic and Social Council in addressing HIV/AIDS, and stressed the need for coordinated efforts of all relevant United Nations organizations to address the HIV/AIDS pandemic in line with their respective mandates and to assist, wherever possible, in global efforts against it. By the same resolution, the Council also stressed that the HIV/AIDS pandemic, if unchecked, might pose a risk to stability and security.<sup>207</sup>

At the 4259th meeting, on 19 January 2001, recalling that his delegation had introduced the issue of

HIV/AIDS for the first time into the agenda of the Council in January 2000,<sup>208</sup> the representative of the United States pointed out that there had been debates about whether the Council, "the highest international body legitimizing international involvement across borders" should address the matter at all. While acknowledging that others considered it appropriate that the issue be left entirely to the Economic and Social Council, he maintained that the earlier debate on the topic had been worth it, because the continued work by the Council would save lives.<sup>209</sup> In that connection, some speakers recalled resolution 1308 (2000) and argued that HIV/AIDS was a threat to international peace and security, and therefore the Council had a role to play.<sup>210</sup>

The representative of Costa Rica, however, while registering his concern in relation to the risk that peacekeepers might contract or spread HIV/AIDS, stressed that under the Charter, it was up to the General Assembly to study and coordinate efforts to combat the epidemic and for the Economic and Social Council to assess, and deal with, the social and developmental effects of the disease. He held that the competence of the Council in that area was severely limited.<sup>211</sup>

#### Case 12

##### **Peacebuilding: towards a comprehensive approach**

At the 4272nd meeting, on 5 February 2001, several speakers acknowledged that peacebuilding was a multidimensional task, which required partnership and better coordination of the Security Council with other organs such as the General Assembly and the Economic and Social Council as well as with other agencies responsible for peacebuilding.<sup>212</sup>

<sup>208</sup> At the 4087th meeting, on 10 January 2000, the Council discussed the agenda item entitled "The situation in Africa: the impact of AIDS on peace and security in Africa".

<sup>209</sup> S/PV.4259, pp. 9-10.

<sup>210</sup> Ibid., p. 20 (United Kingdom); S/PV.4259 (Resumption 1), p. 3 (Ireland); p. 7 (Canada); and p. 8 (Sweden, on behalf of the European Union and associated countries).

<sup>211</sup> S/PV.4259 (Resumption 1), p. 10.

<sup>212</sup> S/PV.4272, p. 6 (France); pp. 9-10 (United States); p. 10 (United Kingdom); p. 15 (Colombia); p. 17 (China); and p. 25 (Bangladesh); S/PV.4272 (Resumption 1); p. 4 (Algeria); p. 11 (Egypt); p. 25 (Argentina); p. 26 (Malaysia); and pp. 33-34 (Tunisia).

<sup>205</sup> Ibid., p. 13.

<sup>206</sup> S/PRST/2000/7.

<sup>207</sup> Resolution 1308 (2000), third, fourth and eleventh preambular paragraphs.

The representative of the United States pointed out that, while directing multiple United Nations agencies involved in peacebuilding was not the responsibility of the Council, the Council had in the past agreed that certain peacebuilding measures, such as disarmament, demobilization and reintegration activities and the rebuilding of local police forces, fell within its purview.<sup>213</sup> The representative of Colombia expressed the view that the Council should be considered as only one of the actors and sometimes “the least relevant one” among those involved in peacebuilding.<sup>214</sup> For his part, underscoring the importance of the main bodies of the Organization carrying out their work within their mandates in conformity with the Charter, the representative of Egypt held that the issue of peacebuilding fell within the competence of the General Assembly and the Economic and Social Council, and therefore urged the Council to give more attention to emerging or ongoing conflicts and to focus on peacebuilding in a controlled manner as it related to post-conflict situations, so the Council was not diverted “from its main function of maintaining international peace and security”. While recognizing the Council’s role in peacebuilding, he also expressed concern about the overlap in the functions of the main bodies of the United Nations.<sup>215</sup> A similar concern was expressed by the representative of India, who held that most of what post-conflict peacebuilding involved lay “outside the mandate of the Council” and “within the purview of the General Assembly”.<sup>216</sup>

By a presidential statement dated 20 February 2001,<sup>217</sup> the Council reaffirmed its primary responsibility for the maintenance of international peace and security and reiterated the value of including, as appropriate, peacebuilding elements in the mandates of peacekeeping operations. The Council further reiterated its willingness to consider ways to improve its cooperation with other United Nations bodies and organs directly by peacebuilding, in particular with the General Assembly and the Economic and Social Council, which had a primary role in that field.

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<sup>213</sup> S/PV.4272, p. 9.

<sup>214</sup> *Ibid.*, p. 15.

<sup>215</sup> S/PV.4272 (Resumption 1), pp. 10-11.

<sup>216</sup> *Ibid.*, p. 22.

<sup>217</sup> S/PRST/2001/5.

### Case 13

#### Role of the Security Council in the prevention of armed conflict

At the 4334th meeting, on 21 June 2001, many speakers expressed general support for greater interaction between the Council, the General Assembly and the Economic and Social Council in dealing with the issue of conflict prevention. They also discussed the distribution of competencies established by the Charter among those principle organs of the United Nations. Some, in that context, stressed that the Council did have a key but not exclusive role to play in the area of conflict prevention.<sup>218</sup> For example, the representative of Iraq stressed that the Charter, in particular Articles 10, 11 and 14, entrusted the General Assembly with a role in the maintenance of international peace and security and in the prevention and settlement of conflicts. Nonetheless, the Security Council had expanded its mandate, and thereby exceeded the terms of reference of the General Assembly, which had led to a diminished role and competence of the General Assembly.<sup>219</sup> The representative of Nigeria argued that although Article 24 of the Charter bestowed on the Council the primary responsibility for the maintenance of international peace and security, a successful conflict prevention strategy required the cooperation of all United Nations actors.<sup>220</sup>

By a presidential statement dated 20 July 2000, bearing in mind its primary responsibility under the Charter for the maintenance of international peace and security, the Council reaffirmed its role in taking appropriate steps aimed at the prevention of armed conflicts. In addition, the Council, stressing the importance of effective post-conflict peacebuilding strategies in preventing the re-emergence of conflicts, recognized the need for close cooperation among bodies of the United Nations system in the area of post-conflict peacebuilding and expressed its

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<sup>218</sup> S/PV.4334, p. 9 (United Kingdom); p. 12 (Tunisia); p. 13 (Russian Federation); p. 19 (Norway); p. 20 (Ukraine); and p. 27 (Canada); S/PV.4334 (Resumption 1), p. 3 (Sweden, on behalf of the European Union and associated countries); p. 5 (Republic of Korea); pp. 5-7 (Argentina); p. 8 (Costa Rica); p. 13 (Egypt); p. 14 (Mexico); p. 16 (Brazil); p. 21 (Iraq); p. 25 (Belarus); and p. 26 (Nepal).

<sup>219</sup> S/PV.4334 (Resumption 1), p. 21.

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

willingness to consider ways to improve such cooperation. The Council further affirmed that a reformed, strengthened and effective United Nations remained central to the maintenance of peace and security, of which prevention was a key component.<sup>221</sup> By resolution 1366 (2001) of 30 August 2001, the Council expressed its determination to pursue the objective of prevention of armed conflict “as an integral part of its primary responsibility for the maintenance of international peace and security”.<sup>222</sup>

#### **Case 14** **Small arms**

At the 4355th meeting, convened on 2 August 2001, following the conclusion of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York from 9 to 20 July 2001, many speakers recognized that the Security Council had an important contribution to make with respect to the issue of small arms, indicating that certain provisions of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted at the conclusion of the Conference<sup>223</sup> were relevant to the role of the Council. At the same time, the representative of the United States cautioned the Council against seeking a more elaborate role beyond its competence.<sup>224</sup> As to the relationship with the General Assembly, the representative of Brazil emphasized that with respect to small arms, the Council should avoid creating a process parallel to that of the Conference; that its role related, *inter alia*, to conflict prevention, arms embargoes and the disarmament, demobilization and reintegration of former combatants.<sup>225</sup> Stressing that the Programme of Action was adopted through a process initiated by the General Assembly, the representative of South Africa suggested that involvement of the Council on the issue of small arms should be “confined to specific areas related to the Council’s agenda”.<sup>226</sup> Furthermore, the representative of the Sudan, speaking on behalf of the Group of Arab States, pointed out that the role of the Council must be a “supporting one in respect of the

efforts undertaken by the General Assembly”.<sup>227</sup> The representative of Pakistan maintained that the Council could contribute to the question of small arms, by focusing on the areas that were directly within its competence and jurisdiction, which meant that it fulfilled its Charter obligations towards the pacific settlement of disputes and the prevention of armed conflicts.<sup>228</sup>

At the same meeting, speakers encouraged coordination between the Security Council and other organs of the Organization, particularly the General Assembly and the specialized agencies, to promote a coherent system-wide approach to small arms.<sup>229</sup>

By a presidential statement dated 31 August 2001,<sup>230</sup> the Council noted with grave concern that the destabilizing accumulation and uncontrolled spread of small arms and light weapons in many regions of the world, among other things, increased the intensity and duration of armed conflicts, undermined the sustainability of peace agreements and compromised the effectiveness of the Council in discharging its primary responsibility for the maintenance of international peace and security. Welcoming the adoption of the Programme of Action, the Council recognized its responsibility in assisting in its implementation.

By a statement by the President dated 31 October 2002,<sup>231</sup> the Council recognized its responsibility to examine ways in which it could further contribute to dealing with the question of illicit trade in small arms and light weapons in situations under its consideration.

#### **Case 15** **Protection of civilians in armed conflict**

At the 4492nd meeting, on 15 March 2002, the Council heard supportive opinions on the role of the Security Council in the protection of civilians in armed conflict. The representative of France, pointing out that the majority of the victims of conflict had shifted from soldiers to civilians, reaffirmed the primary responsibility of the Council for the maintenance of

<sup>221</sup> S/PRST/2000/25.

<sup>222</sup> Resolution 1366 (2001), para. 1.

<sup>223</sup> A/CONF.192/15, para. 24.

<sup>224</sup> S/PV.4355, p. 5.

<sup>225</sup> S/PV.4355 (Resumption 1) and Corr.1, p. 7.

<sup>226</sup> *Ibid.*, p. 11.

<sup>227</sup> *Ibid.*, p. 17.

<sup>228</sup> *Ibid.*, pp. 22-24.

<sup>229</sup> S/PV.4355, p. 7 (Jamaica); p. 10 (Bangladesh); p. 14 (China); p. 23 (Singapore); and p. 27 (Peru); S/PV.4355 (Resumption 1) and Corr. 1; p. 7 (Brazil).

<sup>230</sup> S/PRST/2001/21.

<sup>231</sup> S/PRST/2002/30.

peace and security, and asserted that the ongoing debate was entirely justified.<sup>232</sup> The representative of the United States expressed the view that it had always considered the protection of civilians to be at the heart of the task of the United Nations and of the Security Council in dealing with conflicts.<sup>233</sup> The representative of the Syrian Arab Republic maintained that the Council had decided to focus on the question of protection of civilians as an early warning element of the maintenance of international peace and security. He stated that the Council had a special responsibility to encourage Member States to fulfil their obligations with respect to the protection of civilians and that ways must be found to improve cooperation among the Council, the General Assembly and the Economic and Social Council, each according to its mandate.<sup>234</sup> Noting that resolutions 1265 (1999) and 1296 (2000) had established a solid base for the work of the Council in the area of protection of civilians, the representative of the Russian Federation was of the view that it was “only normal” for the Council to devote its attention to the issue.<sup>235</sup>

By a presidential statement dated 15 March 2002,<sup>236</sup> the Council reaffirmed its concern at the hardships borne by civilians during armed conflict and recognized the consequent impact this had on durable peace, reconciliation and development, bearing in mind its primary responsibility for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution.

By subsequent presidential statements dated 20 December 2002 and 15 December 2003,<sup>237</sup> the Council reaffirmed the need to keep the protection of civilians in armed conflict as an important item on the agenda of the Council.

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<sup>232</sup> S/PV.4492, p. 6.

<sup>233</sup> Ibid., p. 12.

<sup>234</sup> Ibid., p. 15.

<sup>235</sup> Ibid., p. 18.

<sup>236</sup> S/PRST/2002/6.

<sup>237</sup> S/PRST/2002/41 and S/PRST/2003/27, respectively.

## **Case 16**

### **The situation in Africa**

#### *Ad Hoc Working Group on Conflict Prevention and Resolution in Africa*

At the 4538th meeting, on 22 May 2002, following a briefing by the Chairman of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa, the representative of Cuba observed that many measures necessary for eliminating the causes of conflict in Africa and consolidating peace and sustainable development were “clearly beyond the mandate of the Security Council” and corresponded to the work of such organs as the General Assembly and the Economic and Social Council. Therefore, one of the functions of the Working Group should be to consider carefully the activities undertaken by the Council in Africa as the Council might not be the appropriate organ to undertake them. He further argued that his delegation’s concerns stemmed not only from the conceptual perspective but also from a concern over the suffering of the countries where the Council assumed functions that were beyond its competence, and for which it was not duly prepared. He emphasized that the work of the Working Group should “complement and not substitute” for the efforts of other organs to address problems in Africa, and should avoid duplications. He also hoped that it would contribute to improved coordination and communication among the General Assembly, the Council and the Economic and Social Council.<sup>238</sup> The representative of India contended that post-conflict peacebuilding did not fall within the purview of the Council, but lay with other bodies and organs of the Organization. He contended that as and when those bodies required the involvement and the cooperation of the Security Council, they would invite it.<sup>239</sup>

## **Case 17**

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

#### **United Nations peacekeeping**

In a letter dated 3 July 2002 addressed to the President of the Security Council, the representative of Canada requested the Council to convene a meeting on the situation in Bosnia and Herzegovina, stressing that at issue was not just an extension of the United Nations

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<sup>238</sup> S/PV.4538, pp. 23-24.

<sup>239</sup> Ibid., p. 32.

Mission in Bosnia and Herzegovina (UNMIBH), but the “potentially irreversible” decision of the Council which could negatively affect, inter alia, the integrity of treaty negotiations and the “credibility of the Council”.<sup>240</sup> In response to that request, the Council convened the 4568th meeting, on 10 July 2002, in connection with the situation in Bosnia and Herzegovina.

At the meeting, the representative of Canada raised concerns over the discussion that had been taking place in the Council regarding exemptions for peacekeepers from prosecution by the International Criminal Court. He maintained that the Council had not been empowered to rewrite treaties. He further argued that the draft resolutions being circulated<sup>241</sup> contained elements that “exceed[ed] the Council’s mandate” and that passage of them would “undermine the credibility of the Council”.<sup>242</sup> Similarly, the representatives of New Zealand and South Africa stated that the authority and the role of the Council entrusted to it by the Charter would be open to question, if the Council attempted to change the negotiated terms of a treaty without the approval of its States parties.<sup>243</sup> Other speakers also expressed concern over the legitimacy of the proposal which, in their opinion, exceeded the competency of the Council.<sup>244</sup>

Specifically referring to Article 24 of the Charter, the representative of the Islamic Republic of Iran expressed regret that the one-sided approach adopted by a permanent member of the Council was, inter alia, putting in jeopardy the future of United Nations peacekeeping. He further argued that such an approach ran counter to the spirit and letter of the Charter, especially Article 24, which maintained that the Council acted “on behalf of the general membership”.<sup>245</sup> The representative of Jordan was of the view that it was almost inconceivable, given the obligations conferred upon it by Article 24, that the

Council could ponder putting at risk the lives of potentially millions of people and existing peacekeeping operations because of differences in opinions on the International Criminal Court.<sup>246</sup> Explicitly citing Article 24 of the Charter, the representative of Mongolia recalled that Member States viewed the Council as the main United Nations body that was called upon, not only to strengthen international peace and security, but also to safeguard State sovereignty and independence in the case of threats or a crisis.<sup>247</sup>

The representative of Fiji explicitly referred to Article 24 (1), stating that the functions and powers of the Council, including those set out in Chapter VII, did not include amending treaties and that doing so would violate established principles of international treaty law.<sup>248</sup>

However, the representative of the United States argued that the proposal by his delegation, in which article 16 of the Rome Statute was used, was consistent with both the Statute and the primary responsibility of the Council for maintaining international peace and security.<sup>249</sup>

By resolution 1422 (2002) of 12 July 2002, under the agenda item entitled “United Nations peacekeeping”, the Council, acting under Chapter VII of the Charter, requested the International Criminal Court to suspend for 12 months, starting 1 July 2002, the investigation or prosecution cases involving personnel from States not Parties to the Rome Statute of the Court, and expressed the intention to renew that request under the same conditions each 1 July for further twelve-month periods for as long as it might be necessary.<sup>250</sup>

At the 4772nd meeting, on 12 June 2003, in connection with United Nations peacekeeping, some speakers, without explicitly invoking Article 24, contested the proposed renewal of the provisions of resolution 1422 (2002). The representative of Canada indicated his concern about the legitimacy of the action recommended by the Council and stated that under the Charter, Member States had entrusted “certain powers under certain conditions” to the Council in order to

<sup>240</sup> S/2002/723.

<sup>241</sup> Not issued as documents of the Council.

<sup>242</sup> S/PV.4568, p. 3.

<sup>243</sup> *Ibid.*, pp. 5-6 (New Zealand) and p. 6 (South Africa).

<sup>244</sup> *Ibid.*, p. 14 (Costa Rica, on behalf of the Rio Group); p. 15 (Islamic Republic of Iran); pp. 26-27 (Mexico); and p. 30 (Venezuela); S/PV.4568 (Resumption 1) and Corr. 1, p. 13 (Argentina); pp. 13-14 (Cuba); and p. 16 (United Kingdom).

<sup>245</sup> S/PV.4568, p. 15.

<sup>246</sup> *Ibid.*, p. 16.

<sup>247</sup> *Ibid.*, p. 19.

<sup>248</sup> S/PV.4568 (Resumption 1) and Corr.1, p. 2.

<sup>249</sup> S/PV.4568, p. 10.

<sup>250</sup> Resolution 1422 (2002), paras. 1-2.



maintain international peace and security. The representative further indicated his dismay that the Council, in purporting to act in the name of Member States, would take action in the absence of any apparent threat to international peace and security which was the precondition for action under Chapter VII of the Charter.<sup>251</sup> The representative of New Zealand also expressed concern that the intention of the Council to renew resolution 1422 (2002) on an annual basis was inconsistent with both the terms and the purpose of the provision. As such, it touched directly on the obligations assumed by States parties under the Rome Statute, without their consent. He further stated that such an approach stretched the legitimate limits of the role and responsibility entrusted to the Council under the Charter.<sup>252</sup> The representative of Jordan expressed the belief that the Council should not be rewriting treaties previously negotiated by all States comprising the entire international community.<sup>253</sup>

The representative of Liechtenstein stated that resolution 1422 (2002) was more damaging to the Council itself than to the International Criminal Court, and that many of the comments offered the previous year made it clear that the resolution effectively raised questions about the credibility of the action by the Council. He drew attention to the fact that at a time when the relevance of the Council and the Organization as a whole was openly questioned by many critics, the Council would do itself a disservice by renewing automatically or indefinitely the provisions of resolution 1422 (2002).<sup>254</sup> The representative of South Africa also questioned the renewal of resolution 1422 (2002) and urged the Council to use its authority wisely and in the interest of humankind as a whole, and not allow itself to jeopardize the Court or frustrate the ends of international criminal justice.<sup>255</sup>

At the same meeting, there were a number of explicit references to Article 24. The representative of the Islamic Republic of Iran expressed regret that a unilateral approach by one member of the Council had created an untenable and unsound situation in the Council and undoubtedly, such an approach ran counter

to the spirit and letter of the Charter, especially Article 24, which maintained that the Council acted on behalf of the membership of the United Nations.<sup>256</sup> The representative of Nigeria also reaffirmed that Member States had collectively conferred on the Council the primary responsibility for the maintenance of international peace and security, under Article 24.<sup>257</sup> While supporting the draft resolution,<sup>258</sup> the representative of Pakistan stated that his Government strongly adhered to the position that the Council, despite its wide authority and responsibilities, was not empowered to unilaterally amend or abrogate international treaties and agreements freely entered into by sovereign States. He further reaffirmed that the powers of the Security Council were constrained under paragraph 2 of Article 24 of the Charter, which obliged it to discharge its duties in accordance with the purposes and principles of the Charter.<sup>259</sup> At the meeting, the draft resolution was adopted as resolution 1487 (2003) by which the Council extended for a twelve-month period the provisions of resolution 1422 (2002).

#### **Case 18 The situation in the Middle East, including the Palestinian question**

At the 4231st meeting, on 22 November 2000, convened in connection with the situation in the Middle East, including the Palestinian question, the representative of Palestine affirmed that, to put an end to the situation, the responsibility of the Council was consistent and clear in accordance with the Charter. He noted that first, concrete measures needed to be taken to end the Israeli campaign against the Palestinian people and secondly, the Council must provide the necessary international protection for Palestinian civilians under Israeli occupation.<sup>260</sup> For his part, the representative of Israel held the belief that as the organ with the primary responsibility for the maintenance of international peace and security, the Council was duty-bound to encourage the parties to return to the path of bilateral negotiation and compromise. He further urged the Council to call upon the Palestinians to adhere to the commitments they had undertaken to renew

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<sup>251</sup> S/PV.4772, p. 5.

<sup>252</sup> *Ibid.*, pp. 5-6.

<sup>253</sup> *Ibid.*, p. 6.

<sup>254</sup> *Ibid.*, p. 8.

<sup>255</sup> *Ibid.*, pp. 16-17.

<sup>256</sup> *Ibid.*, p. 10.

<sup>257</sup> *Ibid.*, p. 17.

<sup>258</sup> S/2003/630.

<sup>259</sup> S/PV.4722, p. 21.

<sup>260</sup> S/PV.4231 and Corr. 1, pp. 3-4.

security cooperation with Israel and to call for an end to the violence and to return to the negotiating table. The representative of Israel assured the Council that, if the Palestinians were to take those actions, the bloodshed would end immediately.<sup>261</sup>

Several speakers called upon the Council to fulfil its obligations under the Charter and to act without delay to stop the violence. The representative of Malaysia emphasized that the Council, with the primary responsibility for the maintenance of international peace and security, must live up to its obligations and that its credibility was at stake.<sup>262</sup> The representative of the Libyan Arab Jamahiriya stated that if the Council was to express the will of the international community and to maintain international peace and security, it should be just and shoulder its responsibilities under the Charter and its own resolutions.<sup>263</sup> A similar call was made by the representative of Egypt.<sup>264</sup>

In subsequent meetings on the agenda item, also expressed the opinion speakers that the Council should assume the responsibility vested in it by the Charter, by explicitly citing Article 24.<sup>265</sup>

#### **Case 19** **The situation between Iraq and Kuwait**

At the 4336th meeting, held on 28 June 2001 in response to the request contained in a letter dated 15 June 2001 from the representative of the Russian Federation addressed to the President,<sup>266</sup> the Council considered, *inter alia*, the effects of the sanctions imposed on Iraq and ways of improving the humanitarian situation in that country. At the meeting, the representative of Canada, referring to a draft resolution submitted by the United Kingdom to modify the oil-for-food programme,<sup>267</sup> recalled that Article 24 of the Charter specified that members of the Council were to “act on behalf of the entire United Nations membership”. Therefore, he appealed to all members

of the Council to act corporately in the common interest by supporting the draft resolution, since that was “their duty under the Charter” and “our expectation of them as our representatives”.<sup>268</sup>

At the 4625th meeting, on 16 October 2002, following the decision of the Government of Iraq to resume weapons inspections in Iraq, the Deputy Secretary-General stated that non-compliance by Iraq with Security Council resolutions posed a challenge to the Organization and in particular to the Council. She further reaffirmed that in Article 24 of the Charter, Member States had conferred on the Council primary responsibility for the maintenance of international peace and security and that it was essential that the Council should face up to its grave responsibility.<sup>269</sup>

At the same meeting, the representative of Jordan called on all Member States to work towards achieving a solution through peaceful means in order to avoid making the situation in the Middle East even more critical, which, in his opinion, compelled the Council to assume its responsibilities as provided for in the Charter, including paragraphs 1 and 2 of Article 24.<sup>270</sup>

The representative of Morocco expressed the view that resolutions of the Council should be respected, as the Council adopted them “on behalf of” Member States, in accordance with the purposes and principles of the United Nations and in line with the provisions of Article 24 of the Charter.<sup>271</sup> Explicitly citing Article 24, the representative of Jamaica also reaffirmed that the Council was entrusted with the primary responsibility for the maintenance of international peace and security on behalf of the membership of the Organization, and that in discharging its responsibilities, the Council should act in accordance with the purposes and principles of the United Nations. As such, he argued that the Council was accountable to the wider membership, especially in discussing a matter of great importance for the world.<sup>272</sup>

At the same meeting, the representative of Iraq held that the embargo imposed against his country was a blatant violation of several provisions of the Charter of the United Nations, such as Article 24, which called

<sup>261</sup> *Ibid.*, p. 7.

<sup>262</sup> *Ibid.*, p. 16.

<sup>263</sup> *Ibid.*, p. 19.

<sup>264</sup> *Ibid.*, p. 22.

<sup>265</sup> See S/PV.4357 (Resumption 1) and Corr. 1, p. 13 (Bahrain); S/PV.4506 (Resumption 1) and Corr. 1, p. 18 (United Republic of Tanzania); and S/PV.4515 (Resumption 1), pp. 14-15 (Singapore).

<sup>266</sup> S/2001/597.

<sup>267</sup> Not issued as a document of the Council.

<sup>268</sup> S/PV.4336 (Resumption 1), p. 14.

<sup>269</sup> S/PV.4625 and Corr. 1, p. 3.

<sup>270</sup> *Ibid.*, p. 21.

<sup>271</sup> S/PV.4625 (Resumption 2), p. 2.

<sup>272</sup> *Ibid.*, p. 22.

for the Council to work in keeping with the purposes and principles of the Charter.<sup>273</sup>

Following the commencement of the military action against Iraq by the United States and its allies, at the 4726th meeting, on 26 March 2003, the Secretary-General urged Member States to reunite to uphold the principles of the Charter. This was essential for the Council to recover its rightful role, entrusted to it by the Charter, as the body with primary responsibility for the maintenance of international peace and security.<sup>274</sup>

The representative of Iraq argued that, while consideration of humanitarian questions was important, the Council should pay attention first to the cessation of “the war of aggression”, not the humanitarian aspects. He continued that the focus on the latter was an attempt to distract the Council from its main role in the maintenance of international peace and security.<sup>275</sup> Similarly, the representative of the Islamic Republic of Iran held that the international community expected the Council to live up to its obligations and call for an immediate ceasefire and the withdrawal of foreign troops from Iraq.<sup>276</sup>

The representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed disappointment at the failed attempts to avert the war in Iraq and called on the Council to pronounce itself on the issue of the ongoing military action against Iraq. He called on the Council to use its power and authority as mandated by the Charter, “to revert to the multilateral process” to resolve the current issue. He further pointed out that “as the custodian of international peace and security”, the Council had a “special and heightened” responsibility to ensure that the international world order was based on the principles of justice and international law.<sup>277</sup> The representative of the League of Arab States called upon the Council to shoulder its obligations as the organ responsible for the maintenance of international peace and security. He urged the Council to put an end to the war and initiate an immediate withdrawal of the “invading forces”, which was the responsibility of the Council. The credibility of the Council, he said,

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<sup>273</sup> Ibid., p. 7.

<sup>274</sup> S/PV.4726, p. 4.

<sup>275</sup> Ibid., p. 6.

<sup>276</sup> Ibid., p. 34.

<sup>277</sup> Ibid., pp. 6-8.

depended upon that.<sup>278</sup> The representative of Jamaica, referring explicitly to Article 24, also reminded the Council of its responsibility.<sup>279</sup>

## B. Article 25

### *Article 25*

*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*

### **Note**

During the period under review, the Council did not adopt any decisions that explicitly invoked Article 25 of the Charter. In the deliberations of the Council, however, there were several occasions<sup>280</sup> on which explicit references to Article 25 of the Charter were made.

On one such occasion, a speaker noted the relationship between Articles 24 and 25. At the 4568th meeting, on 10 July 2002, the representative of Mongolia noted that Article 24 of the Charter conferred on the Security Council primary responsibility for the maintenance of international peace and security and that Member States viewed the Council as the main United Nations body that was called upon, not only to strengthen international peace and security, but also to

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<sup>278</sup> Ibid., p. 9.

<sup>279</sup> Ibid., p. 32.

<sup>280</sup> In connection with children and armed conflict, see S/PV.4176 (Resumption 1), p. 16 (Iraq). In connection with the situation between Iraq and Kuwait, see S/PV.4625 and Corr. 1, p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 7 (League of Arab States); S/PV.4625 (Resumption 3) and Corr. 1, p. 7 (Syrian Arab Republic); p. 16 (Singapore); p. 23 (Colombia); p. 27 (Mauritius); and p. 29 (Palestine); S/PV.4709 (Resumption 1) and Corr. 1, p. 27 (Iceland); and S/PV.4717 (Resumption 1), p. 9 (El Salvador). In connection with the situation in the Middle East, including the Palestinian question, see S/PV.4506 (Resumption 1), p. 4 (Kuwait); p. 10 (Iraq); p. 30 (Singapore); and p. 37 (Mexico); S/PV.4510, p. 3 (Palestine); and S/PV.4525, p. 13 (Canada). In connection with the situation in Bosnia and Herzegovina, see S/PV.4568, p. 19 (Mongolia). In connection with the role of the Security Council in the pacific settlement of disputes, see S/PV.4753, p. 26 (Cameroon). In connection with justice and the rule of law: the United Nations role, see S/PV.4835, p. 9 (Japan).

safeguard their sovereignty and independence in case of threats or crisis. He stated that it was because of that trust and faith that Member States agreed, in Article 25 of the Charter, to accept and carry out the decisions of the Council.<sup>281</sup>

The principle enshrined in Article 25 was referred to, without being invoked explicitly, in a large number of resolutions and presidential statements. In particular, the binding nature of the decisions of the Council, within the context of Article 25, was reaffirmed in a resolution in connection with the situation between Iraq and Kuwait, by which the Council requested the Secretary-General immediately to notify Iraq of the resolution, which was binding on Iraq.<sup>282</sup> In addition, by a presidential statement of 20 July 2000, in connection with the role of the Security Council in the prevention of armed conflicts, the Council recalled “the obligation of all Member States to accept and carry out” its decisions, including those for the prevention of armed conflicts.<sup>283</sup>

In other instances, the Council demanded that Member States comply with relevant resolutions, reminding them that non-compliance was in a violation of the Charter. For example, in connection with the situation in Somalia, by resolution 1474 (2003) of 8 April 2003, noting with regret that the arms embargo on Somalia had been continuously violated since its imposition in 1992, the Council stressed the obligation of “all States and other actors” to comply with resolution 733 (1992) and reaffirmed that non-compliance constituted “a violation of the provisions of the Charter”.<sup>284</sup> Similar provisions were included in resolution 1519 (2003) of 16 December 2003.<sup>285</sup>

In a draft resolution that was not adopted during the period under review, the Council, recalling “the obligation of Members of the United Nations to accept and carry out decisions of the Security Council”, would have condemned the failure of implementation of its

resolutions and demanded the immediate implementation of a resolution.<sup>286</sup>

During the period under review, there were a few instances in which Article 25 was explicitly cited in communications.<sup>287</sup>

In one case, during the deliberations of the Council concerning the situation between Iraq and Kuwait, an aspect of the application of Article 25 was touched upon, namely the binding nature of the decisions of the Council (case 20).

#### **Case 20** **The situation between Iraq and Kuwait**

At the 4625th meeting, on 16 and 17 October 2002, many speakers urged Iraq to implement relevant Security Council resolutions. The representative of Pakistan, explicitly citing Article 25 of the Charter, opined that the Article imposed a “clear-cut” obligation on Member States to implement the decisions of the Security Council without conditions.<sup>288</sup>

However, several speakers expressed concern about “discrimination” or “double standards” of the Council in seeking the implementation of its decisions in connection with the situation between Iraq and Kuwait, compared to those, in particular, in connection with the situation in the Middle East, including the Palestinian question.<sup>289</sup> The representative of South Africa argued that the Council should ensure consistency in the way it acted to enforce its decisions and to avoid subjectivity and vagueness in its

<sup>281</sup> S/PV.4568, p. 19.

<sup>282</sup> Resolution 1441 (2002), para. 9.

<sup>283</sup> S/PRST/2000/25.

<sup>284</sup> Resolution 1474 (2003), second preambular paragraph and para. 1.

<sup>285</sup> Resolution 1519 (2003), fourth preambular paragraph and para. 1.

<sup>286</sup> S/2002/363.

<sup>287</sup> See the letters dated 2 January 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council (S/2002/2, p. 12 and S/2002/10, p. 6); identical letters dated 26 September 2002 from the representative of Palestine addressed to the Secretary-General and the President of the Council (S/2002/1083, p. 2); and the letter dated 3 June 2003 from the representative of the Islamic Republic of Iran addressed to the Secretary-General (S/2003/619, p. 43).

<sup>288</sup> S/PV.4625 and Corr. 1, p. 18.

<sup>289</sup> *Ibid.*, p. 17 (Egypt); and p. 24 (Tunisia); S/PV.4625 (Resumption 1), p. 7 (League of Arab States); and p. 24 (Sudan); S/PV.4625 (Resumption 2); p. 8 (Malaysia); pp. 9-10 (Lebanon); p. 17 (Palestine); pp. 18-19 (Saudi Arabia); p. 20 (Organization of the Islamic Conference); p. 24 (Zimbabwe); and p. 25 (Qatar); and S/PV.4625 (Resumption 3) and Corr. 1, p. 7 (Syrian Arab Republic).

resolutions. He further underlined that, the Council, by clearly defining the objectives of its decisions and setting clear benchmarks for compliance, could facilitate efforts by Member States to fully comply with their obligations.<sup>290</sup> Similarly, the representative of Algeria, in referring to resolution 1435 (2002), expressed the view that the Council must be consistent and fair and ensure compliance with its resolutions in every instance.<sup>291</sup> The representative of Jordan stated that the implementation of Security Council resolutions was an obligation of all States, without exception, including resolutions on the Middle East, whether they were adopted with regard to Iraq or to the occupied Palestinian territories.<sup>292</sup> The representative of Malaysia argued that what was required of Iraq, with respect to compliance with Council decisions, must also be required of others, particularly Israel, which had ignored many of them with impunity.<sup>293</sup> The representative of Saudi Arabia stressed that Council resolutions, under whatever Chapter of the Charter they might be adopted, were binding, particularly since they addressed issues of international peace and security.<sup>294</sup>

The representative of Israel, for his part, contended that there was indeed a double standard directed against Israel, which could explain the failure to see any distinction between “binding resolutions, adopted under Chapter VII of the Charter — resolutions that set out specific actions to be taken by Iraq, independent of the actions of any other party — and interdependent recommendations or statements of the principle, adopted under Chapter VI”, that were designed to move all the parties forward in the Middle East. He continued by affirming that unlike resolutions concerning Iraq, the resolutions of the Council on the

Israeli-Palestinian conflict did not envision Israeli action without reciprocal commitment and implementation by other parties to the dispute, and that they could not be compared to resolutions adopted under Chapter VII which addressed the threat posed by the aggressive intentions of one regime to both the region and the world.<sup>295</sup>

The representative of the Syrian Arab Republic, however, rejected the view expressed by the representative of Israel as “distortion” of the Charter and affirmed that Article 25 called on all States to implement Council resolutions and that all Council resolutions were binding and must be implemented, and therefore, all resolutions were binding on all Members.<sup>296</sup> The representative of Singapore, echoed by the representative of Mauritius, explicitly cited Article 25 and held that irrespective of whether they were adopted under Chapter VI or Chapter VII of the Charter, all Council resolutions must be complied with and no Council resolution on any issue could be cast aside without consequences. The representative of Singapore continued by stating that, to maintain its credibility and authority, the Council must vigorously pursue the implementation of all its resolutions, whether they were on Iraq, the Middle East, the Balkans or Africa.<sup>297</sup> The representative of Palestine renounced the statement by the representative of Israel indicating that there was a difference in the nature of the resolutions adopted pursuant to Chapter VII and those pursuant to Chapter VI of the Charter. He declared that, while recognizing the existence of an enforcement mechanism pursuant to Chapter VII, to attempt to give the impression that some resolutions were binding and others were not was “legally false”, and maintained that Article 25 was clear and all Council resolutions were binding.<sup>298</sup>

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<sup>290</sup> S/PV.4625 and Corr. 1, p. 6.

<sup>291</sup> *Ibid.*, p. 16.

<sup>292</sup> *Ibid.*, p. 21.

<sup>293</sup> S/PV.4625 (Resumption 2), p. 8.

<sup>294</sup> *Ibid.*, p. 19.

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<sup>295</sup> S/PV.4625 (Resumption 3) and Corr. 1, pp. 2-3.

<sup>296</sup> *Ibid.*, p. 7.

<sup>297</sup> *Ibid.*, p. 16 (Singapore); and p. 27 (Mauritius).

<sup>298</sup> *Ibid.*, pp. 28-29.

### Part III

## Consideration of the provisions of Chapter VIII of the Charter

#### Article 52

1. *Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.*

2. *The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.*

3. *The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.*

4. *This Article in no way impairs the application of Articles 34 and 35.*

#### Article 53

1. *The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.*

2. *The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.*

#### Article 54

*The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.*

#### Note

During the period under review, the Security Council further broadened its cooperation and coordination with regional arrangements or agencies in the maintenance of international peace and security, as provided for in Chapter VIII of the Charter.<sup>299</sup> The more active involvement of regional organizations in the maintenance of peace and security provided for a wider range of options for the Council as to the nature and modalities of cooperation with those regional arrangements, which differed in mandate, structure, capacity and experience in peace-related activities.

Underscoring its expanding cooperation with regional organizations, in April 2003, the Security Council held its first thematic debate, with participation of several regional organizations,<sup>300</sup> on the agenda item entitled “The Security Council and regional organizations: facing the new challenges to international peace and security”.<sup>301</sup>

<sup>299</sup> Chapter VIII of the Charter refers to “regional arrangements and agencies”. The *Repertoire* follows the practice of the Council in its use of these terms as synonymous with “regional organizations”.

<sup>300</sup> Participating regional organizations included the Organization of American States (OAS), the League of Arab States (LAS), the Organization for Security and Cooperation in Europe (OSCE), the African Union, the European Union and the Economic Community of West African States (ECOWAS). For additional information regarding participation of representatives of regional organizations in meetings of the Council, see chapter III, annex II.

<sup>301</sup> In parallel, the Secretary-General continued a high-level meeting process with the heads of regional organizations with a view to strengthening mutual cooperation between regional organizations and the United Nations, particularly, in the context of Chapter VIII of the

The resolutions and presidential statements adopted by the Council during the period under consideration revealed an increased recognition of regional organizations and of their growing or potential role in international peace and security. Most of the activities of regional organizations praised or endorsed by the Council concerned efforts at the peaceful settlement of disputes. In other instances, regional organizations were called upon to assist in the monitoring and implementation of mandatory measures imposed by the Council under Chapter VII of the Charter. Furthermore, in three instances, the Council authorized the use of force by regional organizations to support the respective peacekeeping operations in the performance of their mandates.

While all instances of cooperation with regional arrangements could be considered to fall within the framework of Chapter VIII of the Charter, the Council, on occasion, invoked Chapter VIII or the relevant Articles therein in its decisions.<sup>302</sup> A number of explicit references to Chapter VIII as well as to Articles 52, 53 and 54 of the Charter were also made in

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Charter, on issues related to peace and security. By a presidential statement dated 20 February 2001 (S/PRST/2001/5), the Council welcomed the convening of the fourth high-level meeting between the United Nations and regional organizations and its results as conveyed by the Secretary-General in his letter of 12 February 2001 (S/2001/138). Upon the conclusion of the fifth high-level meeting between the United Nations and regional organizations in July 2003, by identical letters dated 22 October 2003 addressed to the President of the Security Council and the President of the General Assembly (S/2003/1022-A/58/444), the Secretary-General transmitted the conclusions of the meeting. Subsequently, reference was made to the outcome of the fifth high-level meeting during the deliberations of the Council.

<sup>302</sup> In connection with the item entitled "Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa", see resolution 1318 (2000), annex, section VII, first paragraph. In connection with the item entitled "The situation in Côte d'Ivoire", see resolution 1464 (2003), para. 9. In connection with the item entitled "The situation in Liberia", see resolution 1497 (2003), fifth preambular paragraph. In connection with the item entitled "Role of the Security Council in the prevention of armed conflicts", see S/PRST/2000/25. In connection with the item entitled "The situation in Africa", see S/PRST/2002/2.

the course of the deliberations of the Council, particularly during the debates on thematic issues.<sup>303</sup>

In addition, explicit references to Article 52 were made in two communications,<sup>304</sup> and an explicit

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<sup>303</sup> In connection with the item entitled "Protection of civilians in armed conflict", see S/PV.4660, p. 28 (Russian Federation). In connection with the item entitled "Strengthening cooperation between the United Nations system and the Central African region in the maintenance of peace and security", see S/PV.4630 (Resumption 1), p. 29. In connection with the item entitled "Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones", see S/PV.4100, p. 11 (Russian Federation). In connection with the item entitled "High-level meeting of the Security Council: combating terrorism", see S/PV.4688, p. 14 (Mexico). In connection with the item entitled "Wrap-up discussion on the work of the Security Council for the current month", see S/PV.4818, p. 4 (Cameroon) and p. 9 (Russian Federation); and S/PV.4445, p. 4 (Tunisia). In connection with the item entitled "Justice and the rule of law: the United Nations role", see S/PV.4835, p. 24 (Australia). In connection with the item entitled "Maintaining peace and security: humanitarian aspects of issues before the Security Council", see S/PV.4109 (Resumption 1), p. 10 (Pakistan); and p. 13 (India). In connection with the item entitled "No exit without strategy", see S/PV.4223 (Resumption 1), p. 10 (Thailand). In connection with the item entitled "Role of the Security Council in the prevention of armed conflicts", see S/PV.4334, p. 18 (Norway) and S/PV.4334 (Resumption 1), p. 20 (South Africa). In connection with the item entitled "Letter dated 30 April 2001 from the Secretary-General addressed to the President of the Security Council (S/2001/434)", see S/PV.4439, p. 19 (Tunisia).

<sup>304</sup> By a letter dated 5 April 2000 addressed to the President of the Council, the representative of Djibouti, as President of the Intergovernmental Authority on Development (IGAD) at the time, emphasized that IGAD was the main forum for peace efforts in the Sudan. While recognizing the primary responsibility of the Council for the maintenance of peace and security and its involvement in the pacific settlement of conflicts, he held that taking up the question of peace in the Sudan in the Council might have a negative impact on the peace process currently under way under the auspices of IGAD. He expressed hope that the Council, in accordance with Article 52 of the Charter, would do its utmost to "give a chance to the laudable efforts undertaken by IGAD for the resolution of the conflict in the Sudan" (S/2000/288). Additionally, by a letter dated 31 July 2000 addressed to the President of the Council, Mr. Jovanovic of the Federal Republic of Yugoslavia

reference to Article 53 was made in another communication.<sup>305</sup> Explicit references to Article 54 were made occasionally by regional organizations in communications informing the Council of activities undertaken or contemplated by them for the maintenance of international peace and security.<sup>306</sup>

The practice of the Council under Chapter VIII of the Charter is set out below in five sections. Section A captures the relevant debates and decisions of the Council on general and thematic issues that touch upon the provisions of Chapter VIII of the Charter. Section B illustrates various ways in which the Council, in dealing with specific situations under its consideration, encouraged and supported efforts by regional organizations in the peaceful settlement of disputes. Section C sets out cases in which regional organizations were involved in the implementation of Chapter VII measures. Section D depicts four cases in which the Council considered or authorized enforcement action by regional organizations. The final section, section E, captures the modalities and mechanisms of communication, consultation and

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argued that the sanctions imposed since 1998 against his country by the European Union were not in line with Article 52 of the Charter and had never been referred to the Council. Considering that the sanctions by the European Union were not based on international law and were contrary to the purposes and principles of the Charter, the Council was called upon to consider the lack of legal basis of the continued impositions of the sanctions, to declare them illegal and to propose that they be urgently lifted (S/2000/753).

<sup>305</sup> See the letter dated 14 February 2001 from the representative of Cyprus to the President of the Council (S/2001/136).

<sup>306</sup> See the letter dated 2 July 2003 from the representative of Fiji to the President of the Council (S/2003/753); and letters dated 7 September 2000 (S/2000/863), 25 September 2000 (S/2000/900), 21 March 2001 (S/2001/257), 9 April 2001 (S/2001/341 and S/2001/349), 6 August 2001 (S/2001/769), 10 October 2001 (S/2001/957), 23 September 2002 (S/2002/1077, S/2002/1078, S/2002/1079, S/2002/1080, S/2002/1081 and S/2002/1082), 24 September 2002 (S/2002/1074), 23 October 2002 (S/2002/1188), 11 November 2002 (S/2002/1238), 3 March 2003 (S/2003/254), 24 March 2003 (S/2003/365), 3 June 2003 (S/2003/613), 21 July 2003 (S/2003/753), 6 October 2003 (S/2003/949), 4 November 2003 (S/2003/1072) and 11 November 2003 (S/2003/1179) from the representative of the League of Arab States to the President of the Council.

reporting between the Council and regional organizations.

### **A. General consideration of the provisions of Chapter VIII**

On several occasions, as described below, the Council discussed the provisions of Chapter VIII of the Charter in the context of its deliberations on thematic and cross-cutting issues.

#### **Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa**

At the 4194th meeting, on 7 September 2000, the President of China, while underscoring the responsibility of the Council for the maintenance of international peace and security, stressed the need to pay close attention to the opinions of regional organizations, such as the Organization of African Unity.<sup>307</sup> The President of France also emphasized the need to strengthen the partnership between the Council and regional organizations. He noted that some progress had been made, but closer consultations at an earlier stage were critical when planning to call on the United Nations to facilitate implementation of an agreement or to take over a regional action.<sup>308</sup> The President of Mali noted that cooperation with regional organizations should be strengthened to enable the United Nations to be more effective at prevention and at deploying locally based operations. He added that the international community and the Council had to employ a consistent strategy to build the capacity of OAU and of a future African union, and of regional organizations, as well as to cooperate with them.<sup>309</sup> A few speakers called for greater coordination<sup>310</sup> and consultation with regional organizations.<sup>311</sup>

By resolution 1318 (2000), adopted at the same meeting, the Security Council called for the strengthening of cooperation and communication between the United Nations and regional or subregional organizations or arrangements, in

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<sup>307</sup> S/PV.4194, pp. 7-8.

<sup>308</sup> *Ibid.*, p. 9.

<sup>309</sup> *Ibid.*, p. 20.

<sup>310</sup> *Ibid.*, p. 6 (Argentina) and p. 12 (Tunisia).

<sup>311</sup> *Ibid.*, p. 10 (Namibia).



accordance with Chapter VIII of the Charter, and in particular with respect to peacekeeping operations.<sup>312</sup>

At the 4288th meeting, on 7 March 2001, several speakers stressed the need to strengthen cooperation and communication with regional and subregional organizations, citing examples of Council meetings with the ministerial delegation of the Economic Community of West African States and the Political Committee of the Lusaka Ceasefire Agreement process, both on the situation concerning the Democratic Republic of the Congo.<sup>313</sup> The representative of Canada held that, while the Secretary-General had made substantial progress in improving the ability to work with regional and subregional bodies, such progress had not been matched by the Council, which had been too often absent when peace agreements were negotiated, resulting in the United Nations falling short of fulfilling its commitments. He noted, however, that when the Council had engaged regional or subregional bodies, too often the result had been to delay effective Council action.<sup>314</sup> Similarly, while acknowledging the existing cooperation between the Council and regional organizations, the representative of France underscored the importance of implementing that cooperation in a satisfactory manner. Pointing out the limited capacity of regional and subregional organizations to implement their decisions, he advocated the early involvement of the Council in the preparation of regional action, so that the Council could assume a mandate or undertake a mission from the regional organizations.<sup>315</sup>

### **Peacebuilding: towards a comprehensive approach**

At the 4272nd meeting, held on 5 February 2001, several speakers welcomed the timing of the debate in the light of the fourth high-level meeting between the United Nations and regional organizations<sup>316</sup> on 6 and

<sup>312</sup> Resolution 1318 (2000), annex, section VII, first paragraph.

<sup>313</sup> S/PV.4288, p. 4 (Canada); p. 7 (Sweden) and pp. 8-9 (Argentina); S/PV.4288 (Resumption 1); p. 2 (Mali); p. 4 (France); p. 9 (China); p. 12 (United Kingdom); pp. 15-16 (United States); p. 18 (Tunisia); p. 20 (Norway); and p. 23 (Mauritius).

<sup>314</sup> S/PV.4288, p. 4.

<sup>315</sup> S/PV.4288 (Resumption 1), p. 5.

<sup>316</sup> S/PV.4272, p. 13 (Singapore); p. 24 (Mali); and p. 27 (Mauritius); S/PV.4272 (Resumption 1), p. 4 (Sweden, on behalf of the European Union and associated countries); p. 8 (Republic of Korea); p. 20 (Mongolia);

7 February 2001, which concerned cooperation with regional organizations in peacebuilding.<sup>317</sup> With respect to developing a comprehensive peacebuilding strategy, a number of speakers maintained that an integrated approach required thorough and timely coordination between actors on the ground and those at the centre and, most notably, between the United Nations and regional organizations.<sup>318</sup> The representative of the United Kingdom noted that the capacity of regional organizations could be extended, for example, by sharing information and analysis, the “double-hatting” of special envoys, and the arrangement of specialized training and secondments.<sup>319</sup> The representative of Colombia held that peacebuilding missions need not be carried out principally by the United Nations. Rather, depending on the specific conditions, the lead could be taken by a regional organization.<sup>320</sup>

Some speakers also argued that the United Nations and the regional actors possessed different strengths and capabilities in the area of conflict prevention and peacebuilding, and therefore the focus should be on achieving greater complementarity and synergy between the United Nations and regional organizations, using their respective comparative advantages.<sup>321</sup>

### **Role of the Security Council in the prevention of armed conflicts**

At the 4174th meeting, on 20 July 2000, some representatives expressed support for stronger cooperation with regional organizations.<sup>322</sup> While

and p. 25 (Malaysia).

<sup>317</sup> For details, see the letter dated 12 February 2001 from the Secretary-General addressed to the President of the Council (S/2001/138).

<sup>318</sup> S/PV.4272, p. 8 (Jamaica); p. 10 (United States); p. 11 (United Kingdom); p. 20 (Ireland); p. 21 (Norway); p. 24 (Mali); and p. 26 (Bangladesh); S/PV.4272 (Resumption 1), p. 4 (Sweden); p. 8 (Nigeria); p. 17 (Islamic Republic of Iran); p. 18 (Japan); and p. 25 (Argentina).

<sup>319</sup> S/PV.4272, p. 10.

<sup>320</sup> *Ibid.*, p. 16.

<sup>321</sup> S/PV.4272 (Resumption 1), p. 4 (Sweden, on behalf of the European Union and associated countries); and p. 19 (Romania, on behalf of the Organization for Security and Cooperation in Europe).

<sup>322</sup> S/PV.4174, p. 5 (United States); pp. 6-7 (United Kingdom); p. 11 (Russian Federation); p. 14 (Tunisia); p. 21 (Canada); p. 23 (Ukraine); and p. 27 (France); S/PV.4174 (Resumption 1), p. 16 (Kenya).

commenting on the increasingly important role played by regional organizations in the maintenance of peace and security and conflict prevention, in line with their mandate under Chapter VIII of the Charter, some speakers reminded the Council that intervention by regional organizations needed to be done with its authorization, as provided for by Article 53 of the Charter.<sup>323</sup> Other speakers, while urging for more cooperation with regional arrangements, reaffirmed the primacy of the Security Council in the maintenance of international peace and security.<sup>324</sup> Furthermore, the representative of the United Republic of Tanzania asserted that preventive action at the regional level, in the context of Chapter VIII, needed to be enhanced and that regional arrangements could act as an effective spearhead for subsequent Council action.<sup>325</sup> The representative of Canada cited examples of cooperation, albeit “far from perfect”, between the United Nations and regional organizations such as those in the Democratic Republic of the Congo, Ethiopia and Eritrea, and Sierra Leone, where regional organizations had taken the lead in the negotiation of peace agreements with the United Nations following the implementation phase. He argued that for such joint efforts to succeed, close coordination was needed.<sup>326</sup> The representative of Indonesia called for regional organizations to play an active role in initiating and implementing conflict-prevention measures.<sup>327</sup> The representative of the Organization of the Islamic Conference (OIC), commenting that conflict prevention differed from one region to the next, noted that creating an effective coordination mechanism among the United Nations agencies and regional organizations would make it possible to derive benefits, as laid out in Chapter VIII of the Charter, from the comparative advantages of every organization.<sup>328</sup>

By a presidential statement of the same date, the Council recognized the important role that regional organizations played in the prevention of armed conflicts and re-emphasized the need for effective and sustained cooperation and coordination between the United Nations and regional organizations and

arrangements, in accordance with the provisions of Chapter VIII of the Charter. The Council expressed its willingness, within its responsibilities, to support the efforts of the Secretary-General in collaborating with the leadership of regional organizations and arrangements in order to develop strategies and programmes to be employed at the regional level. In that regard, the Council encouraged the strengthening of the modalities of cooperation between the United Nations and regional organizations and arrangements, including in early warning and the mutual exchange of information. Additionally, it recognized the need to enhance the capacity of the Organization of African Unity.<sup>329</sup>

In his report dated 7 June 2001, included in the agenda of the 4360th meeting, held on 30 August 2001, the Secretary-General recognized that Chapter VIII of the Charter provided a broad mandate for interaction between the United Nations and regional organizations in conflict prevention. He held that regional organizations, because of their proximity, could contribute to conflict prevention in a number of ways, as they could provide a local forum for efforts to decrease tensions, and promote and facilitate a comprehensive regional approach to cross-border issues.<sup>330</sup>

By resolution 1366 (2001) of 30 August 2001, the Council, bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security and reaffirming its role in the prevention of armed conflicts, called upon Member States as well as regional and subregional organizations and arrangements to support the development of a comprehensive conflict prevention strategy, as proposed by the Secretary-General in his report of 7 June 2001.<sup>331</sup> It called for the enhancement of the capacity for conflict prevention of regional organizations, in particular in Africa, by extending international assistance to, *inter alia*, OAU, its successor organization and ECOWAS.<sup>332</sup>

<sup>323</sup> S/PV.4174, p. 13 (China); and p. 18 (Namibia).

<sup>324</sup> *Ibid.*, p. 14 (Tunisia); and p. 23 (Ukraine).

<sup>325</sup> S/PV.4174 (Resumption 1), p. 14.

<sup>326</sup> S/PV.4174, p. 21.

<sup>327</sup> S/PV.4174 (Resumption 1), p. 11.

<sup>328</sup> *Ibid.*, p. 18.

<sup>329</sup> S/PRST/2000/25.

<sup>330</sup> S/2001/574, paras. 137-138.

<sup>331</sup> *Ibid.*, recommendation 26.

<sup>332</sup> Resolution 1366 (2001), paras. 3, 19 and 20.

**The Security Council and regional organizations: facing the new challenges to international peace and security**

At the 4739th meeting, on 11 April 2003, the Security Council held its first thematic debate on the agenda item entitled “The Security Council and regional organizations: facing the new challenges to international peace and security”. While recalling the primary responsibility of the Council for the maintenance of international peace and security, a number of speakers stated that cooperation with regional organizations was important and that a dynamic relationship with regional organizations needed to be developed, on the basis of the provisions of Chapter VIII of the Charter.<sup>333</sup> The representative of Germany, welcoming the initiative of the President to discuss questions related to Chapter VIII, commented that the potential of that Chapter seemed to be unfolding in a positive manner. However, he noted that if the primacy of the Council in the maintenance of international peace and security was rejected, the very foundation of international law as represented by the Charter would be brought into question. Therefore, it was imperative that regional security operations remained mandated by the Council. The representative added that to bring the primacy of the United Nations and the Council and the complementarity of regional organizations into sync with one another, regular dialogue between them should take place.<sup>334</sup> The representative of France echoed that position.<sup>335</sup> The representative of Angola reasserted the key role regional organizations played, but added that they could not substitute for the role and character of the United Nations as a universal Organization.<sup>336</sup> The representative of Chile commented that the fruitful work of regional organizations should be promoted through a dynamic and energetic relationship with the Council within the framework of Chapter VIII, adding that there were clear benefits to the close synergy between those organizations and the Council.<sup>337</sup> The representative of the United States asserted that regional organizations had a greater vested interest and sensitivity in regional situations and underlined that the

United Nations should rely increasingly on regional organizations to assume responsibility for peacekeeping efforts and, in that regard, welcomed the decision of the African Union to establish a Peace and Security Council.<sup>338</sup>

Referring to the “distressing circumstances” in the Middle East, the Permanent Observer of the League of Arab States noted that the League had played the role expected of it by responding to the deteriorating situation in the region with regard to Palestine, Iraq and regional security, all in line with the principles and purposes of the Charter and the Articles relevant to the role of the Council and regional organizations in the peaceful settlement of disputes. He further stated that LAS, working collectively with Arab diplomacy, had made a tremendous effort in support of the Council’s mission to inspect weapons of mass destruction in Iraq. Recalling that Chapter VIII allowed regional organizations considerable leeway in the settlement of disputes, while leaving primary responsibility with the Council, the representative of LAS stated that the Council did not deal with all regional organizations on the same footing, as it sometimes utilized some regional organizations while at other times it ignored others in a similar situation.<sup>339</sup> The representative of Pakistan reiterated that regional arrangements were valuable only so long as they acted on the basis of the principles of the Charter.<sup>340</sup>

Referring to the need for a sensible division of labour among regional and subregional structures, by taking each of their comparative advantages into account, the representative of the Russian Federation reaffirmed that authorization by, and accountability to, the Council should be inherent in any regional or coalition peacekeeping operation, particularly when enforcement action was included in its mandate.<sup>341</sup>

Citing Articles 52, 53 and 54 of the Charter, which recognized the potential of regional organizations in conflict prevention and the maintenance of peace, the representative of Cameroon stated that regional organizations aspired to, and had managed to, become more involved in conflict prevention and peacekeeping operations carried out by

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<sup>333</sup> S/PV.4739 and Corr.1, p. 22 (Russian Federation); p. 23 (Bulgaria); and p. 28 (China).

<sup>334</sup> *Ibid.*, p. 5.

<sup>335</sup> *Ibid.*, p. 34.

<sup>336</sup> *Ibid.*, p. 6.

<sup>337</sup> *Ibid.*, p. 9.

<sup>338</sup> *Ibid.*, pp. 9-10.

<sup>339</sup> *Ibid.*, pp. 14-16.

<sup>340</sup> *Ibid.*, p. 17.

<sup>341</sup> *Ibid.*, p. 22.

the United Nations in their respective areas.<sup>342</sup> The representative of Greece, speaking on behalf of the European Union and associated countries,<sup>343</sup> commented that, in relation to operational interaction, the European Union was intensifying its practical cooperation with the United Nations system and other regional and subregional organizations. He highlighted the European Union Police Mission in Bosnia and Herzegovina as the “first example of the practical possibilities of cooperation” between the United Nations and the European Union crisis management operations. He further expressed the view that in order to strengthen the collective security system of the United Nations, regional arrangements or agencies should enhance their role in conflict prevention.<sup>344</sup>

#### **Maintenance of peace and security and post-conflict peacebuilding**

At the 4118th meeting, on 23 March 2000, the representative of Algeria asserted that the growing reluctance of some countries to participate in peacekeeping operations, especially in Africa, had led to the greater involvement of regional organizations. That, in turn, made more acute the problem of the relationship between the United Nations and regional peacekeeping organizations, against the backdrop of the problem of financing operations and the material, logistic and military capacities of the regional organizations in playing their new role.<sup>345</sup> Underscoring the role of regional organizations in post-conflict peacebuilding, the representative of Mongolia expressed the view that the international community and regional organizations should play an important role in addressing the problems of various post-conflict groups on the basis of new power-sharing or other agreed arrangements. He noted that, bearing in mind their nature, obligations and interests, regional organizations had a special stake and role to play in post-conflict peacebuilding — a role that no other international body could effectively fulfil.<sup>346</sup>

<sup>342</sup> *Ibid.*, p. 26.

<sup>343</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia; and Bulgaria and Romania.

<sup>344</sup> S/PV.4739 and Corr.1, p. 29.

<sup>345</sup> S/PV.4118, p. 20.

<sup>346</sup> S/PV.4118 (Resumption 1), p. 4.

#### **Strengthening cooperation between the United Nations system and the Central African region in the maintenance of peace and security**

At the 4630th meeting, on 22 October 2002, some speakers called for strengthening the relationship between the Security Council and African regional and subregional organizations.<sup>347</sup> In that context, the representative of Egypt urged the Council to give its political weight to the limited peacekeeping operations that regional organizations were able to undertake.<sup>348</sup> Asserting that the African Union and subregional organizations could work closely with the United Nations on the basis of a comparative advantage in advocacy, preventive actions and peacemaking, the representative of Mauritius commented that subregional institutions could, in certain situations, advise the United Nations as to whether the situations necessitated that the Organization play a lead role or that of a simple coordinator. He concluded that in that way their respective roles would be clearly defined at the very early stages of emerging conflicts.<sup>349</sup> The representative of the Russian Federation pointed out that regional organizations, owing to their geographical proximity and greater familiarity with unique local situations, could take the initiative in preventive diplomacy and the peaceful settlement of disputes, as demonstrated in Angola and, to a certain extent, the Democratic Republic of the Congo. He added, however, that peacekeeping operations by regional organizations could be launched only with “clear authorization by the Security Council”.<sup>350</sup> The representative of Mexico asserted that cooperation between the United Nations and regional organizations, recognized in Chapter VIII of the Charter, ensured not only better knowledge of the situation on the ground, but also a strategy that was commensurate with needs.<sup>351</sup>

<sup>347</sup> S/PV.4630, p. 21 (Democratic Republic of the Congo); p. 22 (Equatorial Guinea); p. 24 (Denmark, on behalf of the European Union and associated countries); p. 26 (Egypt); and p. 27 (Japan); S/PV.4630 (Resumption 1), p. 9 (United States); p. 12 (China); p. 13 (Syrian Arab Republic); pp. 15-16 (Ireland); and p. 29 (Cameroon).

<sup>348</sup> S/PV.4630, p. 26.

<sup>349</sup> S/PV.4630 (Resumption 1), p. 11.

<sup>350</sup> *Ibid.*, p. 20.

<sup>351</sup> *Ibid.*, p. 21.

### The role of the Security Council in the pacific settlement of disputes

At the 4753rd meeting, on 13 May 2003, referring to the various ways in which the Security Council had used Chapter VI in recent years, the Secretary-General mentioned Council attempts to work more closely with regional and subregional organizations to prevent and resolve conflicts in Africa.<sup>352</sup> He recalled some of the recommendations contained in his report of 7 June 2001,<sup>353</sup> including the use of regional prevention mechanisms. Some speakers highlighted the importance of coordination by the Council with regional organizations in the pacific settlement of disputes.<sup>354</sup> A few speakers noted that regional organizations played a crucial role in assisting the Council in understanding the root causes of conflict and in advising on the best way to cope with a situation. They further emphasized that regional organizations had closer knowledge and were particularly well placed to provide early warning and to maintain political mechanisms for the settlement of disputes.<sup>355</sup> The representative of Guinea, while noting that the Council had a crucial role to play in seeking pacific settlement of conflicts, emphasized that regional organizations were appropriate channels for the prevention, management and settlement of conflicts.<sup>356</sup> Other speakers emphasized the role of the Council under Chapter VIII to encourage the pacific settlement of disputes through regional arrangements.<sup>357</sup> The representative of Greece, speaking on behalf of the European Union and associated countries,<sup>358</sup> urged States parties to regional arrangements to try to achieve pacific settlement of their disputes through such mechanisms, in accordance with Articles 33 and 52 of the Charter.<sup>359</sup>

<sup>352</sup> S/PV.4753, pp. 2-3.

<sup>353</sup> S/2001/574.

<sup>354</sup> S/PV.4753, p. 12 (Spain); pp. 14-15 (Germany); p. 19 (Chile); p. 20 (Bulgaria); pp. 20-21 (Guinea); pp. 21-22 (France); p. 25 (Syrian Arab Republic); and p. 27 (Cameroon).

<sup>355</sup> *Ibid.*, pp. 15-16 (Germany); and p. 27 (Cameroon).

<sup>356</sup> *Ibid.*, pp. 20-21.

<sup>357</sup> S/PV.4753 (Resumption 1), p. 11 (Colombia); p. 13 (Ethiopia); and p. 14 (Armenia).

<sup>358</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia; Bulgaria and Romania and Turkey; and Iceland.

<sup>359</sup> *Ibid.*, p. 3.

### The situation in Africa

By a presidential statement dated 31 January 2002,<sup>360</sup> the Security Council, recalling its primary responsibility for the maintenance of international peace and security as well as the provisions of Chapter VIII of the Charter of the United Nations, underscored the importance of partnership and enhanced coordination and cooperation, based on complementarity and comparative advantage, between the United Nations, OAU and subregional organizations in Africa in the promotion of regional peace and stability. The Council also emphasized the importance of enhanced cooperation and of ensuring better coordination between the United Nations and OAU with the view to achieving a lasting solution to conflicts. The Council further expressed its readiness to deepen its cooperation with OAU and subregional organizations and invited them to inform it at the earliest possible stage over their decisions and initiatives that could have implications relating to its responsibilities under the Charter. In addition, the Council called on the United Nations system to intensify its cooperation with OAU and subregional organizations in Africa in the field of capacity-building, particularly in early warning, conflict prevention and peacekeeping. It also stressed the importance of effective interaction between the United Nations system and OAU and subregional organizations through the exchange of information and analysis at the conflict prevention stage; coordination and clear understanding of respective roles in forwarding peace processes; and coordinated support to national and regional peacebuilding efforts.

At the 4460th meeting, on 29 January 2002, many speakers focused on the need to strengthen and develop the relationship between the United Nations, OAU and African subregional organizations in order to develop integrated approaches to conflict prevention, conflict settlement, and post-conflict peacebuilding, reconstruction and development.<sup>361</sup> Some speakers

<sup>360</sup> S/PRST/2002/2.

<sup>361</sup> S/PV.4460, p. 10 (United Kingdom); p. 12 (Ireland); p. 14 (Norway); p. 16 (Mexico); p. 18 (Guinea); p. 20 (Democratic Republic of the Congo); p. 23 (Algeria); p. 24 (Senegal); p. 26 (Zambia); pp. 28-29 (Mozambique); and p. 33 (South Africa); S/PV.4460 (Resumption 1), p. 2 (Colombia); pp. 3-4 (China); p. 5 (Russian Federation); p. 7 (Bulgaria); pp. 8-9 (Cameroon); p. 10 (Singapore); pp. 12-13 (Syrian Arab

supported the proposal by Mauritius to establish a working group to examine ways of improving relations between OAU and the United Nations.<sup>362</sup> Given the primary responsibility of the United Nations in matters of international peace and security, the representative of Mexico considered it necessary to strengthen support for the regional and subregional measures adopted in Africa because the United Nations had neither the capacity nor the resources to deal with all the problems that might arise on the African continent.<sup>363</sup> The representative of South Africa, while recalling Article 24 of the Charter, expressed the belief that the mandate of the Council was not premised on isolation and included maintaining peace and security through regional and subregional arrangements, as specified in Chapter VIII of the Charter.<sup>364</sup> The representative of Cameroon noted that Central Africa, as a partner of the Council, met the requirements of Articles 52 and 53 of the Charter, promoting conflict settlement on a regional level.<sup>365</sup>

Pointing out that the maintenance of international peace and security was first and foremost the responsibility of the Council and that there should be no dilution by shifting the obligation to regional organizations, the representative of India observed that while the idea of building an African peacekeeping capacity looked attractive, such organizations should be backed politically and, more importantly, through an infusion of the resources required. Citing the important role that regional and subregional organizations played in Ethiopia and Eritrea or Burundi, he nevertheless remained sceptical of the tendency, particularly evident in Africa, to transfer responsibility and subcontract initiatives to regional and subregional organizations, which might not necessarily be prepared for them.<sup>366</sup>

Republic); p. 17 (United States); pp. 23-24 (Spain, on behalf of the European Union and associated countries); p. 26 (Tunisia); p. 28 (Bangladesh); p. 30 (Cuba); p. 32 (Côte d'Ivoire); and p. 37 (Nigeria); S/PV.4460 (Resumption 2); pp. 3-4 (Ghana); p. 5 (Jamaica); p. 10 (Ukraine); and p. 13 (Malaysia).

<sup>362</sup> S/PV.4460, p. 10 (United Kingdom); S/PV.4460 (Resumption 1); p. 14 (France); S/PV.4460 (Resumption 2); p. 15 (Kenya).

<sup>363</sup> S/PV.4460, p. 16.

<sup>364</sup> *Ibid.*, p. 33.

<sup>365</sup> S/PV.4460 (Resumption 1), p. 9.

<sup>366</sup> S/PV.4460 (Resumption 2), p. 8.

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

### Conflicts in Africa: Security Council missions and United Nations mechanisms to promote peace and security

At the 4766th meeting, on 30 May 2003, a number of speakers emphasized the importance of coordination and cooperation between the Security Council and regional and subregional bodies,<sup>367</sup> while others underlined the importance of providing regional arrangements with financial and political support.<sup>368</sup> The representative of Cameroon maintained that the Council had, in a consistent and encouraging way, developed an exemplary institutional relationship with the Economic Community of West African States, citing the situation in Côte d'Ivoire as one example, but added that the Council had sometimes proved to be highly selective when there had been a contradictory regional decision on a conflict under consideration.<sup>369</sup> The representative of the Russian Federation shared his satisfaction with the intensification of the peacekeeping efforts of the African Union, ECOWAS, the Southern African Development Community and the Intergovernmental Authority on Development, but expressed concern that, in some cases, the assessments of the Council and the African institutions did not coincide and that the requests of the African partners did not always find Council support.<sup>370</sup> Citing the role of the African Union, among others, in resolving the situations in Central and Western Africa, the representative of Tunisia held that the efforts and initiatives to be carried out should be based on parameters established by African States themselves in pursuance of the principles and objectives of the

<sup>367</sup> S/PV.4766, p. 8 (Mauritius); p. 12 (Angola); p. 13 (Mexico); p. 15 (Egypt); p. 18 (Burundi); and p. 20 (Cameroon); S/PV.4766 (Resumption 1), p. 3 (Bulgaria); p. 5 (Japan); p. 6 (Malaysia); p. 7 (Chile); p. 10 (Greece, on behalf of the European Union and associated countries); and p. 14 (Philippines).

<sup>368</sup> S/PV.4766, p. 7 (United Kingdom); p. 15 (Egypt); and p. 21 (United States); S/PV.4766 (Resumption 1), p. 3 (Bulgaria); p. 5 (Japan); p. 6 (Malaysia); p. 7 (Chile); p. 10 (Greece, on behalf of the European Union and associated countries); p. 12 (Guinea); p. 13 (Syrian Arab Republic); p. 17 (China); p. 18 (Russian Federation); and p. 20 (Tunisia).

<sup>369</sup> S/PV.4766, p. 20.

<sup>370</sup> S/PV.4766 (Resumption 1), p. 18.

African Union and in close cooperation with the Council.<sup>371</sup>

## **B. Encouragement or calls by the Security Council for action by regional arrangements in the pacific settlement of disputes**

During the period under review, the Security Council, on various occasions, expressed encouragement and support for efforts undertaken by regional organizations in the pacific settlement of disputes, including the peace processes carried out under the auspices of regional organizations, such as the Lusaka process undertaken by OAU on behalf of the Democratic Republic of Congo. The Council also supported the deployment of the subregional peacekeeping force in Côte d'Ivoire by the Economic Community of West African States. In Sierra Leone, a United Nations mission took over some functions assigned to the ECOWAS peacekeeping mission and the two operated side by side. Furthermore, to harmonize the activities of the Organization and to promote cooperation with ECOWAS, the Council supported the establishment of the first United Nations regional peacebuilding office — the United Nations Office in West Africa (UNOWA). The practice of the Council in that regard is set out below, by region and by chronological order.

### **Africa**

#### **The situation in Côte d'Ivoire**

In connection with the situation in Côte d'Ivoire, the Security Council supported the efforts by ECOWAS to achieve a pacific settlement of the conflict, which included support for deployment of a subregional peacekeeping force.

By a presidential statement dated 20 December 2002,<sup>372</sup> the Council strongly supported the efforts of ECOWAS to promote a peaceful resolution of the conflict and urged the leaders of ECOWAS to continue their efforts in a coordinated manner. Furthermore, the Council expressed its full support for the deployment in Côte d'Ivoire of the Economic Community of West

African States Monitoring Group (ECOMOG) by 31 December 2002, as called for in the final communiqué of the ECOWAS Summit in Dakar, adopted on 18 December 2002.<sup>373</sup>

By resolution 1464 (2003) of 4 February 2003, the Council recalled its full support for the efforts of ECOWAS to promote a peaceful settlement of the conflict, and also expressed its appreciation for the efforts of the African Union to reach a settlement.<sup>374</sup> By the same resolution, the Council welcomed the deployment of the ECOWAS forces with a view to contributing to a peaceful solution of the crisis and, in particular, to the implementation of the Linas-Marcoussis Agreement.<sup>375</sup>

At the 4746th meeting, on 29 April 2003, the Executive Secretary of ECOWAS expressed the view that the Council was being challenged to find ways to support worthy subregional efforts to maintain peace and security, which, after all, was the primary responsibility of the Council. In addition, he suggested that the Council should look at cases of “successful subregional deployment of troops under Chapter VIII” of the Charter to stabilize crisis situations and deliberate whether it might not be prudent for the Council to provide the requisite resources for such forces. Citing Côte d'Ivoire as an example, he argued that the Council should encourage ECOWAS and other subregional organizations to continue to play a leading role and called for the creation of the right synergy and collaborative working relationships between ECOWAS and the Council to deal with issues of peace and security.<sup>376</sup>

In accordance with rule 55 of the rules of procedure, at the close of the 4747th meeting, held in private on 29 April 2003, the Council issued a communiqué through the Secretary-General, welcoming the action taken by ECOWAS with a view to resolving the crisis in Côte d'Ivoire. Furthermore, by resolution 1479 (2003) of 13 May 2003, the Council established the United Nations Mission in Côte d'Ivoire (MINUCI) with a mandate to facilitate the implementation by the Ivorian parties of the Linas-

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<sup>371</sup> Ibid., p. 20.

<sup>372</sup> S/PRST/2002/42.

<sup>373</sup> S/2002/1386, annex.

<sup>374</sup> Resolution 1464 (2003), fourth preambular paragraph.

<sup>375</sup> Ibid., para. 8. The Linas-Marcoussis Agreement was signed by the Ivorian political forces in Linas-Marcoussis, France, on 23 January 2003 (S/2003/99, annex I).

<sup>376</sup> S/PV.4746, p. 7.

Marcoussis Agreement, complementing the operations of ECOWAS forces.<sup>377</sup>

By a presidential statement dated 25 July 2003, the Council welcomed the satisfactory deployment of the ECOWAS peacekeeping force in the western part of the country to support the implementation of the ceasefire agreement reached on 3 May 2003. By resolution 1514 (2003) of 13 November 2003, the Council continued to reiterate its full support for the efforts of ECOWAS in promoting a peaceful settlement of the conflict.<sup>378</sup>

**The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone**

**Letter dated 30 April 2001 from the Secretary-General addressed to the President of the Security Council (S/2001/434)**

At the 4319th meeting, on 14 May 2001, at which no action was taken, the Council discussed, inter alia, the efforts of ECOWAS to advance the peace process and the report of the Inter-Agency Mission to West Africa.<sup>379</sup> The Under-Secretary-General for Peacekeeping Operations noted the efforts of ECOWAS to advance the peace process.<sup>380</sup> The representative of Tunisia stated that ECOWAS should be fully involved in the activities in the subregion and supported the recommendations of the Inter-Agency Mission regarding the provision of assistance to ECOWAS to strengthen its institutional, logistical and financial capacities to enable it to shoulder its weighty responsibilities. He further recalled that the United Nations and the Council were called upon to support the initiatives of that subregional organization under Chapter VIII of the Charter, particularly its initiatives to settle the problems by political means and to put an end to the humanitarian crisis in the subregion.<sup>381</sup> Many speakers supported the role played by ECOWAS in the context of the West Africa region and called for more cooperation and coordination between the United Nations and ECOWAS.<sup>382</sup> Furthermore, a number of

speakers welcomed the recommendation of the above-mentioned report to establish a United Nations office for West Africa.<sup>383</sup>

On the basis of its consideration of the report of the Inter-Agency Mission to West Africa,<sup>384</sup> the Council, by a presidential statement dated 19 December 2001,<sup>385</sup> fully supported the initiatives taken with a view to implementing the recommendations in the report. In particular, the Council welcomed the establishment of the Office of the Special Representative of the Secretary-General for West Africa to ensure, inter alia, the strengthening of harmonization and coordination of the activities of the United Nations system in an integrated regional perspective and the development of a fruitful partnership with ECOWAS, other subregional organizations and international and national actors. The Council stressed the need to strengthen further the capacities of ECOWAS in areas that would enable it to act as the “engine of subregional integration and increased cooperation with the United Nations system”.

**The situation in Sierra Leone**

In Sierra Leone, the Security Council welcomed the efforts by ECOWAS in the peaceful settlement of the dispute, and provided its support by expanding the peacekeeping operation of the United Nations to take over some functions performed by the ECOWAS peacekeeping operation, both of which continued to operate side by side throughout the reporting period.

In his report of 11 January 2000, the Secretary-General observed that, following the decision of Nigeria to withdraw its troops from Sierra Leone, the ECOWAS Monitoring Group would be unable to continue to perform the vital functions of providing security and protection to the Government of Sierra Leone. He therefore recommended that the Council authorize the expansion of the mandate of the United Nations Mission in Sierra Leone (UNAMSIL), established by resolution 1270 (1999) of 22 October

<sup>377</sup> Resolution 1479 (2003), para. 2.

<sup>378</sup> Resolution 1514 (2003), ninth preambular paragraph.

<sup>379</sup> S/2001/434.

<sup>380</sup> S/PV.4319, p. 3.

<sup>381</sup> *Ibid.*, p. 17.

<sup>382</sup> *Ibid.*, pp. 13-14 (Mali); pp. 15-16 (United Kingdom); p. 17 (Tunisia); p. 20 (Bangladesh); p. 21 (Russian Federation); p. 22 (Colombia); p. 23 (France); p. 25 (Jamaica); p. 26 (Singapore); p. 28 (China); p. 29

(Ukraine); p. 30 (Mauritius); p. 30 (Norway); and p. 31 (United States).

<sup>383</sup> *Ibid.*, p. 14 (Mali); p. 16 (United Kingdom); p. 21 (Bangladesh); p. 23 (France); p. 25 (Jamaica); p. 28 (China); and p. 29 (Ukraine).

<sup>384</sup> S/2001/434.

<sup>385</sup> S/PRST/2001/38.



1999, in order for UNAMSIL to assume the functions that were assigned to ECOMOG.<sup>386</sup>

By resolution 1289 (2000) of 7 February 2000, the Council welcomed the efforts made by ECOMOG and UNAMSIL towards the implementation of the Peace Agreement, signed in Lomé on 7 July 1999.<sup>387</sup> In addition, the Council, while taking note of the decision of the Governments of Ghana, Guinea and Nigeria, to withdraw their remaining ECOMOG contingents from Sierra Leone,<sup>388</sup> expressed its appreciation of ECOMOG for its indispensable contribution towards the restoration of democracy and the maintenance of peace, security and stability in Sierra Leone. The Council, in deciding to expand the mandate of UNAMSIL,<sup>389</sup> stressed the importance of a smooth transition between ECOMOG and UNAMSIL for the successful implementation of the Peace Agreement and the stability of Sierra Leone and, in that regard, urged all those concerned to consult over the timing of troop movements and withdrawals.<sup>390</sup> By subsequent resolutions and presidential statements, the Council continued to support and encourage the efforts of ECOWAS towards a lasting and final settlement of the crisis in the Mano River Union region.<sup>391</sup> In particular, by resolution 1370 (2001) of 20 November 2001, the Council underlined the importance of the continuing political and other support that the United Nations provided to the efforts made by ECOWAS to stabilize the region.<sup>392</sup>

### **The situation in Liberia**

With regard to the situation in Liberia, the Security Council continuously commended the efforts by ECOWAS and the African Union towards the restoration of peace and stability in the region. In particular, following the signing of the ceasefire agreement in July 2003, the Council commended the

role of ECOWAS in facilitating the peace process, citing Chapter VIII of the Charter.

By a series of resolutions, the Council welcomed the continued efforts of ECOWAS to restore peace and security in the region and bring lasting peace in Liberia.<sup>393</sup> By a presidential statement dated 13 December 2002, the Council recognized that the success of a comprehensive international strategy to Liberia rested on the direct and active involvement of the African Union, ECOWAS and the International Contact Group, working with the United Nations offices in the region in accordance with their mandates.<sup>394</sup> By resolution 1478 (2003) of 6 May 2003, the Council called upon the parties to enter without delay into bilateral ceasefire negotiations under the auspices of ECOWAS and the newly appointed mediator of ECOWAS.<sup>395</sup>

By resolution 1497 (2003) of 1 August 2003, the Council commended ECOWAS for its leadership role in facilitating the achievement of the Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic of Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia, signed in Accra on 17 June 2003,<sup>396</sup> and recognized the role it had played and necessarily would continue to play in the Liberia peace process, “consistent with Chapter VIII of the Charter”.<sup>397</sup>

At the 4815th meeting, on 27 August 2003, the Executive Secretary of ECOWAS noted that the excellent working relationship between the Council and ECOWAS in the resolution of the Liberian crisis was “a shining example of the partnership that should exist between the United Nations and regional organizations in tackling regional issues of peace and security”. He added that there was much to gain from deepening collaboration to better handle conflicts and political instability in that region.<sup>398</sup> By a presidential

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<sup>386</sup> S/2000/13, paras. 43-44.

<sup>387</sup> S/1999/777, annex.

<sup>388</sup> See letter dated 23 December 1999 from the Secretary-General addressed to the President (S/1999/1285).

<sup>389</sup> See chapter V for details.

<sup>390</sup> Resolution 1289 (2000), paras. 1, 2, 7-10, 12 and 14.

<sup>391</sup> Resolutions 1315 (2000), second preambular paragraph; 1346 (2001), para. 11; 1370 (2001), para. 11; 1400 (2002), para. 11; 1436 (2002), para. 12; 1470 (2003), para. 13; and 1508 (2003), para. 8; S/PRST/2000/14; and S/PRST/2000/31.

<sup>392</sup> Resolution 1370 (2001), para. 11.

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<sup>393</sup> Resolutions 1408 (2002), sixth and seventh preambular paragraphs; 1478 (2003), sixth preambular paragraph; and 1509 (2003), eighth and ninth preambular paragraphs.

<sup>394</sup> S/PRST/2002/36.

<sup>395</sup> Resolution 1478 (2003), sixth preambular paragraph and para. 5.

<sup>396</sup> S/2003/657, annex.

<sup>397</sup> Resolution 1497 (2003), fifth preambular paragraph.

<sup>398</sup> S/PV.4815, pp. 5-6.

statement issued at the same meeting,<sup>399</sup> the Council expressed its appreciation for the efforts of ECOWAS in negotiating the Comprehensive Peace Agreement between the Government of Liberia, rebel groups, political parties and civil society, signed in Accra, on 18 August 2003.

In respect of the role played by the African Union, by resolution 1509 (2003) of 19 September 2003, the Council welcomed the continued support of the African Union for the leadership role of ECOWAS in the peace process in Liberia, and further encouraged the African Union to continue to support the peace process through close collaboration and coordination with ECOWAS and the United Nations.<sup>400</sup>

### The situation in Burundi

In Burundi, the Security Council continued to support the peace process in cooperation with the Organization of African Unity/African Union. Following the establishment by the African Union of a peacekeeping force in Burundi in April 2003, the Council renewed its support for such a regional effort and began to consider ways to further support the regional peacekeeping operation on the ground.

By resolution 1375 (2001) of 29 October 2001, the Council commended the continued efforts of, and support from, the Organization of African Unity/African Union for the peace process in Burundi.<sup>401</sup> By a presidential statement dated 18 December 2002,<sup>402</sup> the Council paid tribute to the role that the African Union, among other actors, had played in the process towards the signing of the Ceasefire Agreement between the Transitional Government of Burundi and the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie, signed at Arusha on 2 December 2002.<sup>403</sup>

At the 4655th meeting, on 4 December 2002, the Facilitator of the Burundi peace process noted that the implementation process of the Ceasefire Agreement would require strong support from the United Nations. While aware of the difficulties of deploying a United Nations peacekeeping operation in the absence of a

total ceasefire as in Burundi, he noted that regional States felt that “creativity and innovation” in looking at the situation would make it possible for the United Nations to become involved. He argued that the United Nations’ support for a unique situation in Burundi was possible under Chapter VIII of the Charter, which supported the establishment of regional initiatives for the resolution of conflicts, provided that such arrangements were consistent with the purposes and principles of the United Nations, as well as Chapter VI, which provided for the use of regional initiatives for the resolution of disputes without the active, direct involvement of the United Nations, but with its full support. The Facilitator also explained that the decision by regional leaders to deploy the African mission was based on the understanding that it was a bridging mechanism to open the way for the United Nations. He called for support from the Council as the African countries did not have all the resources.<sup>404</sup>

At the same meeting, the representative of Ireland noted that the efforts of all regional actors reflected well on the attempts of the African Union to find African solutions to the problems of the region.<sup>405</sup> Some speakers, while recognizing the peace process in Burundi as a regional initiative, held that the Council had a role to play in the settlement of the dispute.<sup>406</sup> The representative of France asserted that the Council would have to reflect on its support for a possible African mission or whatever formula the Secretary-General could recommend in support of the peace process, once all the parties had agreed to a ceasefire.<sup>407</sup>

On 2 April 2003, the African Mission in Burundi (AMIB) was established to provide security for the cantonment of combatants and to assist the demobilization, disarmament and reintegration of the armed groups.<sup>408</sup> By a presidential statement dated 2 May 2003,<sup>409</sup> the Council expressed its support for the speedy deployment of AMIB to facilitate the continuing implementation of the ceasefire agreements.

At the 4876th meeting, on 4 December 2003, the Facilitator commented that the establishment of the

<sup>399</sup> S/PRST/2003/14.

<sup>400</sup> Resolution 1509 (2003), ninth preambular paragraph.

<sup>401</sup> Resolution 1375 (2001), seventh preambular paragraph.

<sup>402</sup> S/PRST/2002/40.

<sup>403</sup> S/2002/1329, annex I.

<sup>404</sup> S/PV.4655, pp. 3-4 and p. 13.

<sup>405</sup> *Ibid.*, p. 8.

<sup>406</sup> *Ibid.*, p. 6 (Norway); p. 7 (Syrian Arab Republic); p. 8 (Singapore); and p. 10 (United States).

<sup>407</sup> *Ibid.*, p. 6.

<sup>408</sup> S/2003/1146, paras. 25-32.

<sup>409</sup> S/PRST/2003/4.

African Union mission was “in line with Chapter VIII of the Charter” and called for “more direct” United Nations involvement to achieve the continued success of the Burundi peace process. The Facilitator held that conditions were conducive for the United Nations to take over AMIB, “re-hat” the existing military contingent and deploy a United Nations peacekeeping operation. He underscored that, in the interim, AMIB needed material, logistical and financial support to enable it to continue its work while preparations continued for more robust involvement by the United Nations.<sup>410</sup> A number of speakers expressed their appreciation to the African Union and countries in the region for solving regional problems by their own efforts.<sup>411</sup> Noting the importance of reinforcing efforts on the ground, some speakers supported the idea of establishing a United Nations peacekeeping operation to supplement or eventually replace AMIB.<sup>412</sup> In that context, the representative of Angola stressed that the presence of the African Union reflected the important engagement of Africa in peacebuilding in Burundi, in accordance with the provisions of the Charter, and contended that it was necessary for the Council to apply equal standards to Burundi, as in Liberia and the Democratic Republic of the Congo.<sup>413</sup>

#### **The situation concerning the Democratic Republic of the Congo**

In the Democratic Republic of the Congo, the Security Council supported the efforts by Southern African Development Community and the Organization of African Unity/African Union to advance the peace process.

By a presidential statement dated 26 January 2000, the Council valued the vital contribution of SADC and expressed its appreciation for the role of the Organization of African Unity in the Lusaka process.<sup>414</sup> By resolution 1332 (2000) of 14 December 2000, the Council stressed the need for a coordinated

approach involving the United Nations and OAU to create new momentum for further progress in the peace process.<sup>415</sup> By a presidential statement dated 23 July 2002,<sup>416</sup> the Council welcomed the efforts and good offices of South Africa, in its capacity as chair of the African Union, to help the Democratic Republic of the Congo and Rwanda reach an agreement to tackle the problem of the armed groups and to take forward the withdrawal of Rwandan troops. In addition, the Council welcomed the support of the African Union for that process.

Furthermore, by a series of resolutions,<sup>417</sup> the Council continuously reaffirmed the importance of holding, at the appropriate time, an international conference on peace, security, democracy and development in the Great Lakes region under the auspices of the United Nations and OAU, with the participation of all the Governments of the region and all others concerned.

#### **The situation in Somalia**

During the period under review, by a series of decisions,<sup>418</sup> the Security Council continued to support and encourage the efforts made by the Intergovernmental Authority on Development, the Organization of African Unity/African Union and the League of Arab States to find a political solution to the crisis in Somalia and called for closer interaction between those organizations and the Council in support of national reconciliation.

In his report of 25 October 2002,<sup>419</sup> the Secretary-General observed that the international community had welcomed the opening of the Somali National Reconciliation Conference at Eldoret, Kenya, on 15 October 2002, and stressed that efforts made by all the IGAD countries to bring about a coherent regional approach towards national reconciliation in Somalia were appreciated. He added that the progress made by the peace process since the ninth IGAD Summit in Khartoum in January 2002 had indeed been

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<sup>410</sup> S/PV.4876, pp. 2-5.

<sup>411</sup> *Ibid.*, p. 8 (China); p. 9 (United Kingdom); p. 9 (Germany); p. 10 (United States); p. 11 (Syrian Arab Republic); p. 11 (Russian Federation); p. 12 (Spain); p. 12 (Guinea); and p. 15 (Bulgaria).

<sup>412</sup> *Ibid.*, p. 6 (France); p. 7 (Angola); pp. 7-8 (Pakistan); p. 9 (United Kingdom); pp. 13-14 (Guinea); and p. 14 (Cameroon).

<sup>413</sup> *Ibid.*, p. 7.

<sup>414</sup> S/PRST/2000/2.

<sup>415</sup> Resolution 1332 (2000), nineteenth preambular paragraph.

<sup>416</sup> S/PRST/2002/22.

<sup>417</sup> Resolutions 1291(2000), para. 18; 1304 (2000), para. 18; and 1355 (2001), para. 26.

<sup>418</sup> Resolution 1425 (2002); and S/PRST/2000/22; S/PRST/2001/1; S/PRST/2001/30; S/PRST/2002/8; and S/PRST/2002/35.

<sup>419</sup> S/2002/1201, para. 56.

significant and underlined the important role regional organizations could and did play in resolving conflicts.

By a presidential statement dated 11 November 2003,<sup>420</sup> the Council reiterated its firm support for the Somali National Reconciliation Process launched under the auspices of IGAD and expressed its readiness to support IGAD in the implementation of the agreements reached. Furthermore, the Council commended the support given by the African Union to the Somali National Reconciliation Process, including its participation in the Process and its commitment to deploy a military observer mission to Somalia once a comprehensive agreement was reached.

### **The situation between Ethiopia and Eritrea**

With regard to the situation between Ethiopia and Eritrea, the Council continued to support the role of the Organization of African Unity/African Union, under the auspices of which the Agreement on Cessation of Hostilities had been signed.<sup>421</sup>

By resolutions 1297 (2000) of 12 May 2000 and 1298 (2000) of 17 May 2000, the Council, expressing its strong support for the efforts of OAU to achieve a peaceful resolution of the conflict, demanded the earliest possible reconvening of substantive peace talks, under the auspices of the OAU, which would conclude a peaceful definitive settlement of the conflict.<sup>422</sup> By resolution 1298 (2000), the Council requested that the current Chairman of OAU consider dispatching his Personal Envoy to the region to seek immediate cessation of hostilities and resumption of the peace talks.<sup>423</sup>

By resolution 1312 (2000) of 31 July 2000, the Council, commending OAU for successfully facilitating the Agreement on Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, signed in Algiers on 18 June 2000,<sup>424</sup> welcomed the discussions between the Secretariats of the United Nations and OAU on cooperation in the implementation of the Agreement.<sup>425</sup>

By resolution 1320 (2000) of 15 September 2000, the Council stressed its commitment to work in coordination with OAU and the parties to implement fully the Agreement.<sup>426</sup> By subsequent decisions,<sup>427</sup> the Council further commended the efforts of OAU, among others, for its role in achieving the Agreement. The Council also reaffirmed its strong support for the role played by the Organization of African Unity/African Union Liaison Mission in Ethiopia and Eritrea.<sup>428</sup>

### **Letter dated 2 October 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council (S/2003/934)**

With regard to the peace talks between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), the Council, by a presidential statement dated 10 October 2003,<sup>429</sup> welcomed the agreement on security arrangements reached between the parties in Naivasha, Kenya, on 25 September 2003, and expressed its appreciation of the key role played by IGAD, among others, in the Sudan peace talks.

### **Europe**

#### **Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)**

#### **The situation in the former Yugoslav Republic of Macedonia**

By resolution 1345 (2001) of 21 March 2001, the Security Council welcomed the international efforts, including those of the United Nations Interim Administration Mission in Kosovo, the Kosovo Force (KFOR), the European Union, the North Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe, in cooperation with the Governments of the former Yugoslav Republic

<sup>420</sup> S/PRST/2003/19.

<sup>421</sup> S/2000/601, annex.

<sup>422</sup> Resolutions 1297 (2000), fifth preambular paragraph and para. 5, and 1298 (2000), para. 4.

<sup>423</sup> Resolution 1298 (2000), para. 5.

<sup>424</sup> S/2000/601, annex.

<sup>425</sup> Resolution 1312 (2000), second preambular paragraph and para. 2.

<sup>426</sup> Resolution 1320 (2000), sixth preambular paragraph.

<sup>427</sup> S/PRST/2000/34; S/PRST/2001/4; and S/PRST/2001/14.

<sup>428</sup> Resolutions 1369 (2001), sixth preambular paragraph; 1398 (2002), eighth preambular paragraph; and 1430 (2002), seventh preambular paragraph.

<sup>429</sup> S/PRST/2003/16.

of Macedonia, the Federal Republic of Yugoslavia and other States, to prevent the escalation of ethnic tensions in the area. The Council also welcomed the contribution of the European Union to a peaceful solution to the problems in certain municipalities in southern Serbia and its decision to substantially increase the presence of the European Union Monitoring Mission there. It further welcomed the cooperation between NATO and the authorities of the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia in addressing security problems in parts of the former Yugoslav Republic of Macedonia and certain municipalities in southern Serbia.<sup>430</sup>

By a presidential statement dated 13 August 2001,<sup>431</sup> the Security Council welcomed the efforts of the European Union, NATO and OSCE in support of the Framework Agreement on the former Yugoslav Republic of Macedonia, signed in Skopje on 13 August 2001. By resolution 1371 (2001) of 26 September 2001, the Council, welcomed the efforts of the European Union and OSCE to contribute to the implementation of the Framework Agreement, in particular through the presence of international observers.<sup>432</sup>

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

During the period under review, the Security Council welcomed the transition of responsibilities from the International Police Task Force of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to the European Union Police Mission, on 1 January 2003 and noted the contribution by OSCE to the implementation of the Peace Agreement.

By a series of resolutions, the Council emphasized its appreciation of, among others, the personnel of OSCE for its contribution to the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto.<sup>433</sup>

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<sup>430</sup> Resolution 1345 (2001), fourth, fifth and sixth preambular paragraphs.

<sup>431</sup> S/PRST/2001/20.

<sup>432</sup> Resolution 1371 (2001), para. 4.

<sup>433</sup> Resolutions 1305 (2000), fourth preambular paragraph; 1357 (2001), fourth preambular paragraph; 1423 (2002), fifth preambular paragraph; and 1491 (2003), fifth preambular paragraph.

By resolution 1423 (2002) of 12 July 2002, and similarly by a presidential statement dated 12 December 2002, the Council welcomed the decision of the European Union to send a Police Mission to Bosnia and Herzegovina from 1 January 2003 to assume responsibilities from IPTF at the end of the mandate of UNMIBH on 31 December 2002, as well as the close coordination between the European Union, UNMIBH and the High Representative to ensure a seamless transition.<sup>434</sup>

At the 4631st meeting, on 23 October 2002, the Special Representative of the Secretary-General for Bosnia and Herzegovina<sup>435</sup> noted that the first operation by the European Union would be a practical embodiment of the recommendation called for in the report of the Panel on United Nations Peace Operations of August 2000, on greater cooperation between the United Nations and regional organizations in peacekeeping.<sup>436</sup> At the same meeting, the representative of the Russian Federation underscored that the Council, as the main body responsible for peacekeeping and international security, would, even after UNMIBH had completed its work, continue to receive, on a regular basis, reports on the process of implementation of the police operation in that country.<sup>437</sup>

By resolution 1491 (2003) of 11 July 2003, the Council welcomed the deployment by the European Union of its Police Mission to Bosnia and Herzegovina since 1 January 2003.<sup>438</sup>

At the 4837th meeting, on 8 October 2003, the representative of the United Kingdom stated that he considered it a highly desirable trend that regional organizations were taking over responsibilities from the United Nations, as seen in Bosnia and Herzegovina and also in Africa.<sup>439</sup>

### **The situation in Georgia**

In Georgia, by a series of its decisions, the Council welcomed the important contributions that the United Nations Observer Mission in Georgia (UNOMIG) and the collective peacekeeping force of

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<sup>434</sup> Resolution 1423 (2002), para. 20 and S/PRST/2002/33.

<sup>435</sup> S/2000/809.

<sup>436</sup> S/PV.4631, pp. 10-11.

<sup>437</sup> *Ibid.*, p. 16.

<sup>438</sup> Resolution 1491 (2003), para. 19.

<sup>439</sup> S/PV.4837, p. 15.

the Commonwealth of Independent States (CIS), operating side by side, made in stabilizing the situation in the conflict zone. The Council also noted the close working relationship between UNOMIG and the CIS peacekeeping force, and stressed the importance of continuing and increasing close cooperation and coordination between them in the performance of their respective mandates.<sup>440</sup> Furthermore, during the reporting period, the Council continued to express its support for the sustained efforts of OSCE to promote the stabilization of the situation and the achievement of a comprehensive political settlement, which included a settlement of the political status of Abkhazia within the State of Georgia.<sup>441</sup>

## Middle East

### The situation between Iraq and Kuwait

In Iraq, during the period under review, the Security Council recognized the efforts of such organizations as the League of Arab States and the Organization of the Islamic Conference, for a peaceful resolution of the situation.

By a letter dated 16 September 2002 addressed to the President, the Secretary-General transmitted a letter of the same date from the representative of Iraq addressed to the Secretary-General, informing the Council that, in response to the appeals of the Secretaries-General of the United Nations and LAS, his country had decided to allow the return of the United Nations weapons inspectors to Iraq without conditions.<sup>442</sup>

By resolution 1441 (2002) of 8 November 2002, the Council established an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions. The Council also

commended the Secretary-General and the members of LAS for their efforts.<sup>443</sup>

At the 4717th meeting, on 11 March 2003, held in response to the request from the Non-Aligned Movement (NAM),<sup>444</sup> the representative of Algeria pointed out that the Council had to listen to the regional organizations and other groupings — be it the European Union, OAU, LAS or OIC — who had spoken out for a peaceful settlement to the crisis, the primacy of the role of the United Nations and respect for international legality. He asserted that the Council was all the more duty-bound to do so because close cooperation between the Council and regional organizations was desirable, encouraged and clearly provided for by the Charter and because all those bodies and regional groupings were calling on the Council unanimously to ensure that the logic of peace prevailed over that of war.<sup>445</sup>

## C. Calls by the Security Council for involvement of regional arrangements in the implementation of Chapter VII measures

During the period under review, regional arrangements were increasingly called upon to assist in the implementation of measures imposed by the Security Council under Chapter VII of the Charter, as in the cases of Afghanistan, Liberia, Sierra Leone, Somalia and the former Yugoslav Republic of Macedonia. In Liberia, the Council requested input from the Economic Community of West African States with a view to the termination of such measures. The practice of the Council in this regard is set out below by region.

### The situation in Sierra Leone

By resolution 1306 (2000) of 5 July 2000, the Council, acting under Chapter VII of the Charter, requested the Security Council Committee established pursuant to resolution 1132 (1997), to strengthen the existing contacts with, inter alia, regional organizations, in particular ECOWAS and the Organization of African Unity, with a view to

<sup>440</sup> Resolutions 1287 (2000), tenth preambular paragraph; 1311 (2000), ninth preambular paragraph; 1339 (2001), eighth preambular paragraph; 1364 (2001), preambular paragraph 8 and para. 20; 1393 (2002), seventh preambular paragraph; 1427 (2002), seventh preambular paragraph; 1462 (2003), seventh preambular paragraph; and 1494 (2003), eighth preambular paragraph; and S/PRST/2000/16; S/PRST/2000/32; and S/PRST/2001/9.

<sup>441</sup> Resolutions 1287 (2000), para. 3; 1311 (2000), para. 2; 1339 (2001), para. 2; 1393 (2002), para. 2; 1427 (2002), para. 2; 1462 (2003), para. 3; and 1494 (2003), para. 3.

<sup>442</sup> S/2002/1034, annex.

<sup>443</sup> Resolution 1441 (2002), sixteenth preambular paragraph and para. 2.

<sup>444</sup> See letter dated 7 March 2003 from the representative of Malaysia to the President of the Council (S/2003/283).

<sup>445</sup> S/PV.4717, p. 11.

identifying ways to improve the effective implementation of the arms embargo imposed by paragraph 2 of resolution 1171 (1998).<sup>446</sup>

### **The situation in Liberia**

In connection with the situation in Liberia, the Council cooperated with the Economic Community of West African States in the implementation and termination of the mandatory measures against Liberia. Additionally, the Council extended logistical support to the ECOWAS forces in Liberia and subsequently, on 1 October 2003, reassigned those forces as United Nations peacekeepers.

By resolution 1343 (2001) of 7 March 2001, the Council welcomed the intention of ECOWAS to monitor, in close cooperation with the United Nations, the implementation of measures to prohibit the export of rough diamonds from Sierra Leone pursuant to resolution 1306 (2000) of 5 July 2000 and to report thereon after a period of two months.<sup>447</sup> By a series of resolutions, the Council further invited ECOWAS to report regularly to the Security Council Committee established pursuant to paragraph 14 of resolution 1343 (2001) on all activities undertaken by its members in the implementation of relevant measures.<sup>448</sup>

Furthermore, by resolution 1478 (2003) of 6 May 2003, the Council, following the establishment of the Panel of Experts, called upon all members of ECOWAS to cooperate fully with the Panel in the identification of violations of the arms embargo against Liberia.<sup>449</sup>

In respect of the termination of sanctions against Liberia,<sup>450</sup> the Council, by a series of resolutions, expressed its readiness to terminate the measures imposed with regard to Liberian-registered aircraft, and the ban on the import of rough diamonds not controlled through the certificate of origin regime of the Government of Sierra Leone, taking into account, inter alia, input from ECOWAS.<sup>451</sup>

In connection with peacekeeping activities, the Council, by resolution 1497 (2003) of 1 August 2003, authorized the establishment of a Multinational Force in Liberia under Chapter VII of the Charter. The Council also authorized the United Nations Mission in Sierra Leone to extend the necessary logistical support to the forward elements of ECOWAS in the Multinational Force in Liberia for a limited duration.<sup>452</sup>

By resolution 1509 (2003) of 19 September 2003, the Council commended the rapid and professional deployment to Liberia of the forces of the ECOWAS Mission in Liberia (ECOMIL), pursuant to resolution 1497 (2003).<sup>453</sup> Acting under Chapter VII of the Charter, the Council also established the United Nations Mission in Liberia (UNMIL) and requested the Secretary-General to transfer authority from the forces of ECOMIL to UNMIL on 1 October 2003.<sup>454</sup> In his report dated 15 December 2003, the Secretary-General informed the Council that UNMIL had taken over peacekeeping duties from ECOMIL on 1 October 2003, as stipulated in resolution 1509 (2003), and all ECOMIL troops had been reassigned to UNMIL as United Nations peacekeepers.<sup>455</sup>

### **The situation in Somalia**

The Security Council called upon regional organizations, in particular the Intergovernmental Authority on Development, the African Union and the League of Arab States, to cooperate with it and its subsidiary bodies in the implementation of the arms embargo against Somalia imposed by resolutions 733 (1992) and 1356 (2001).

By resolution 1474 (2003) of 8 April 2003, the Council, acting under Chapter VII of the Charter, decided to re-establish a Panel of Experts whose mandate included exploring the possibility of establishing a monitoring mechanism for the implementation of the arms embargo with partners inside and outside Somalia, "in close cooperation with regional and international organizations, including with the African Union." The Council also called upon regional organizations, in particular the African Union and LAS, to assist Somali parties and the States in the

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<sup>446</sup> Resolution 1306 (2000), para. 22.

<sup>447</sup> Resolution 1343 (2001), sixth preambular paragraph and para. 2 (c).

<sup>448</sup> Resolutions 1408 (2002), para. 12, and 1478 (2003), para. 21.

<sup>449</sup> Resolution 1478 (2003), para. 30.

<sup>450</sup> For details, see chap. XI, part III.

<sup>451</sup> Resolutions 1343 (2001), para. 2 (a)-(g); 1408 (2002), para. 6; and 1478 (2003), para. 12.

<sup>452</sup> Resolution 1497 (2003), paras. 1-3.

<sup>453</sup> Resolution 1509 (2003), tenth preambular paragraph.

<sup>454</sup> Resolution 1509 (2003), para. 1.

<sup>455</sup> S/2003/1175, para. 2.

region in their efforts to implement fully the arms embargo.<sup>456</sup> By resolution 1519 (2003) of 16 December 2003, the Council, acting under Chapter VII, called upon regional organizations, in particular IGAD, the African Union and LAS, to establish focal points to enhance cooperation with the Monitoring Group established by the same resolution and to facilitate the exchange of information.<sup>457</sup>

#### **The situation in Afghanistan**

In Afghanistan, the Security Council cooperated with regional organizations in the implementation of sanctions measures.

By resolution 1333 (2000) of 19 December 2000, the Council, in imposing further measures, requested its Committee established pursuant to resolution 1267 (1999) to establish and maintain, on the basis of information provided by States and regional organizations, an updated list of all points of entry and landing areas for aircraft within the territory of Afghanistan under the control of the Taliban and of individuals and entities designated as being associated with Osama bin Laden.<sup>458</sup> A similar reference was made in resolution 1390 (2002) of 28 January 2002.<sup>459</sup>

#### **Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)**

#### **The situation in the former Yugoslav Republic of Macedonia**

By resolution 1345 (2001) of 21 March 2001, the Council called on the Kosovo Force to continue to strengthen its efforts to prevent unauthorized movement and illegal arms shipments across borders and boundaries in the region, to confiscate weapons within Kosovo, Federal Republic of Yugoslavia, and to continue to keep the Council informed in accordance with resolution 1160 (1998).<sup>460</sup>

By resolution 1371 (2001) of 26 September 2001, the Security Council welcomed the efforts of the United Nations Interim Administration Mission in Kosovo and KFOR to implement fully resolution 1244 (1999), in particular by further strengthening efforts to prevent unauthorized movement and illegal arms shipments across borders and boundaries, to confiscate illegal weapons within Kosovo, Federal Republic of Yugoslavia, and to keep the Council informed.<sup>461</sup>

#### **D. Consideration or authorization by the Security Council of enforcement action by regional arrangements**

During the period under review, the Security Council gave its authorization to regional arrangements to take the necessary action in their peacekeeping activities, as in the cases of Afghanistan and Côte d'Ivoire. In the case of the former Yugoslav Republic of Macedonia, the Council recalled the authorization it had given the Kosovo Force by resolution 1244 (1999) of 10 June 1999. In one instance, the Council considered but did not take a decision on authorization of the use of force by a regional organization.

#### **The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone**

#### **The situation in Sierra Leone**

At the 4319th meeting, on 14 May 2001, the Council discussed the request by the Economic Community of West African States for assistance in deploying an interposition force along the borders of Guinea, Liberia and Sierra Leone, and the report of the Inter-Agency Mission to West Africa.<sup>462</sup> Several speakers supported the deployment of an interposition force to monitor along the borders.<sup>463</sup> The representative of the Russian Federation expressed the

<sup>456</sup> Resolution 1474 (2003), paras. 3 (g) and 11.

<sup>457</sup> Resolution 1519 (2003), para. 5.

<sup>458</sup> Resolution 1333 (2001), para. 16 (a) and (b).

<sup>459</sup> Resolution 1390 (2002), para. 5 (a).

<sup>460</sup> Resolution 1345 (2001), para. 10. See, for example, S/2000/50, S/2000/152, S/2000/235, S/2000/318, S/2000/489, S/2000/634, S/2000/814, S/2000/891, S/2000/1120, S/2000/1246, S/2001/205, S/2001/333,

S/2001/465, S/2001/578, S/2001/707, S/2001/832, S/2001/910, S/2001/1002, S/2001/1131, S/2002/122, S/2002/183, S/2002/366, S/2002/611, S/2002/725, S/2002/978, S/2002/984, S/2002/1111, S/2002/1225, S/2002/1404, S/2002/1421, S/2003/130, S/2003/301, S/2003/378, S/2003/511, S/2003/616, S/2003/682, S/2003/855, S/2003/931 and S/2003/1141.

<sup>461</sup> Resolution 1371 (2001), para. 7.

<sup>462</sup> S/2001/434.

<sup>463</sup> S/PV.4319, p. 17 (Tunisia); p. 20 (Bangladesh); and p. 24 (Jamaica).



view that building trust in the subregion could be furthered by the deployment of ECOWAS troops to areas of most intensive activity by the unlawful armed groups, while stressing that such an operation should be based on the agreement of all States on whose territories it would be conducted and on the basis of the mandate that included an enforcement component authorized by the Security Council.<sup>464</sup> No decisions of the Council were taken on the matter during the reporting period.

#### **The situation in Côte d'Ivoire**

By resolution 1464 (2003) of 4 February 2003, the Council, recalling the decision taken at the ECOWAS Summit, held in Accra on 29 September 2002, to deploy a peacekeeping force in Côte d'Ivoire, authorized Member States participating in the ECOWAS forces, in accordance with Chapter VIII of the Charter, to "take the necessary steps" to guarantee the security and freedom of movement of their personnel and to ensure the protection of civilians immediately threatened with physical violence within their zones of operation. In addition, the Council requested that ECOWAS, through the command of its force, report to the Council periodically, through the Secretary-General, on all aspects of implementation of its mandate.<sup>465</sup> The ECOWAS forces, whose authorization was renewed by resolution 1498 (2003) of 4 August 2003, remained on the ground in parallel to the United Nations Mission in Côte d'Ivoire, which was established by resolution 1479 (2003) of 13 May 2003.<sup>466</sup>

#### **Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)**

By resolution 1345 (2001) of 21 March 2001,<sup>467</sup> the Council welcomed the efforts of KFOR to implement resolution 1244 (1999) of 10 June 1999, whereby, acting under Chapter VII of the Charter, the Council had authorized Member States and relevant international organizations to establish an international

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<sup>464</sup> *Ibid.*, p. 21.

<sup>465</sup> Resolution 1464 (2003), third preambular paragraph and paras. 8-10. See, for example, S/2003/472.

<sup>466</sup> Resolution 1479 (2003), para. 2.

<sup>467</sup> Resolution 1345 (2001), first preambular paragraph.

security presence in Kosovo, with substantial North Atlantic Treaty Organization participation.<sup>468</sup>

#### **The situation in Afghanistan**

By resolution 1386 (2001) of 20 December 2001, the Council, acting under Chapter VII of the Charter, authorized, as envisaged in annex 1 to the Bonn Agreement, the establishment for six months of an International Security Assistance Force (ISAF) to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Authority and the personnel of the United Nations could operate in a secure environment.<sup>469</sup> The Council requested ISAF to provide periodic reports on progress towards the implementation of its mandate through the Secretary-General.<sup>470</sup>

By resolutions 1413 (2002) of 23 May 2002 and 1444 (2002) of 27 November 2002, the Council decided to extend the authorization of ISAF, as defined in resolution 1386 (2001).<sup>471</sup>

In a letter dated 7 October 2003 addressed to the President, the Secretary-General transmitted letters dated 2 October and 6 October 2003, respectively, from the Secretary-General of NATO, in which the latter informed the Secretary-General that NATO had assumed strategic command, control and coordination of ISAF on 11 August 2003, and that NATO had under consideration a possible expansion of the Force's mission.<sup>472</sup> By resolution 1510 (2003) of 13 October 2003, the Council, noting the above-mentioned letter and acting under Chapter VII of the Charter, authorized expansion of the mandate of ISAF, and requested the leadership of ISAF to provide quarterly reports on the implementation of its mandate to the Council through the Secretary-General.<sup>473</sup>

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<sup>468</sup> Resolution 1244 (1999), para. 7 and annex II, principle 4. By resolution 1244 (1999), the Council also requested the Secretary-General to report to it at regular intervals on the implementation of the resolution, including reports from the leadership of the international civil and security presences (para. 20).

<sup>469</sup> Resolution 1386 (2001), para. 1.

<sup>470</sup> *Ibid.*, para. 9. See for example, S/2002/274, S/2002/740, S/2002/940, S/2002/1092, S/2002/1196, S/2002/1340, S/2003/210, S/2003/555 and S/2003/807, among others.

<sup>471</sup> Resolutions 1413 (2002), para. 1, and 1444 (2002), para. 1.

<sup>472</sup> S/2003/970, annexes I and II.

<sup>473</sup> Resolution 1510 (2003), paras. 1 and 5.

## E. Consultation, briefing and reporting by regional arrangements

The increasing collaboration between the Security Council and regional arrangements witnessed a corresponding growth in the exchange of information between the two, using different modalities.

During the reporting period, the practice continued whereby the Security Council was kept informed of the activities of regional organizations by means of communications addressed to the President of the Council or the Secretary-General from various organs or States holding the rotating Chairmanship/Presidency or simply membership of the regional organizations, from States parties to a situation, or from other States concerning matters pertaining to regional organizations.<sup>474</sup> Moreover, while the reporting obligation of regional organizations under Article 54 of the Charter applied to all activities undertaken or contemplated by them, in several instances where the Council authorized coercive measures within the meaning of Article 53, it explicitly requested the involved regional organizations to report to it on a regular basis.<sup>475</sup>

In addition to communications transmitting mainly reports, resolutions, memoranda and statements from regional arrangements, the Council has

increasingly utilized the practice of receiving briefings by regional organizations at its formal meetings concerning activities undertaken or in contemplation by them for the maintenance of international peace and security, independently or in cooperation with the Council.<sup>476</sup> Regional organizations were frequently invited to participate and make statements in the context of thematic debates, as well as in Council deliberations on a number of specific situations of immediate concern to them.<sup>477</sup> In the context of its closed consultative meetings with troop-contributing countries, the Council, by resolution 1353 (2001), annex II, section B, explicitly listed representatives of regional and subregional organizations among the parties to be invited, whether they were contributing troops or not.<sup>478</sup>

Furthermore, during the period under review, the Council welcomed and established several consultative mechanisms with a view to building a dialogue with regional organizations. For example, by presidential statements dated 19 December 2001 and 31 January 2002,<sup>479</sup> the Council welcomed the establishment of the Office of the Special Representative of the Secretary-General for West Africa to ensure, among other things, the development of a fruitful partnership with the Economic Community of West African States and other subregional organizations. With respect to

<sup>474</sup> See the letter dated 2 July 2003 from the representative of Fiji to the President of the Council (S/2003/753); and letters dated 7 September 2000 (S/2000/863), 25 September 2000 (S/2000/900), 21 March 2001 (S/2001/257), 9 April 2001 (S/2001/341 and S/2001/349), 6 August 2001 (S/2001/769), 10 October 2001 (S/2001/957), 23 September 2002 (S/2002/1077, S/2002/1078, S/2002/1079, S/2002/1080, S/2002/1081 and S/2002/1082), 24 September 2002 (S/2002/1074), 11 November 2002 (S/2002/1238), 3 March 2003 (S/2003/254), 24 March 2003 (S/2003/365), 3 June 2003 (S/2003/613), 21 July 2003 (S/2003/753), 6 October 2003 (S/2003/949), 4 November 2003 (S/2003/1072) and 11 November 2003 (S/2003/1079) from the representative of the League of Arab States to the President of the Council.

<sup>475</sup> For example, in connection with the item entitled "The situation in Côte d'Ivoire", the Council, by paragraph 10 of resolution 1464 (2003) requested ECOWAS to report periodically on all aspects of the implementation of its mandate. Similarly, in connection with the item entitled "The situation in Afghanistan", by paragraphs 2 and 5 of resolution 1510 (2003), the Council requested ISAF to submit quarterly reports.

<sup>476</sup> For example, ECOWAS was invited to brief the Council at the 4720th meeting, on 18 March 2003, in connection with the item entitled "Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa." ECOWAS and the African Union briefed the Council at the 4739th meeting, on 11 April 2003, in connection with the item entitled "The Security Council and regional organizations: facing the new challenges to international peace and security". At the 4815th meeting, on 27 August 2003, in connection with the item entitled "The situation in Liberia" and at the 4873rd meeting, on 24 November 2003, in connection with the item entitled "The situation in Côte d'Ivoire", the Council heard briefings by the Executive Secretary of ECOWAS. At the 4860th meeting, on 18 November 2003, in connection with the item entitled "The situation in Guinea-Bissau", the Council heard a briefing by the representative of the Chairman of ECOWAS.

<sup>477</sup> For a comprehensive table of the participation of representatives of regional organizations in meetings of the Council, see chap. III, annex II.

<sup>478</sup> Resolution 1353 (2001), annex II, sect. B, para. 3 (g) and (h).

<sup>479</sup> S/PRST/2001/38 and S/PRST/2002/2, respectively.

threats to international peace and security caused by terrorist acts, the Council, by a presidential statement dated 15 April 2002,<sup>480</sup> invited the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism to build a dialogue with international, regional, and subregional organizations active in the areas covered by that resolution. Furthermore, by resolution 1377 (2001) of

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<sup>480</sup> S/PRST/2002/10.

12 November 2001, the Council invited the Committee to explore with international, regional, and subregional organizations the promotion of best practices in those areas, the availability of existing assistance programmes that might facilitate the implementation of resolution 1373 (2001) and the promotion of possible synergies between those assistance programmes.<sup>481</sup>

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<sup>481</sup> Resolution 1377 (2001), annex.

## Part IV

### Consideration of the miscellaneous provisions of the Charter

#### Article 103

*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.*

#### Note

During the period under review, Article 103 was not explicitly invoked in any resolution or decision. However, the Security Council, in a number of resolutions imposing mandatory measures under Chapter VII of the Charter against Afghanistan, Eritrea and Ethiopia, Liberia and Sierra Leone, implicitly referred to the principle enshrined in Article 103, by emphasizing the primacy of the obligations under the Charter over those contracted by Member States under any other international agreement. For example, by resolution 1298 (2000) of 17 May 2000, in connection with the situation between Eritrea and Ethiopia, the Council called upon all States and all international and regional organizations to act strictly in conformity with the resolution, “notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any licence or permit granted prior to the entry into force of measures” imposed by the resolution.<sup>482</sup> Similar language was used in resolutions 1306 (2000) of 5 July 2000<sup>483</sup> and 1333 (2000) of 19 December 2000,<sup>484</sup> by which the Council imposed mandatory

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<sup>482</sup> Resolution 1298 (2000), para. 9.

<sup>483</sup> Resolution 1306 (2000), para. 9.

<sup>484</sup> Resolution 1333 (2000), para. 17.

measures against Sierra Leone and against individuals or entities belonging to or associated with Al-Qaida and/or the Taliban, respectively.

Additionally, by resolution 1343 (2001) of 7 March 2001, by which the Council imposed measures against Liberia, the Council called upon States and international and regional organizations to act strictly in accordance with the provisions of the resolution, notwithstanding the existence of any rights or obligations entered into or any licence or permit granted prior to the date of adoption of the resolution.<sup>485</sup>

Article 103 was explicitly referred to once in the deliberations of the Council, at the 4568th meeting, on 10 July 2002, in connection with the situation in Bosnia and Herzegovina, in which Member States discussed the question of impunity of United Nations peacekeepers under the Rome Statute of the International Criminal Court that entered into force on 1 July 2002 (case 21).<sup>486</sup> Furthermore, during the deliberations in connection with the situation in Angola, the Council touched upon the principle enshrined in Article 103, including obligations arising pursuant to decisions of the Council imposing mandatory measures under Chapter VII of the Charter (case 22).

There was also one communication during the reporting period in which explicit reference to Article 103 was made.<sup>487</sup>

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<sup>485</sup> Resolution 1343 (2001), para. 22.

<sup>486</sup> S/PV.4568, p. 23 (Singapore).

<sup>487</sup> S/2001/136.

## Case 21

### The situation in Bosnia and Herzegovina

#### United Nations peacekeeping

In connection with the situation in Bosnia and Herzegovina, at the 4563rd meeting, on 30 June 2002, a draft resolution,<sup>488</sup> by which the Security Council would have extended the mandate of the United Nations Mission in Bosnia and Herzegovina for six months, was not adopted owing to the negative vote of a permanent member of the Council. The representative of the United States, before voting, explained his concern regarding the jurisdiction of the International Criminal Court which would enter into force on 1 July 2002, in particular the need for his Government to ensure national jurisdiction over its personnel and officials involved in United Nations peacekeeping. He stressed that the proposal by his Government, calling for the establishment of immunity for United Nations peacekeeping, built on immunities that were already recognized in the United Nations system and reflected in status-of-forces and status-of-mission agreements. He further insisted that the Rome Statute itself recognized the concept of immunity and that the consequence of providing United Nations peacekeepers with such immunity would be the creation of a legal obligation on States to observe that immunity. He expressed the view that pursuant to Article 98 of the Rome Statute of the Court, the compliance of parties to the Statute with such obligations was “entirely consistent” with the Statute.<sup>489</sup>

Following that meeting, in his letter dated 3 July 2002 to the President, the representative of Canada requested an open meeting of the Council, stressing that the issue raised in the deliberations of the Council concerning UNMIBH involved not just the extension of the mission, but a “potentially irreversible decision negatively affecting the integrity of the Rome Statute of the Court, the integrity of treaty negotiations more generally, the credibility of the Council, the viability of international law with respect to the investigation and prosecution of grievous crimes, and the established responsibilities of States under international law to act on such crimes”.<sup>490</sup>

<sup>488</sup> S/2002/712.

<sup>489</sup> S/PV.4563, pp. 2-3.

<sup>490</sup> S/2002/723.

At the 4568th meeting, held on 10 July 2002 in response to the request contained in the above-mentioned letter, most speakers voiced their concerns over the draft text that was circulating among members of the Council<sup>491</sup> in connection with granting immunity from prosecution to United Nations peacekeepers from States not parties to the Rome Statute. Pointing out that sufficient safeguards against unwarranted and politically motivated prosecution were included in the Statute, a number of speakers expressed opposition to the circulating text as it would attempt to modify a provision of an international treaty, by means of a Council resolution, and undermine the viability and the integrity of the multinational legal framework.<sup>492</sup>

Furthermore, some speakers stated that, if such a text were to be adopted, Member States that were parties to the Statute would be forced to question the legality of the Council decision and the role of the Council.<sup>493</sup> In that connection, the representative of Mongolia pointed out that no State should be placed in a situation in which it was “forced to breach its international obligations” under either the Charter or the Statute.<sup>494</sup> The representative of Brazil expressed the view that the Council was not vested with treaty-making and treaty-reviewing powers and could not create new obligations for the States parties to the Statute, which could be amended only through the procedures provided in the Statute.<sup>495</sup> The representative of Ukraine also argued against the creation of a conflict between the powers of the Council under Chapter VII of the Charter and the legal obligations entered into by Member States in compliance with the provisions of the Charter.<sup>496</sup> Stating that Article 103 provided for Charter obligations to prevail in the event of a conflict between Charter obligations and other international obligations,

<sup>491</sup> Not issued as a document of the Council.

<sup>492</sup> S/PV.4568, p. 3 (Canada); p. 5 (New Zealand); p. 6 (South Africa); p. 11 (France); p. 15 (Costa Rica, on behalf of the Rio Group); p. 15 (Islamic Republic of Iran); p. 16 (Jordan); p. 22 (Brazil), p. 24 (Singapore); and pp. 26-27 (Mexico); S/PV.4568 (Resumption 1) and Corr.1, p. 2 (Fiji); p. 5 (Guinea); p. 8 (Malaysia); p. 9 (Germany); p. 9 (Syrian Arab Republic); and p. 14 (Cuba).

<sup>493</sup> S/PV.4568, p. 4 (Canada); p. 6 (New Zealand); and p. 20 (Liechtenstein).

<sup>494</sup> *Ibid.*, p. 19.

<sup>495</sup> *Ibid.*, p. 22.

<sup>496</sup> S/PV.4568 (Resumption 1) and Corr.1, p. 4.

the representative of Singapore raised the question of the desirability of Council action in connection with the International Criminal Court.<sup>497</sup>

The representative of the United States, reiterating concerns over the legal exposure of his country's peacekeepers under the Rome Statute, argued that his country respected the obligation of those States that had ratified the Statute and that in its proposals before the Council, it sought to work "within the provisions of the Statute". He further stated that the proposed solution was consistent with the obligations of all Member States, including those that were parties to the Statute.<sup>498</sup>

At the 4572nd meeting, on 12 July 2002, under the item entitled "United Nations peacekeeping", the Council adopted resolution 1422 (2002) by which, acting under Chapter VII of the Charter, it requested the International Criminal Court to suspend for 12 months starting 1 July 2002 any investigations or prosecutions involving personnel from States not Parties to the Rome Statute of the Court.<sup>499</sup> The Council also expressed the intention to renew the above-mentioned request under the same conditions each 1 July for further 12-month periods for as long as it might be necessary and decided that Member States should take no action inconsistent with the provision for deferral and "with their international obligations". By resolution 1487 (2003) of 12 June 2003, the Council extended the provisions of resolution 1422 (2002) for a further 12-month period starting 1 July 2003.

## **Case 22**

### **The situation in Angola**

The monitoring mechanism established by resolution 1295 (2000) to monitor sanctions imposed against the União Nacional Para a Independência Total de Angola, in its final report dated 21 December 2000,<sup>500</sup> noted that the Schengen Agreement seemed to

conflict with the sanctions imposed by resolution 1127 (1997), or was at least used as a reason for not implementing the sanctions fully. In addition, it pointed out that while paragraph 10 of resolution 1127 (1997) called upon States to act strictly in accordance with the provisions of the resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreements, many countries considered themselves unable to expel senior officials of UNITA and send them to Angola for reasons relating to the adherence of international instruments regarding refugees and political asylum.<sup>501</sup> In conclusion, the report recommended that the States parties to the Schengen Agreement should look into the problem of UNITA abusing its structures with a view to closing existing loopholes.<sup>502</sup>

At the 4283rd meeting, on 22 February 2001, members of the Council considered the above-mentioned report of the monitoring mechanism. The representative of Ukraine agreed that the relevant requirements of resolution 1127 (1997) regarding the travel restrictions on UNITA representatives should be fully implemented, "notwithstanding the existence of any rights or obligations under any other international agreements".<sup>503</sup> The representative of Bangladesh, referring to the report of the mechanism, emphasized that there was "a conflict between the national obligation of member States of the Schengen Agreement to allow their nationals free movement across their borders and the international obligation flowing from the relevant Council resolutions".<sup>504</sup>

At the 4418th meeting, on 15 November 2001, the representative of Angola stressed that obligations resulting from Council resolutions prevailed over any other obligation to which Member States might be subject by virtue of any treaty or international agreement to which they were or might become party, and that such principle should also be applied to sanctions against UNITA.<sup>505</sup>

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<sup>497</sup> S/PV.4568, pp. 23-24.

<sup>498</sup> *Ibid.*, pp. 9-10.

<sup>499</sup> Resolution 1422 (2002), para. 1.

<sup>500</sup> S/2000/1225 and Corr.1 and Corr.2.

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<sup>501</sup> *Ibid.*, para. 109.

<sup>502</sup> *Ibid.*, para. 234.

<sup>503</sup> S/PV.4283, p. 16.

<sup>504</sup> *Ibid.*, p. 18.

<sup>505</sup> S/PV.4418, p. 5.

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