
Chapter VI

Relations with other United Nations organs

Contents

	<i>Page</i>
Introductory note	178
Part I. Relations with the General Assembly	178
Note	178
A. Election by the General Assembly of non-permanent members of the Security Council	178
Note	178
B. Recommendations by the General Assembly to the Security Council in the form of resolutions under Articles 10 and 11 of the Charter	179
Note	179
1. Recommendations on matters relating to the Council's powers and functions or with regard to the general principles of cooperation in the maintenance of international peace and security	180
2. Recommendations with regard to questions relating to the maintenance of international peace and security or requesting action on such questions by the Council	182
3. Situations drawn to the attention of the Security Council	188
C. Practice in relation to Article 12 of the Charter	188
Note	188
D. Practice in relation to provisions of the Charter involving recommendations by the Security Council to the General Assembly	189
Note	189
1. Appointment of the Secretary-General	189
2. Membership in the United Nations	190
E. Reports of the Security Council to the General Assembly	190
Note	190
F. Other Council practice bearing on relations with the General Assembly	191
Note	191
G. Relations with subsidiary organs established by the General Assembly	194
Note	194
Communications from subsidiary organs established by the General Assembly	195
Part II. Relations with the Economic and Social Council	206
Practice in relation to Article 65 of the Charter	206
Note	206

Part III. Relations with the Trusteeship Council	209
Note	209
A. Practice relating to the partial termination of a trusteeship agreement under Article 83, paragraph 1, of the Charter	209
B. Transmission of reports to the Security Council by the Trusteeship Council	211
Part IV. Relations with the International Court of Justice	211
Note	211
A. Practice in relation to the election of members of the International Court of Justice	211
B. Consideration of the relationship between the Security Council and the Court	213
Part V. Relations with the Secretariat	216
Note	216
A. Functions entrusted to the Secretary-General by the Security Council	216
B. Matters brought to the attention of the Security Council by the Secretary-General	219
Part VI. Relations with the Military Staff Committee	221
Note	221

Introductory note

This chapter deals, in parts I to V, with relations of the Security Council with the other principal organs of the United Nations. It also includes, in part VI, material relating to the Military Staff Committee, which has been placed, by Articles 45, 46 and 47 of the Charter, in a special relationship with the Security Council.

Part I Relations with the General Assembly

Note

Part I concerns various aspects of the relationship between the Security Council and the General Assembly. It begins with a new section A, on the election by the Assembly of non-permanent members of the Council. Section B considers the General Assembly's practice in making recommendations to the Council under Articles 10 and 11 of the Charter, and calling its attention under Article 11 (3) to situations which are likely to endanger international peace and security. Section C concerns the limitation imposed by Article 12 (1) on the authority of the General Assembly to make recommendations with respect to any dispute or situation while the Council is exercising the functions assigned to it by the Charter in respect of that dispute or situation. It also describes the procedure under Article 12 (2) by which the Secretary-General notifies the Assembly of matters relating to the maintenance of international peace and security which are being dealt with by the Council, and when the Council ceases to deal with such matters.

Section D considers those instances in which a decision by the Council must be taken before that of the General Assembly, for example, the appointment of the Secretary-General and the admission, suspension, or expulsion of Members. One case concerning the appointment of the Secretary-General is treated in this section (case 1).

Section E describes the annual and special reports submitted by the Council to the General Assembly.

Section F considers other Council practice bearing on relations with the General Assembly: constitutional discussion within the Council (case 2) and Council decision-making (cases 3, 4 and 5).

Lastly, section G concerns relations between the Security Council and those subsidiary organs

established by the General Assembly which have reported to or otherwise played a part in the work of the Council. There was no constitutional discussion bearing on these relations during the period under review. As in previous *Supplements*, entries under this heading are presented in tabular format.

A. Election by the General Assembly of non-permanent members of the Security Council

Note

During the period under review, in accordance with Article 23 of the Charter, the General Assembly, at each regular session, elected five non-permanent members to the Security Council for a two-year term to replace those members whose terms of office were to expire on 31 December of the respective year. In each instance, the Assembly elected the five non-permanent members in the course of one plenary meeting. A table of those elections is set out below.

<i>General Assembly decision</i>	<i>Plenary meeting and date of election</i>	<i>Members elected to two-year terms beginning January of the following year</i>
43/309	37th 26 October 1988	Canada Colombia Ethiopia Finland Malaysia
44/306	34th 18 October 1989	Côte d'Ivoire Cuba People's Democratic Republic of Yemen Romania Zaire

<i>General Assembly decision</i>	<i>Plenary meeting and date of election</i>	<i>Members elected to two-year terms beginning January of the following year</i>
45/306	36th 1 November 1990	Austria Belgium Ecuador India Zimbabwe
46/305	32nd 16 October 1991	Cape Verde Hungary Japan Morocco Venezuela

B. Recommendations by the General Assembly to the Security Council in the form of resolutions under Articles 10 and 11 of the Charter

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. *The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.*

2. *The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with*

regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

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

4. *The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.*

Note

During the period under consideration, the General Assembly made a number of recommendations — in the form of resolutions — to the Security Council regarding the maintenance of international peace and security. Several of those recommendations were of a general nature, touching upon the “powers and functions” of the Council under the Charter and/or upon “the general principles of cooperation in the maintenance of international peace and security”. As such, they may be seen to be illustrative of the General Assembly’s recommendation-making powers under Articles 10 and 11 (1), respectively, of the Charter. A table of those recommendations is set out in section 1 below.¹

In other resolutions, the General Assembly made recommendations to the Security Council either with regard to specific questions relating to the maintenance of international peace and security or requesting action from the Council with regard to such questions, in accordance with Article 11 (2). Those recommendations all concerned items already on the Council’s agenda. Examples of the General Assembly requesting action from the Council include its resolutions urging the Council to take action under Chapter VII of the Charter in relation to the policies of apartheid of the Government of South Africa and the

¹ Another resolution worthy of note in this context, but which did not contain a recommendation directed specifically to the Security Council, is General Assembly resolution 47/62 of 11 December 1992, on the question of equitable representation on and increase in the membership of the Security Council.

situation in Bosnia and Herzegovina. A table of the recommendations relating to Article 11 (2) is set out in section 2.

The General Assembly also drew the attention of the Security Council to certain situations in accordance with Article 11 (3). These are dealt with in section 3.

1. Recommendations on matters relating to the Council's powers and functions or with regard to the general principles of cooperation in the maintenance of international peace and security

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
44/17 1 November 1989	Cooperation between the United Nations and the Organization of African Unity	Calls upon the United Nations organs — in particular the Security Council ... — to continue to associate closely the Organization of African Unity with all their activities concerning Africa.
44/126 15 December 1989	Review of the implementation of the Declaration on the Strengthening of International Security	Stresses that there is a need further to enhance the effectiveness of the Security Council in discharging its principal responsibility of maintaining international peace and security and to enhance the preventive role, authority and enforcement capacity of the Council in accordance with the Charter.
45/13 7 November 1990	Cooperation between the United Nations and the Organization of African Unity	Calls upon the United Nations organs — in particular the Security Council ... — to continue to associate closely the Organization of African Unity with all their activities concerning Africa.
46/59, annex 9 December 1991	Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security	<p>The Security Council should consider the possibility of undertaking fact-finding to discharge effectively its primary responsibility for the maintenance of international peace and security in accordance with the Charter.</p> <p>The Security Council should, wherever appropriate, consider the possibility of providing in its resolutions for recourse to fact-finding.</p> <p>The Security Council and the General Assembly should, in deciding to whom to entrust the conduct of a fact-finding mission, give preference to the Secretary-General, who may, inter alia, designate a special representative or a group of experts reporting to him. Resort to an ad hoc subsidiary body of the Security Council or the General Assembly may also be considered.</p>

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
		<p>In considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies.</p> <p>The decision by the competent United Nations organ to undertake fact-finding should always contain a clear mandate for the fact-finding mission and precise requirements to be met by its report. The report should be limited to a presentation of findings of a factual nature.</p>
47/71 14 December 1992	Comprehensive review of the whole question of peacekeeping operations in all their aspects	Believes ... that the closest attention needs to be paid to the issue of applying the preventive potential of the United Nations more broadly and considers that the responsibilities of the Security Council, the General Assembly and the Secretary-General in this regard should be strengthened in accordance with the framework and provisions of the Charter.
47/72 14 December 1992	Protection of peacekeeping personnel	<p>Recommends that, in appropriate cases, the Security Council might make it clear to the parties when authorizing a new peacekeeping operation that it is prepared to take further steps in accordance with the Charter of the United Nations should the purpose of the operation systematically be frustrated by provocative attacks against United Nations personnel.</p> <p>Also recommends that the Security Council continue, in collaboration with the Secretary-General, to collect and, where appropriate, to disseminate reliable information about attacks on the safety of peacekeeping and other United Nations personnel.</p>
47/120 A ² 18 December 1992	An Agenda for Peace: preventive diplomacy and related matters	Encourages the Security Council to utilize fully the provisions of Chapter VI of the Charter on procedures and methods for peaceful settlement of disputes and to call upon the parties concerned to settle their disputes peacefully.

² See also resolution 47/120 B of 20 September 1993.

Repertoire of the Practice of the Security Council

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
47/148 18 December 1992	Cooperation between the United Nations and the Organization of African Unity	Encourages the Secretary-General and the Security Council to engage at an early stage in close and continuous consultation in order to develop, on a case-by-case basis, an appropriate strategy for the peaceful settlement of specific disputes, including the participation of other organs, organizations and agencies of the United Nations system, as well as regional arrangements and organizations as appropriate, and invites the Secretary-General to report to the General Assembly on such consultations. Calls upon the United Nations organs — in particular the Security Council ... — to continue to involve the Organization of African Unity closely in all their activities concerning Africa.

2. Recommendations with regard to questions relating to the maintenance of international peace and security or requesting action on such questions by the Council

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
44/27 C, G, H, I and K 22 November 1989	Policies of apartheid of the Government of South Africa	Urges the Security Council to consider immediate action under Chapter VII of the Charter of the United Nations with a view to applying comprehensive and mandatory sanctions against the racist regime of South Africa as long as it continues to disregard the demands of the majority of the people of South Africa and of the international community to eradicate apartheid. Requests all United Nations bodies, organs and agencies to cooperate with the Special Committee [against Apartheid] and the [United Nations] Centre against Apartheid in their activities in order to ensure consistency and improve coordination and the greatest use of available resources in the implementation of the relevant resolutions of the General Assembly and the Security Council. Urges the Security Council to take action without further delay to impose a mandatory embargo on the supply and shipping of oil and petroleum products to South Africa as well as on the supply of equipment and technology to, financing of and investment in its oil industry and coal liquefaction projects.

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
		<p>Urges the Security Council to consider immediate steps to ensure the scrupulous and full implementation of the arms embargo imposed by the Council in resolutions 418 (1977) of 4 November 1977 and 558 (1984) of 13 December 1984 and its effective monitoring.</p> <p>Urges the Security Council to consider without delay the adoption of effective mandatory sanctions against South Africa.</p> <p>Also urges the Security Council to take steps for the strict implementation of the mandatory arms embargo instituted by it in resolution 418 (1977) and of the arms embargo requested in its resolution 558 (1984) and, within the context of the relevant resolutions, to secure an end to military and nuclear cooperation with South Africa and the import of military equipment or supplies from South Africa.</p>
44/41 6 December 1989	Question of Palestine	Endorses the recommendations of the Committee [on the Exercise of the Inalienable Rights of the Palestinian People] in paragraphs 110 to 118 of its report and draws the attention of the Security Council to the fact that action on the Committee's recommendations, as repeatedly endorsed by the General Assembly at its thirty-first session and subsequently, is still awaited.
44/42 6 December 1989	Question of Palestine	Once again invites the Security Council to consider measures needed to convene the International Peace Conference on the Middle East, including the establishment of a preparatory committee, and to consider guarantees for security measures agreed upon by the Conference for all States in the region.
44/48 8 December 1989	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories	Requests the Security Council to ensure Israel's respect for and compliance with all the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied by Israel since 1967, and to initiate measures to halt Israeli policies and practices in those territories.

Repertoire of the Practice of the Security Council

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
44/121 15 December 1989	Israeli nuclear armament	Requests once more the Security Council to take urgent and effective measures to ensure that Israel complies with Council resolution 487 (1981).
45/68 6 December 1990	International Peace Conference on the Middle East	Once again invites the Security Council to consider measures needed to convene the International Peace Conference on the Middle East, including the establishment of a preparatory committee, and to consider guarantees for security measures agreed upon by the Conference for all States in the region.
45/74 A 11 December 1990	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories	Requests the Security Council to ensure Israel's respect for and compliance with all the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied by Israel since 1967, and to initiate measures to halt Israeli policies and practices in those territories.
45/176 C, D, E and F 19 December 1990	Policies of apartheid of the Government of South Africa	<p>Urges the Security Council to consider immediate steps to ensure the scrupulous and full implementation and the effective monitoring of the arms embargo imposed by Council resolutions 418 (1977) and 558 (1984) of 13 December 1984, to consider strengthening the monitoring and the reporting of violations of the arms embargo and to provide information on a regular basis to the Secretary-General for general distribution to Member States.</p> <p>Also urges the Security Council to implement the recommendations of the report of the Committee established under Council resolution 421 (1977) concerning appropriate measures against those States violating the mandatory arms embargo against South Africa.</p> <p>Urges the Security Council to take appropriate measures against Israel for its violation of the mandatory arms embargo against South Africa.</p>

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
		Requests all United Nations bodies, organs and agencies to cooperate with the Special Committee [against Apartheid] and the [United Nations] Centre [against Apartheid] in their activities in order to ensure consistency, improve coordination and efficient use of available resources and avoid duplication of efforts in the implementation of the relevant resolutions of the General Assembly and the Security Council.
		Urges the Security Council to take action under appropriate provisions of the Charter of the United Nations to ensure an effective embargo on the supply and shipping of oil and petroleum products to South Africa in order to effect a speedy and peaceful eradication of apartheid.
46/47 A 9 December 1991	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories	Requests the Security Council to ensure Israel's respect for and compliance with all the provisions of the [Geneva] Convention [relative to the Protection of Civilian Persons in Time of War] in the occupied Palestinian territory, including Jerusalem, and other Arab territories occupied by Israel since 1967, and to initiate measures to halt Israeli policies and practices in those territories.
46/74 A 11 December 1991	Question of Palestine	Endorses the recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People contained in paragraphs 87 to 95 of its report and draws the attention of the Security Council to the fact that action on the recommendations of the Committee, as repeatedly endorsed by the General Assembly at its thirty-first session and subsequently, is still awaited.
46/79 A, C, D 13 December 1991	Policies of apartheid of the Government of South Africa	Calls upon all Governments to observe fully the mandatory arms embargo, requests the Security Council to continue to monitor effectively its strict implementation and urges States to adhere to the provisions of other Security Council resolutions on the import of arms from South Africa and the export of equipment and technology destined for military or police purposes in that country.

Repertoire of the Practice of the Security Council

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
		<p>Urges the Security Council to consider immediate steps to ensure the full implementation and the effective monitoring of the arms embargo imposed by the Council in its resolutions 418 (1977) and 558 (1984) of 13 December 1984, to implement the recommendations of the Committee established under Council resolution 421 (1977) concerning appropriate measures in response to violations of the mandatory arms embargo and to provide information on a regular basis to the Secretary-General for general distribution to Member States.</p> <p>Urges the Security Council to consider taking appropriate measures against Israel for its violation of the mandatory arms embargo against South Africa.</p>
46/242 25 August 1992	The situation in Bosnia and Herzegovina ³	<p>Urges the Security Council to consider on an urgent basis, taking further appropriate measures, as provided in Chapter VII of the Charter, to put an end to the fighting and to restore the unity and the territorial integrity of the Republic of Bosnia and Herzegovina.</p>
47/64 A 11 December 1992	Question of Palestine	<p>Endorses the recommendations of the Committee [on the Exercise of the Inalienable Rights of the Palestinian People] contained in paragraphs 85 to 94 of its report and draws the attention of the Security Council to the fact that action on the recommendations of the Committee, as repeatedly endorsed by the General Assembly at its thirty-first session and subsequently, is still awaited.</p>
47/116 E, F 18 December 1992	Policies of apartheid of the Government of South Africa	<p>Urges the Security Council to consider immediate steps to ensure the full implementation and the effective monitoring of the arms embargo imposed by the Council in its resolutions 418 (1977) and 558 (1984) of 13 December 1984, to implement the recommendations of the Committee established under Council resolution 421 (1977) concerning appropriate measures in response to violations of the mandatory arms embargo and to provide information on a regular basis to the Secretary-General for general distribution to Member States.</p>

³ See also letter dated 2 September 1992 from the President of the General Assembly to the President of the Security Council (S/24517), expressing the hope that the members of the Security Council would find it appropriate to take urgent action on General Assembly resolution 46/242.

<i>General Assembly resolution</i>	<i>Agenda item</i>	<i>Recommendation</i>
47/121 18 December 1992	The situation in Bosnia and Herzegovina	<p>Urges the Security Council to consider taking appropriate measures against Israel for its violation of the mandatory arms embargo against South Africa.</p> <p>Urges the Security Council, within its responsibility to maintain international peace and security, to again call upon the Serbian and Montenegrin forces to comply with all relevant resolutions and to bring to an end the aggressive acts against the Republic of Bosnia and Herzegovina, to implement and enforce all existing resolutions with respect to the Republic of Bosnia and Herzegovina and the former Yugoslavia and, specifically, further to consider measures, including the following, on an urgent basis, but no later than 15 January 1993:</p> <p>(a) In the event that Serbian and Montenegrin forces fail to comply fully with all relevant resolutions of the Security Council, under the provisions of Chapter VII of the Charter of the United Nations, to authorize Member States, in cooperation with the Government of the Republic of Bosnia and Herzegovina, to use all necessary means to uphold and restore the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina;</p> <p>(b) To exempt the Republic of Bosnia and Herzegovina from the arms embargo as imposed on the former Yugoslavia under Security Council resolution 713 (1991) of 25 September 1991.</p> <p>Also urges the Security Council to consider taking measures to open more airports/airfields for international humanitarian relief flights, to pursue emergency airdrops as a stop-gap measure and to study the possibility of and the requirements for the promotion of safe areas for humanitarian purposes.</p> <p>Further urges the Security Council to consider what resources may be required to improve the implementation of all relevant resolutions, and calls upon Member States to notify the Secretary-General regarding the availability of personnel and materiel to assist and facilitate in this effort.</p>

Urges the Security Council to consider recommending the establishment of an ad hoc international war crimes tribunal to try and punish those who have committed war crimes in the Republic of Bosnia and Herzegovina when sufficient information has been provided by the Commission of Experts established by Council resolution 780 (1992) of 6 October 1992.

3. Situations drawn to the attention of the Security Council

The General Assembly did not refer any matters to the Security Council explicitly invoking Article 11 (3) during this period. However, in a number of resolutions, adopted from April 1989 to December 1992, the Assembly requested the Security Council to consider or examine “the situation in the occupied Palestinian territory”.⁴ It specifically requested the Council to consider “measures needed to provide international protection to the Palestinian civilians in the Palestinian territory occupied by Israel since 1967, including Jerusalem”. Those resolutions were adopted in connection with several related agenda items: the question of Palestine; the uprising (*intifada*) of the Palestinian people; the United Nations Relief and Works Agency for Palestine Refugees in the Near East; and the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

C. Practice in relation to Article 12 of the Charter

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter,

the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Note

During the period under review, there was no discussion in the Security Council of the nature of the limitation placed by Article 12 (1) upon the authority of the General Assembly to make recommendations. Neither did the Council request that the General Assembly make a recommendation in respect of a dispute or situation in accordance with the exception provided for in Article 12 (1).

In accordance with Article 12 (2), the Secretary-General continued to notify the General Assembly of “matters relative to the maintenance of international peace and security which are being dealt with by the Security Council” and of matters with which the Council had ceased to deal.⁵ These notifications were

⁴ General Assembly resolutions 43/233 (20 April 1989); 44/2 (6 October 1989); 44/47 I (8 December 1989); 44/48 (8 December 1989); 45/69 (6 December 1990); 45/73 I (11 December 1990); 45/74 A (11 December 1990); 46/46 I (9 December 1991); 46/47 A (9 December 1991); 46/76 (11 December 1991); 47/64 E (11 December 1992); 47/69 I (14 December 1992); 47/70 A (14 December 1992).

⁵ See notes by the Secretary-General entitled “Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations” (A/44/528 (15 September 1989) and Add.1 (2 October 1989); A/45/501 (14 September 1990); A/46/479 (17 September 1991); A/47/436 (15 September 1992) and Corr.1 (9 February 1993)).

based upon the summary statement of matters of which the Security Council is seized and of the stage reached in their consideration, circulated each week to the members of the Security Council, in accordance with rule 11 of the provisional rules of procedure of the Council.⁶ The items in the notifications were the same as those in the summary statements for the relevant period, apart from the omission of those items not considered to relate to the maintenance of international peace and security.

The matters being dealt with by the Security Council have been listed in the notifications since 1951 in two categories: (a) matters discussed during the period since the last notification; and (b) other matters of which the Council remained seized, but which it had not discussed since the last notification. The notifications also indicated those instances in which the Council had concluded its consideration of a particular item.⁷ When the Council subsequently ceased to deal with a matter listed in a notification, the Secretary-General so informed the General Assembly by circulating an addendum to the relevant notification.⁸

The consent of the Council, required by Article 12 (2), was obtained through the circulation by the Secretary-General to the members of the Council of copies of the draft notifications. The General Assembly formally took note of the various notifications.

D. Practice in relation to provisions of the Charter involving recommendations by the Security Council to the General Assembly

Note

On a number of matters, the Charter of the United Nations provides for joint decision-making by the Security Council and the General Assembly, but requires the decision by the Council to be taken first. This is the case, for instance, with respect to the

appointment of the Secretary-General (Article 97), the admission, suspension, or expulsion of Members (Articles 4, 5 and 6), and the conditions under which a State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice (Article 93 (2)).⁹

This section considers briefly the Council's practice during the period under review in relation to the first two such matters. No question arose concerning the conditions of accession to the Statute of the Court.

1. Appointment of the Secretary-General

Article 97

... The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. ...

Rule 48

... Any recommendation to the General Assembly regarding the appointment of the Secretary-General shall be discussed and decided at a private meeting.

Note

In accordance with rule 48 of the provisional rules of procedure, the meetings of the Security Council to consider the question of a recommendation to the General Assembly regarding the appointment of the Secretary-General have been held in private. The Council has voted by secret ballot. A communiqué circulated at the end of each meeting, in accordance with rule 55, has indicated the stage reached in the consideration of the recommendation. During the period under review, the Council considered and unanimously adopted a recommendation of this kind (case 1).

⁶ Rule 11 reads as follows: "The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration."

⁷ See, for example, A/47/436/Corr.1.

⁸ See, for example, A/44/528/Add.1.

⁹ The Security Council also makes recommendations to the General Assembly regarding the conditions under which a State which is a party to the Statute of the International Court of Justice but is not a Member of the United Nations may participate in electing members of the Court, and in making amendments to the Statute (Articles 4 (3) and 69 of the Statute of the International Court of Justice).

Case 1

At its 3017th meeting, held in private on 21 November 1991, the Security Council considered the question of the recommendation regarding the appointment of the Secretary-General of the United Nations. Following a vote by secret ballot, the Council unanimously adopted resolution 720 (1991), recommending to the General Assembly that Mr. Boutros Boutros-Ghali be appointed Secretary-General of the United Nations for a term of office from 1 January 1992 to 31 December 1996.¹⁰ By letter dated 21 November 1991, the President of the Council transmitted the recommendation to the President of the General Assembly.¹¹ Acting in accordance with this recommendation, the General Assembly formally appointed Mr. Boutros-Ghali as Secretary-General of the United Nations on 3 December 1991.¹²

2. Membership in the United Nations

Note

The admission of a State to membership in the United Nations, and the suspension or expulsion of a Member State from the Organization, is effected by “the General Assembly upon the recommendation of the Security Council” (Articles 4 (2), 5 and 6 of the Charter). In accordance with rule 60 of its provisional rules of procedure, the Council submits to the General Assembly within specified time limits its recommendation concerning each application for membership together with a record of its discussion of the application.

During the period under review, the Council recommended the admission of 22 States to membership in the United Nations.¹³ It made no

¹⁰ S/PV.3017.

¹¹ A/46/700.

¹² Resolution 46/21.

¹³ Namibia (A/S-18/3, 17 April 1990); Liechtenstein (A/45/419, 15 August 1990); Democratic People’s Republic of Korea (A/46/354, 8 August 1991); Republic of Korea (A/46/354, 8 August 1991); Micronesia (Federated States of) (A/46/355, 12 August 1991); Marshall Islands (A/46/356, 12 August 1991); Estonia (A/46/460, 12 September 1991); Latvia (A/46/460, 12 September 1991); Lithuania (A/46/460, 12 September 1991); Kazakhstan (A/46/853, 23 January 1992); Armenia (A/46/859, 29 January 1992); Kyrgyzstan (A/46/860, 29 January 1992); Uzbekistan (A/46/861,

negative recommendations, requiring it to submit a special report to the General Assembly. The Council did not discuss or recommend the suspension or expulsion of any Member.

In the case of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Council, in resolution 777 (1992) of 19 September 1992, considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations, and therefore recommended to the General Assembly “that it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly”. The General Assembly so decided.¹⁴

E. Reports of the Security Council to the General Assembly

Article 24, paragraph 3

The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 15, paragraph 1

The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

Note

In accordance with Article 24 (3) of the Charter, the Security Council continued during the period under

29 January 1992); Tajikistan (A/46/862, 29 January 1992); Republic of Moldova (A/46/870, 5 February 1992); Turkmenistan (A/46/871, 7 February 1992); Azerbaijan (A/46/880, 14 February 1992); San Marino (A/46/885, 25 February 1992); Croatia (A/46/919, 18 May 1992); Slovenia (A/46/920, 18 May 1992); Bosnia and Herzegovina (A/46/922, 20 May 1992); Georgia (A/46/942, 7 July 1992). For the consideration by the Council of these applications, see chapter VII.

¹⁴ Resolution 47/1 of 22 September 1992. See also case 1 in chapter VII.

review to submit annual reports to the General Assembly.¹⁵ Each report covered the period from 16 June of one year to 15 June of the next. The format of the report remained unaltered during this period. It comprised four main parts: Part I provided a summary of the questions considered by the Security Council under its responsibility for the maintenance of international peace and security; Part II dealt with “other matters” considered by the Council, such as the admission of new Members, the appointment of the Secretary-General, and the Council’s responsibilities regarding the election of members of the International Court of Justice; Part III provided an account of the work of the Military Staff Committee; and Part IV contained matters that were brought to the attention of the Council but not discussed during the period covered by the report. During the period under consideration, the reports continued to be adopted at private meetings of the Security Council. The General Assembly took note of the reports with little or no discussion.¹⁶

During the period covered by this *Supplement*, the Council did not submit any special reports to the Assembly (as, for example, under rule 60 (3) of the Council’s provisional rules of procedure).¹⁷

F. Other Council practice bearing on relations with the General Assembly

Note

During the period under review, there was a brief constitutional discussion concerning the importance of the Council’s restricting its deliberations and actions within its sphere of competence, as defined under the

¹⁵ Annual reports were adopted by the Security Council at the following meetings held in private: 44th report (covering the period 1988/89), 2892nd meeting, 17 November 1989; 45th report (covering the period 1989/90), 2958th meeting, 23 November 1990; 46th report (covering the period 1990/91), 3020th meeting, 29 November 1991.

¹⁶ For the relevant General Assembly debates, see A/44/PV.79, p. 31 (on the report covering the period 1988/89); A/45/PV.63, pp. 32-52 (on the report covering the period 1989/90); and A/46/PV.70, pp. 2-28 (on the report covering the period 1990/91).

¹⁷ That rule provides that if the Security Council does not recommend an applicant State for membership or postpones the consideration of the application, it “shall submit a special report to the General Assembly with a complete record of the discussion”.

Charter, and not encroaching on the competence of the General Assembly. This occurred during the Council’s consideration in 1992 of the situation between Iraq and Kuwait and the situation in Bosnia and Herzegovina. An account of this discussion is given in case 2 below.

The Security Council adopted several decisions addressing or revealing the interplay between the Council and the General Assembly. These included: (a) a letter dated 5 October 1990 from the President of the Security Council to the Secretary-General as part of an exchange of letters concerning Haiti, in which Council members reserved their positions on the competence of the organs of the United Nations on electoral assistance; (b) presidential statements dealing with general issues, such as disarmament and fact-finding, and with the process of coordinating with the Assembly consideration of the Secretary-General’s report entitled “An agenda for peace”; and (c) a resolution on the question of South Africa, recalling the Assembly’s Declaration on Apartheid and its Destructive Consequences in Southern Africa and providing for an operational element. These decisions are considered in cases 3, 4, 5 and 6 below.

Case 2

Respective competencies of the Council and the Assembly

The issue of the respective competencies of the Security Council and the General Assembly was addressed by some Council members when they commented on proposals made at three meetings in 1992 to extend invitations to participate to two individuals who had been appointed as special rapporteurs of the Commission on Human Rights. At the Council’s 3105th and 3139th meetings, on 11 August and 23 November, respectively, it was proposed that Mr. Max van der Stoep, Special Rapporteur on the situation of human rights in Iraq, be invited to participate in the Council’s consideration of the situation between Iraq and Kuwait. At the 3134th meeting, on 13 November, it was proposed that Mr. Tadeusz Mazowiecki, Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, be invited to participate in the Council’s consideration of the situation in Bosnia and Herzegovina. Following a brief discussion in each case, the Council decided to extend those invitations.¹⁸

¹⁸ On the question of participation under rule 39 of the

Some Council members expressed reservations in that regard. They stressed that the various organs of the United Nations should restrict their deliberations and actions within their respective spheres of competence under the Charter. In their view, the Council had primary responsibility for the maintenance of international peace and security; it should exercise caution in the manner in which it interpreted that mandate, and not encroach on the functions of the other organs. As they saw it, the Council could not discuss human rights situations per se or make recommendations in that regard; matters pertaining to human rights fell within the purview of the Commission on Human Rights and the General Assembly. These speakers considered it inappropriate, therefore, that the Security Council should invite those individuals — who had been appointed by, and reported to, the Commission on Human Rights — to participate in the meetings of the Council.¹⁹

While sharing some of these concerns, another Council member stated that the invitation to Mr. van der Stoep did not in any way affect or increase the normal authority of the Council as it fell within the scope of a resolution already adopted, and should be understood to reflect all the limitations inherent in that resolution. He recalled, in that regard, that the Council, on 5 April 1991, had adopted resolution 688 (1991), in which it had condemned the acts of repression committed by Iraq against the Iraqi civilian population in many parts of the country. The Council had adopted that resolution because it considered that the mass violations of human rights and the resulting flow of refugees across international borders endangered international peace and security in the region. In other words, the Council had decided to act on that matter, which was not normally part of its competence, because of a phenomenon that could affect international peace and security, the maintenance of which was its primary responsibility. The speaker noted, further, that the four countries, in requesting the meeting in question, had invoked resolution 688 (1991). Mr. van der Stoep would thus be providing information on matters that were within the purview of the Council.²⁰

Council's provisional rules of procedure, see chapter III.

¹⁹ For the relevant statements, see S/PV.3105, pp. 6-12 (India, Zimbabwe, China); S/PV.3134, pp. 9-11 (China and Zimbabwe); and S/PV.3139, pp. 3-5 (China and Zimbabwe).

²⁰ See S/PV.3105, pp. 6-12 (Ecuador).

Case 3

Exchange of letters between the Secretary-General and the President of the Security Council concerning Haiti

By letters dated 7 and 17 September 1990,²¹ the Secretary-General informed the President of the Security Council that he had received a request from the President of the Interim Government of Haiti requesting the assistance of a United Nations observer mission in connection with forthcoming elections in Haiti. By the letter of 7 September, the Secretary-General requested the President of the Council to transmit to the members of the Council certain information that he intended to convey to the General Assembly when the Assembly considered a draft resolution on the matter. This included the fact that, if the General Assembly adopted the draft resolution, he would establish an observer mission, to be known as the United Nations Observer Group for the Verification of Elections in Haiti, to provide assistance in the observation and verification of the electoral process and in drawing up electoral security plans and observing their implementation, as requested by the President of Haiti.

By a letter dated 5 October 1990,²² the President of the Security Council informed the Secretary-General as follows:

I have informed the members of the Council of your letter of 7 September concerning possible United Nations assistance in connection with the forthcoming elections in Haiti, and your letter of 17 September clarifying the Haitian Government's request.

The members of the Council, without prejudice to their positions on the competence of the organs of the United Nations on electoral assistance if requested by a Member State and without prejudice to the right of any member of the Council to raise the matter at any later time in the Council for further consideration, concur that it is important that you respond positively to the request for assistance from the Government of Haiti on an urgent basis. They note that the proposed assistance to its electoral process, as requested by the President of the Interim Government of Haiti, which involves, inter alia, the provision of advisers, observers and experts on electoral security matters, but does not include the use of any peacekeeping forces, will be considered in its entirety by the General Assembly. They express the hope that the General Assembly will take urgent action so that the United Nations assistance can be extended within the time frame required by Haiti to hold its elections.

²¹ S/21845 and S/21846.

²² S/21847.

Case 4*The responsibility of the Security Council
in the maintenance of international
peace and security*

At its 3046th meeting, held at the level of Heads of State and Government on 31 January 1992, the Council discussed the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”. At the conclusion of the meeting, the President made a statement on behalf of the members of the Council.²³ Commenting on the subject of “disarmament, arms control and weapons of mass destruction”, he stated:

The members of the Council, while fully conscious of the responsibilities of other organs of the United Nations in the fields of disarmament, arms control and non-proliferation, reaffirm the crucial contribution which progress in these areas can make to the maintenance of international peace and security. They express their commitment to take concrete steps to enhance the effectiveness of the United Nations in these areas.

...

On conventional armaments, they note the General Assembly’s vote in favour of a United Nations register of arms transfers as a first step, and in this connection recognize the importance of all States providing all the information called for in the General Assembly’s resolution.²⁴

Case 5*Agenda for peace: preventive diplomacy,
peacemaking and peacekeeping*

In considering the report of the Secretary-General of 17 June 1992 entitled “An Agenda for Peace: preventive diplomacy, peacemaking and peacekeeping”,²⁵ the Council touched on its own approach to examining the report and how it would coordinate its consideration with the discussions carried out in the General Assembly. It did so in two presidential statements, made in each case at a meeting of the Council, following consultations held earlier among the members of the Council. At the 3089th meeting, on 30 June 1992, the President made a statement on behalf of the Council,²⁶ which reads in the relevant part:

In reading the report, the Council has noted a set of interesting proposals addressed to the various organs of the United Nations and to Member States and regional organizations. The Council therefore trusts that all organs and entities, in particular the General Assembly, will devote particular attention to the report and will study and evaluate the elements of the report that concern them.

Within the scope of its competence, the Security Council will, for its part, examine in depth and with due priority the recommendations of the Secretary-General.

At the 3128th meeting, on 29 October 1992, the President made a further statement on behalf of the Council,²⁷ which reads in the relevant part:

Pursuant to the President’s statement of 30 June 1992, the Council has begun to examine the Secretary-General’s report entitled “An agenda for peace”.

This consideration of the report of the Secretary-General ... by the Council will be coordinated with the discussions carried out in the General Assembly. The Council welcomes in this regard the contact already established between the Presidents of the two organs and invites the President of the Council to continue and intensify such contacts.

The Council has followed with close interest the views expressed by Member States in the General Assembly during the general debate as well as during the discussion on item 10 of the agenda of the General Assembly. It has also noted the report²⁸ of the special session of the Special Committee on Peacekeeping Operations.

Commenting on the substance of the report in a further statement made on behalf of the members of the Council on 30 November 1992,²⁹ the President cited the Declaration on Fact-Finding that had recently been adopted by the General Assembly:

The members of the Council welcome and support the proposals in paragraph 25 of the report of the Secretary-General on fact-finding. They are of the view that an increased resort to fact-finding as a tool of preventive diplomacy, in accordance with the Charter of the United Nations and the United Nations Declaration on Fact-Finding for International Security and Peacemaking,³⁰ particularly its guidelines, can result in the best possible understanding of the objective facts of a situation which will enable the Secretary-General to meet his responsibilities under Article 99 of the Charter and facilitate Security Council deliberations. ...

²³ S/23500.

²⁴ General Assembly resolution 46/36 L of 9 December 1991, entitled “Transparency in armaments”.

²⁵ S/24111.

²⁶ S/24210.

²⁷ S/24728.

²⁸ A/47/386.

²⁹ S/24872.

³⁰ General Assembly resolution 46/59 of 9 December 1991, annex.

Case 6

The question of South Africa

At its 3096th meeting, held on 16 July 1992 to consider the question of South Africa, the Council unanimously adopted resolution 765 (1992). In a preambular paragraph, the Council recalled the Declaration on Apartheid and its Destructive Consequences in Southern Africa³¹ adopted by consensus by the General Assembly at its sixteenth special session, on 14 December 1989, which called for negotiations in South Africa to take place in a climate free of violence. In paragraph 4, the Council invited the Secretary-General to appoint, as a matter of urgency, a Special Representative for South Africa to recommend measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a democratic, non-racial and united South Africa.

G. Relations with subsidiary organs established by the General Assembly

Note

Certain subsidiary organs established by the General Assembly have played a part in the work of the Security Council, either because they have been placed in a special relationship to the Council by resolutions of the General Assembly, or because the Council has made use of the services of a subsidiary organ or invited its officers to participate in its meetings.

³¹ General Assembly resolution S-16/1 of 14 December 1989, annex.

During the period under review, there was no constitutional discussion bearing on the relations between such subsidiary organs and the Security Council. Those subsidiary organs still active included the Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples; the Special Committee against Apartheid; the United Nations Council for Namibia; the Committee on the Exercise of the Inalienable Rights of the Palestinian People; and the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. Those entities submitted reports and recommendations to the Security Council — and/or to the General Assembly, as appropriate — pursuant to a request by the General Assembly. The United Nations Council for Namibia submitted its last communication in April 1990; this was a declaration by which the Council for Namibia decided to recommend to the General Assembly its own dissolution as a result of Namibia's attainment of independence. The United Nations Council for Namibia and some of the other subsidiary organs also participated in meetings of the Council.³² The tables below give an account of the communications from these organs to the Council.

During the period under consideration, no decisions adopted by the Security Council contained references to these entities. The Council did, however, mention another subsidiary organ established by the General Assembly. In a presidential statement of 29 October 1992, adopted in connection with its consideration of the Secretary-General's report entitled "An agenda for peace: preventive diplomacy, peacemaking and peacekeeping", the Council noted the report on the special session of the Special Committee on Peacekeeping Operations on the same subject.³³

³² See, on their participation, chapter III, annex II.A.

³³ Statement by the President of the Security Council of 29 October 1992 (S/24728), citing A/47/386.

Communications from subsidiary organs established by the General Assembly

(a) Communications from the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/20796	18 August 1989	Letter dated 17 August 1989 transmitting the text of a decision adopted by the Special Committee on 15 August 1989 (A/AC.109/1011). Drawing particular attention to para. 6 which urges the Security Council to consider the report of the Committee established under its resolution 421 (1977), to adopt further measures to widen the scope of resolution 418 (1977), and for scrupulous observance of Security Council resolution 558 (1984) of 13 December 1984 enjoining Member States to refrain from importing armaments from South Africa.
S/20810	24 August 1989	Letter dated 22 August 1989 transmitting the text of a resolution on the question of Namibia adopted by the Special Committee on 18 August 1989 (A/AC.109/1014). Drawing particular attention to para. 6 which urges the Security Council to continue to follow developments in Namibia very closely in order to ensure the full implementation of Council resolution 435 (1978) in its original and definitive form.
S/20827	1 September 1989	Letter dated 30 August 1989 transmitting the text of the conclusions and recommendations concerning the Trust Territory of the Pacific Islands, adopted by the Special Committee on 7 August 1989 (A/AC.109/L.1693). Drawing particular attention to para. 18 which notes that, under Article 83 of the Charter, the Security Council exercises all functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, and expresses confidence that the Security Council will give special attention to full implementation of all provisions of the Trusteeship Agreement and the Charter.
S/21662	28 August 1990	Letter dated 24 August 1990 transmitting the text of the conclusions and recommendations concerning the Trust Territory of the Pacific Islands, adopted by the Special Committee on 1 August 1990 (A/AC.109/L.1737). Drawing particular attention to para. 18 which notes that, under Article 83 of the Charter, the Security Council exercises all functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, and expresses confidence that the Security Council will give special attention to full implementation of all provisions of the Trusteeship Agreement and the Charter.

Repertoire of the Practice of the Security Council

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/21678	30 August 1990	Letter dated 27 August 1990 transmitting the text of a decision on military activities and arrangements by colonial Powers, adopted by the Special Committee on 20 August 1990 (A/AC.109/1054). Drawing particular attention to para. 6 which urges the Security Council to consider, as a matter of urgency, the report of the Committee established under its resolution 421 (1977) and to adopt further measures to widen the scope of resolution 418 (1977) to make it more effective and comprehensive, and which calls for the scrupulous observance of resolution 558 (1984) enjoining Member States to refrain from importing armaments from South Africa.
S/23014	6 September 1991	Letter dated 4 September 1991 transmitting the text of a decision on military activities and arrangements by colonial Powers, adopted by the Special Committee on 23 August 1991 (A/AC.109/1090). Drawing particular attention to para. 6 which urges the Security Council to consider, as a matter of urgency, the report of the Committee established under its resolution 421 (1977) and to adopt further measures to widen the scope of resolution 418 (1977) to make it more effective and comprehensive, and which calls for the scrupulous observance of resolution 558 (1984) enjoining Member States to refrain from importing armaments from South Africa.
S/23035	13 September 1991	Letter dated 12 September 1991 transmitting the text of a resolution on the Trust Territory of the Pacific Islands, adopted by the Special Committee on 14 August 1991 (A/AC.109/1095). Drawing attention to its second, third and fourth preambular paragraphs and to its operative paragraph 2, in which the Special Committee, “ <i>Taking note</i> of the Trusteeship Agreement concluded between the Administering Authority and the Security Council with regard to the Trust Territory of the Pacific Islands, <i>Mindful</i> that under Article 83 of the Charter of the United Nations, the Security Council shall exercise all functions of the United Nations relating to strategic areas, including the approval of the terms of trusteeship agreements and of their alteration or amendment, <i>Confident</i> that special attention will continue to be given by the Security Council to the full implementation of all provisions of the Trusteeship Agreement, ... 2. <i>Takes note</i> of the adoption by the Security Council of resolution 683 (1990) on 22 December 1990, by which it determined, in the light of the entry into force of the new status agreements for the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands, that the objectives of the Trusteeship Agreement had been fully attained and that the applicability of the Trusteeship Agreement had terminated with respect to those entities.”
S/24471	21 August 1992	Letter dated 19 August 1992 transmitting the text of a decision on military activities and arrangements by colonial Powers, adopted by the Special Committee on 7 August 1992 (A/AC.109/1136). Drawing attention to para. 7 which urges the Security Council to consider, as a matter of urgency, the report of the Committee established under its resolution 421 (1977) of 9 December 1977 and to adopt further measures to widen the scope of Council resolution 418 (1977) in order to make it more effective and comprehensive, and calls for scrupulous observance of resolution 558 (1984) enjoining Member States to refrain from importing armaments from South Africa.

(b) Communications from the Special Committee against Apartheid

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/20634	16 May 1989	Letter dated 11 May 1989 transmitting the report of the Panel on the Hearings on the Oil Embargo against South Africa, held in New York on 12 and 13 April 1989. The report concluded that a mandatory decision by the Security Council to adopt an oil embargo against South Africa, under Chapter VII of the Charter, was the most appropriate means to complement the arms embargo against South Africa imposed by Council resolution 418 (1977) (para. 18), and recommended measures for tightening the oil embargo (para. 19).
S/20844	14 September 1989	Letter dated 11 September 1989 transmitting the text of the conclusions and recommendations adopted by the International Non-Governmental Organizations Seminar on Education against Apartheid, held at Geneva from 4 to 6 September 1989, which expressed support for the declaration on the question of South Africa made in Harare on 21 August 1989 by the OAU Ad Hoc Committee on Southern Africa (para. 2) and reaffirmed its conviction that comprehensive and mandatory sanctions should be adopted by the Security Council (para. 3).
S/20901 and Corr.2	25 October 1989 6 November 1989	Submitting its annual report, in which, inter alia, the Special Committee concluded (para. 257) that despite recent developments in Namibia on the implementation of Security Council resolution 435 (1978), even under the new leadership of Mr. de Klerk, Pretoria continued to suppress any peaceful opposition to its policies. The Special Committee also recommended to the General Assembly that it urge the Council to take immediate action, under Chapter VII of the Charter, with a view to applying comprehensive and mandatory sanctions against the regime (para. 275 (h)); and that it take concrete steps for the strict implementation of its resolutions 418 (1977) and 558 (1984), and that it urge those States, which directly or indirectly infringe the arms embargo and continue to collaborate with South Africa in the military intelligence and technology fields, to cease such acts (para. 275 (i)). The Special Committee requested the Secretary-General to ensure the coordination of activities of the United Nations system regarding the struggle against apartheid and to facilitate all efforts leading to the peaceful eradication of apartheid (para. 275 (o)). Part II contained a report on recent developments on the relations between Israel and South Africa.
S/21953 and Add.1	21 November 1990 5 December 1990	Submitting its annual report, in which the Special Committee concluded (para. 354) that although a process of change had been set in motion in South Africa, continued efforts were necessary to ensure the ultimate eradication of apartheid. The Special Committee recommended to the General Assembly (para. 372 (i)), inter alia, that it urge the Security Council to take concrete steps to strictly implement resolutions 418 (1977) and 558 (1984) and bring an end to the continued violations of the mandatory arms embargo. Part II contained a report on recent developments on the relations between Israel and South Africa.

Repertoire of the Practice of the Security Council

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/23224	20 November 1991	Submitting its annual report, in which the Special Committee cited the terms set out in the Declaration on Apartheid and its Destructive Consequences in Southern Africa (General Assembly resolution S-16/1 of 14 December 1989, annex) (para. 1) and, inter alia, called for the strict observance of the mandatory arms embargo, monitored effectively by the Security Council, and for the maintenance of restrictions on the export of computers, communication equipment and the provision of technology and military intelligence to South Africa until free and fair elections were held and a new democratic government established (para. 200 (m)). Part II contained a report on recent developments on the relationship between Israel and South Africa.
S/24291	15 July 1992	Letter dated 15 July 1992 transmitting the concluding remarks made by Archbishop Trevor Huddleston at the International Hearing on Political Violence in South Africa and the Implementation of the National Peace Accord, co-sponsored by the Special Committee against Apartheid, held in London on 14 and 15 July 1992.
S/24292	15 July 1992	Letter dated 15 July 1992 transmitting the statement made by the Reverend Frank Chikane, General Secretary of the South African Council of Churches, at the International Hearing on Political Violence in South Africa and the Implementation of the National Peace Accord, co-sponsored by the Special Committee against Apartheid, held in London on 14 and 15 July 1992.
S/24663	6 November 1992	Submitting its annual report, in which the Special Committee concluded that the decision of the Security Council, OAU, the Commonwealth and the European Community to send observers to monitor the political violence had been welcomed by all major political parties and organizations inside and outside South Africa (para. 176), and recommended that the General Assembly should, inter alia, welcome the Council's decisions of 16 July and 17 August 1992, its statement of 10 September 1992, and the deployment of United Nations observers (para. 181 (f)), and request the Council to continue to monitor the implementation of the existing measures to end apartheid (para. 181 (m)). Part II contained a report on recent developments on the relations between South Africa and Israel, which concluded that South Africa was one of Israel's major arms customers, in violation of resolutions 418 (1977) and 421 (1977) (para. 204). It urged the Council to end the violation (para. 205), and recommended that the Assembly authorize the Special Committee to continue monitoring those relations and report to the Assembly and the Council (para. 206).

(c) Communication from the United Nations Council for Namibia

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/21270	24 April 1990	Letter dated 20 April 1990 transmitting the text of the declaration adopted at its special meeting, held at Windhoek, from 9 to 11 April, in which it noted (para. 5) that the Security Council had ensured the critical implementation of resolution 435 (1978) by the United Nations Transition Assistance Group for Namibia, and its completion under the guidance of the Secretary-General.

(d) Communications from the Committee on the Exercise of the Inalienable Rights of the Palestinian People

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/20372	5 January 1989	Letter dated 5 January 1989 deploring Israel's deportation to southern Lebanon of Palestinians from the West Bank and Gaza Strip, and appealing to the Secretary-General to ensure the safety and protection of Palestinian civilians under occupation and to intensify his efforts towards the urgent convening of the International Peace Conference on the Middle East, in accordance with General Assembly resolution 43/176 of 15 December 1988.
S/20424	26 January 1989	Letter dated 25 January 1989 drawing attention to the escalation of the situation in the occupied Palestinian territories as a result of the increasingly harsh measures taken by Israel to suppress the Palestinian intifada.
S/20455	9 February 1989	Letter dated 9 February 1989 supporting the request by Tunisia, on behalf of the Arab Group, for an urgent meeting of the Security Council to consider the situation in the occupied Palestinian territory.
S/20505	6 March 1989	Letter dated 3 March 1989 concerning the killing of Palestinians, particularly children and youth, by Israeli forces, and appealing to the Secretary-General to ensure the safety and protection of Palestinian civilians under occupation and to intensify his efforts towards the convening of the International Peace Conference on the Middle East.
S/20563 and Corr.1	4 April 1989 7 April 1989	Letter dated 3 April 1989 drawing attention to Israel's policy of repression against Palestinians in the occupied territory, including the storming of a United Nations medical clinic in Gaza, and appealing to the Secretary-General to intensify his efforts towards the convening of the International Peace Conference on the Middle East.
S/20564	6 April 1989	Letter dated 3 April 1989 transmitting an excerpt from the <i>Country Reports on Human Rights Practices for 1988</i> , issued by the United States Department of State, which contained information on the human rights situation in the Palestinian and other Arab territories occupied by Israel since 1967.

Repertoire of the Practice of the Security Council

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/20592	14 April 1989	Letter dated 14 April 1989 drawing attention to the escalation of attacks by Israeli troops and settlers against Palestinians and stating that the Committee considered that the international community was duty bound to redouble its efforts to ensure protection for the Palestinians under occupation and the withdrawal of Israel from the occupied territory, in accordance with the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949, and United Nations resolutions, and reiterating its appeal to the Secretary-General and to all parties concerned to further intensify their efforts for the convening of the International Peace Conference on the Middle East.
S/20623	10 May 1989	Letter dated 9 May 1989 regarding press reports on the shooting of Palestinian civilians by Israeli troops and Israel's announcement that the West Bank would be considered as a "closed military zone" until 10 May, and calling on the Security Council to adopt urgent measures to provide international protection to the Palestinian civilians, in accordance with General Assembly resolution 43/233 of 20 April 1989.
S/20668	2 June 1989	Letter dated 1 June 1989 drawing attention to the escalation of repression against Palestinians in the occupied territory and, inter alia, an announcement by the Defence Minister of Israel of further repressive measures unless Palestinians in the occupied territories accepted Israel's "offer of elections", and reiterating the need for urgent measures by the Security Council to provide international protection to the Palestinian civilians.
S/20714	5 July 1989	Letter dated 5 July 1989 protesting the renewed deportation of Palestinians from the occupied territory and calling on the international community as a whole and the Security Council, in particular, to ensure compliance by Israel with the Fourth Geneva Convention and Council resolutions.
S/20860	21 September 1989	Letter dated 21 September 1989 drawing attention to Israel's escalation of repression and suppression of the intifada, and urging the Council to adopt urgent measures to provide international protection to the Palestinian civilians.
S/21009	6 December 1989	Letter dated 6 December 1989 drawing attention to the escalation of repression by Israel, in particular the statement of an Israeli army judge that soldiers were permitted to shoot at masked Palestinian youths, and calling for the Security Council to adopt urgent measures to provide international protection to the Palestinian civilians, in accordance with General Assembly resolutions 43/233 of 20 April 1989 and 44/2 of 6 October 1989.
S/21089	16 January 1990	Letter dated 15 January 1990 drawing attention to the further escalation of repression by Israel, with large numbers of Palestinians killed and injured, and to a military order closing universities and higher education institutions, and calling upon the Security Council to provide international protection to the Palestinian civilians.

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/21151	16 February 1990	Letter dated 15 February 1990 citing press reports on the demolition in the occupied territory of houses belonging to Palestinians by Israeli military authorities, and urging the Security Council to provide international protection to the Palestinian civilians.
S/21199	21 March 1990	Letter dated 20 March 1990 transmitting an extract from <i>Country Reports on Human Rights Practices for 1989</i> , published by the United States Department of State, on the human rights situation in the Palestinian and other Arab territories occupied by Israel since 1967.
S/21281	1 May 1990	Letter dated 1 May 1990 concerning collective punishment, torture and harsh conditions in detention camps for Palestinians, and Israeli settlement activities, and urging the Security Council to provide international protection to the Palestinian civilians.
S/21303	21 May 1990	Letter dated 21 May 1990 denouncing the massacre near Tel Aviv of Palestinian workers from Gaza and the climate of hate engendered by the repressive policies of the occupying Power; calling upon the Council to adopt urgent measures to protect the Palestinian people under occupation; reiterating its appeal to the High Contracting Parties to the Geneva Convention to ensure compliance with the Convention; stating that ultimately true protection for Palestinians can only be achieved through the exercise of their right to self-determination and the establishment of their own State, alongside Israel, with adequate security guarantees; and calling on all concerned to intensify their efforts to promote a comprehensive, just and lasting settlement through the convening of the International Peace Conference on the Middle East.
S/21362	19 June 1990	Letter dated 15 June 1990 deploring the incursion by the Israeli army into a health-care centre in Gaza City and its use of tear gas; citing Israel's policies and practices in disregard of its obligations under the Geneva Convention, particularly articles 24, 28 and 50, and violation of the Convention on the Rights of the Child of 20 November 1989; and calling upon the Security Council to provide international protection to the Palestinian civilians.
S/21802	25 September 1990	Letter dated 19 September 1990 drawing attention to the increased killing and wounding of children by Israeli forces, harsh collective punishment, injury and torture in Israeli prisons, restriction on freedom of speech and forced closure of press offices; urging again the Security Council to provide international protection to the Palestinians in the occupied territory; underscoring the imperative need for a comprehensive and just settlement of the question of Palestine through the convening of the International Peace Conference on the Middle East.

Repertoire of the Practice of the Security Council

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/22012	18 December 1990	Letter dated 18 December 1990 condemning Israel's resumption of its policy of deportation of Palestinians from the occupied territory, in violation of the Geneva Convention and several Council resolutions, and the reported arrest of more than 1,000 Palestinians. Also reaffirming the need to provide effective protection for Palestinians in the occupied territory and to promote a comprehensive, just and lasting settlement of the question of Palestine through the convening of the International Peace Conference on the Middle East.
S/22040	2 January 1991	Letter dated 31 December 1990 denouncing the indiscriminate shooting and killing of Palestinian civilians and reiterating the need to protect them and to promote a lasting settlement through the convening of the International Peace Conference on the Middle East.
S/22073	14 January 1991	Letter dated 14 January 1991 expressing concern at the mass transfer of Palestinian civilians, noting the recent deterioration of the situation in the occupied territory, and appealing to the Secretary-General and to all concerned to ensure the safety and protection of Palestinians in the occupied territory.
S/22207	8 February 1991	Letter dated 6 February 1991 condemning the use of collective punishment by the Israeli authorities against Palestinians in the occupied territory; citing press reports that approximately 1.7 million Palestinians had been under a strict 24-hour curfew since the beginning of hostilities on 16 January 1991, in violation of Israel's obligations under the Fourth Geneva Convention, particularly its articles 39 and 35; and reiterating the urgent need to make Israel comply with Security Council resolution 681 (1990), and urging its Government to accept the de jure applicability of the Convention to all the territories occupied by Israel since 1967.
S/22294	1 March 1991	Letter dated 1 March 1991 drawing attention to the continuous mass detention of Palestinian civilians, including minors, without trial and as a collective punishment, in violation of Israel's obligations under the Geneva Convention, in particular articles 33, 37, 72 and 78, and of the individual's rights to protection from arbitrary arrest and due process, stipulated by article 10 of the Universal Declaration of Human Rights and article 9 (i) of the International Covenant on Civil and Political Rights.
S/22388	26 March 1991	Letter dated 26 March 1991 condemning Israel's continuous deportation of Palestinians and reaffirming the imperative need for the international community, and in particular the High Contracting Parties to the Fourth Geneva Convention, to ensure Israel's compliance, as the occupying Power, with its obligations under the Convention, and to ensure effective protection for Palestinians under occupation.

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/22511	19 April 1991	Letter dated 18 April 1991 citing a press report that the forthcoming building of 13,000 housing units was part of a plan by the Israeli Government to increase by 50 per cent the Jewish population in the occupied Palestinian territories, and deploring the intensification of its settlements policy and practice, in violation of article 49 of the Fourth Geneva Convention and Council resolutions 446 (1979), 452 (1979) and 465 (1980).
S/23291	17 December 1991	Letter dated 16 December 1991 drawing attention to attacks carried out by the Israeli Government and settlers against the Holy Places and Palestinian property in East Jerusalem and adjoining areas, in violation of Israel's obligations as the occupying Power under the Geneva Convention and numerous Council resolutions, particularly 271 (1969), 298 (1971) and 476 (1980), concerning the Holy Places and religious buildings in Jerusalem, and 446 (1979), 452 (1979) and 465 (1980), concerning settlement activities by Israel, which hampered the establishment of a comprehensive, just and lasting peace in the Middle East.
S/23374	6 January 1992	Letter dated 6 January 1992 condemning Israel's decision to continue the deportation of Palestinians from the occupied territory, in violation of the Fourth Geneva Convention and several Council resolutions, and expressing concern at the increasing imposition of harsh collective punishment, such as curfews, school closings and administrative detention.
S/23570	11 February 1992	Letter dated 11 February 1992 denouncing the death of Palestinians in Israeli custody and the systematic use of torture and ill-treatment of Palestinian detainees, in violation of Israel's obligations under article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 7 of the International Covenant on Civil and Political Rights, as well as articles 31 and 32 of the Fourth Geneva Convention.
S/23782	3 April 1992	Letter dated 3 April 1992 condemning the shooting of Palestinian civilians by Israeli military forces in the occupied Palestinian territory, in violation of Israel's obligations under the Fourth Geneva Convention, the International Covenant on Civil and Political Rights, and numerous Security Council and General Assembly resolutions.
S/24045	5 June 1992	Letter dated 5 June 1992 drawing attention to the twenty-fifth anniversary of the Israeli occupation of the Palestinian territory; calling on all concerned, and in particular the High Contracting Parties to the Geneva Convention and the supervisory bodies of the human rights treaties, to ensure compliance by Israel with its obligations under those instruments; calling upon the international community and the Security Council to ensure Israel's withdrawal from the occupied territories, in conformity with Council resolution 242 (1967); recalling that in its first 1976 report, the Committee had recommended, inter alia, the establishment of a timetable for Israel's complete withdrawal; drawing once again the attention of the Security Council and the General Assembly to the fact that their decisions remained unimplemented; and expressing concern at Israel's ongoing efforts to turn the occupation into a permanent fact.

Repertoire of the Practice of the Security Council

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/24304	16 July 1992	Letter dated 16 July 1992 drawing attention to Israel's decision to place Al-Najah University under siege and to impose a curfew on the city of Nablus, and appealing to the Secretary-General and all concerned to induce Israel to abide by its obligations under international law and United Nations resolutions.
S/24436	13 August 1992	Letter dated 13 August 1992 denouncing the reported death of another Palestinian detainee in Israeli custody and appealing to the Secretary-General and all concerned, in particular the Human Rights Committee and the Committee against Torture, as well as the High Contracting Parties to the Fourth Geneva Convention, to ensure that Israel desist forthwith from using illegal methods in the treatment of Palestinian detainees and respect its international obligations.
S/24648	9 October 1992	Letter dated 8 October 1992 drawing attention to the ongoing hunger strike by some 3,000 Palestinian prisoners in Israeli prisons to protest against ill-treatment; expressing concern at the use of live ammunition and rubber bullets against demonstrators; and appealing to the Secretary-General and all concerned, particularly the High Contracting Parties to the Geneva Convention, to ensure Israel's compliance with its international obligations under the Convention and relevant human rights instruments, as well as Security Council resolutions.
S/24974	17 December 1992	Letter dated 17 December 1992 drawing attention to Israel's mass deportation of 418 Palestinians in retaliation for the killing of a kidnapped Israeli soldier, and calling for an immediate end to the deportation policy; noting the recent mass arrests of some 2,000 Palestinians, the curfew imposed on the Gaza Strip and the sealing of the West Bank and Gaza Strip; and appealing to the Secretary-General and all concerned to induce Israel to desist from deportations and cease its collective punishments of Palestinians, in accordance with its obligations under the Fourth Geneva Convention and numerous Security Council resolutions.

(e) Communications from the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/20634	16 May 1989	Letter dated 11 May 1989 transmitting the report of the Panel on the Hearings on the Oil Embargo Against South Africa, held in New York on 12 and 13 April 1989, which concluded (para. 18) that the Security Council's decision to adopt a mandatory oil embargo against South Africa, under Chapter VII of the Charter, was the most appropriate means to complement the arms embargo imposed under resolution 418 (1977), and recommended (para. 19) measures for tightening the oil embargo.
S/20926 and Add.1	31 October 1989 20 June 1990	Transmitting the report of the Intergovernmental Group, which reaffirmed that a mandatory oil embargo against South Africa was urgently needed to assist its people in the struggle against apartheid, and recommended once again that the General Assembly request the Security Council to impose a mandatory embargo on the supply and shipping of oil and petroleum products to South Africa (para. 61) under Chapter VII of the Charter.
S/21946	19 November 1990	Transmitting the report of the Intergovernmental Group, which stated that the most effective way of enforcing the oil embargo was for the Security Council to invoke Chapter VII of the Charter (para. 32) and put forward a draft model law for the effective enforcement of the oil embargo against South Africa (annex I).
S/23126	9 October 1991	Transmitting the report of the Intergovernmental Group, which concluded that in spite of positive developments in South Africa (para. 62), it was not opportune to lift the oil embargo until there was clear evidence of irreversible changes (para. 64), and concluded that the most effective way to enforce the embargo was the adoption by the Council of a mandatory embargo under Chapter VII of the Charter (para. 67).
S/24775 and Add.1	9 November 1992 11 November 1992	Transmitting the report of the Intergovernmental Group, which noted some positive political developments in South Africa (para. 31) and stated that the oil embargo should be lifted only when an interim government representing the majority of the population was established and upon request by such government (para. 33); and that a premature lifting of the oil embargo would be counterproductive and harm the negotiating process (para. 34).

Part II

Relations with the Economic and Social Council

Practice in relation to Article 65 of the Charter

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Note

During the period under consideration, the Security Council did not formally address a request for information or assistance to the Economic and Social Council or mention Article 65 in its decisions. In 1992, however, the Security Council received information from the Economic and Social Council through one of its subsidiary bodies, the Commission on Human Rights, about grave human rights abuses and violations of international humanitarian law identified by the Security Council as being of concern in two situations before it, the situation between Iraq and Kuwait and the situation in the former Yugoslavia. In the first instance, the Security Council referred to the information thus provided in two of its resolutions. This practice is considered in case 7 below. In relation to the situation in the former Yugoslavia, the Security Council subsequently specifically requested the “relevant United Nations bodies” to make available information relating to the violations of humanitarian law being committed in the territory of the former Yugoslavia. The Security Council also requested those United Nations bodies to provide other appropriate assistance to the Commission of Experts to be established, at its request, by the Secretary-General. This instance is discussed in case 8.

In his report entitled “An agenda for peace: preventive diplomacy, peacemaking and peacekeeping”,³⁴ submitted in June 1992 at the request

³⁴ S/24111. The report of the Secretary-General was submitted pursuant to the presidential statement dated 31 January 1992 (S/23500), by which the Council invited the Secretary-General to report “on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for

of the Security Council, the Secretary-General touched upon the potential relevance of Article 65 as part of an early warning system. He recommended “that the Security Council invite a reinvigorated and restructured Economic and Social Council to provide reports, in accordance with Article 65 of the Charter, on those economic and social developments that may, unless mitigated, threaten international peace and security”.³⁵ This recommendation was not formally discussed or commented upon by the Council in 1992 in the course of its consideration of the Secretary-General’s report.

Case 7

Situation between Iraq and Kuwait

By resolution 688 (1991) of 5 April 1991, the Security Council “condemn[ed] the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten[ed] international peace and security in the region”. It demanded that Iraq, “as a contribution to removing the threat to international peace and security in the region, immediately end this repression”, and expressed the hope that an open dialogue would take place to ensure that the human and political rights of all Iraqi citizens were respected.

When the Council reviewed this matter at its 3059th meeting, on 11 March 1992, several Council members referred to the findings contained in the report on the situation of human rights in Iraq dated 18 February 1992 prepared by Max van der Stoep, Special Rapporteur of the Commission on Human Rights.³⁶⁻³⁷ That report had been circulated to the members of the Security Council at the request of the Permanent Representative of Belgium.³⁸ The covering

peacemaking and for peacekeeping”.

³⁵ S/24111, para. 26.

³⁶ For the relevant statements by Council members, see S/PV.3059, p. 22 (Austria), p. 30 (United Kingdom), pp. 45-46 (United States), pp. 51-52 (Russian Federation) and p. 67 (Belgium).

³⁷ S/23685/Add.1. The report had been prepared in accordance with resolution 1992/71 of the Commission on Human Rights, as approved by the Economic and Social Council in its decision 1992/241.

³⁸ Letter dated 9 March 1992 from the Permanent

letter drew attention to paragraph 159 of the report, in which the Special Rapporteur, after referring to resolution 688 (1991), stated that, inasmuch as the repression continued, he could only conclude that the threat to international peace and security in the region mentioned in that resolution remained. At the same meeting, the President of the Security Council made a statement on behalf of the Council,³⁹ concerning the status of Iraq's compliance with the various obligations imposed upon it by resolutions concerning the situation between Iraq and Kuwait. With respect to the implementation of resolution 688 (1991), the presidential statement referred to a resolution of the Commission on Human Rights and both the findings and conclusion contained in the Special Rapporteur's report. Thus, it stated:

33. The Security Council remains deeply concerned at the grave human rights abuses that, despite the provisions of resolution 688 (1991), the Government of Iraq continues to perpetrate against its population, in particular in the northern region of Iraq, in southern Shi'a centres and in the southern marshes (Commission on Human Rights resolution 1992/71 of 5 March 1992). The Security Council notes that this situation is confirmed by the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/31, also to be circulated in document S/23685) ...

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

At an urgent follow-up meeting held on 11 August 1992, the Council had before it the interim report on the human rights situation in Iraq prepared by the Special Rapporteur⁴⁰ which, as in the case of his first report, had been circulated as a Security Council document at the request of the Permanent Representative of Belgium.⁴¹ At the request of four Council members, the Council decided to extend an

Representative of Belgium to the President of the Security Council (S/23685).

³⁹ S/23699.

⁴⁰ S/24386, annex.

⁴¹ Letter dated 3 August 1992 to the President of the Security Council (S/24386).

invitation to Mr. van der Stoel to participate in the meeting under rule 39 of its provisional rules of procedure. Several Council members expressed reservations about the appropriateness of the Security Council inviting Mr. van der Stoel, on the ground that questions of human rights ought to be dealt with by the Commission on Human Rights, the body which had appointed him rapporteur.⁴² Mr. van der Stoel made a statement in which he reported on the Government of Iraq's continued policy of repression against the Kurdish population in the north and the Shiites in the southern marshes, in violation of resolution 688 (1991).

The Council renewed its consideration of this item at its 3139th meeting, on 23 November 1992. Once again, Mr. van der Stoel was invited to participate in the meeting. Some Council members had reiterated their reservations, for the same reasons as cited at the August meeting. At the 3139th meeting, the President of the Council read out a statement on behalf of the Council concerning the status of Iraq's compliance with the various obligations placed upon it by the Council.⁴³ In relation to resolution 688 (1991), the statement referred to a resolution of the Commission on Human Rights, the Special Rapporteur's reports and the public meeting held with Mr. van der Stoel. It did so in the following terms:

30. The Security Council remains deeply concerned at the grave human rights abuses that, despite the provisions of resolution 688 (1991), the Government of Iraq continues to perpetrate against its population, in particular in the northern region of Iraq, in southern Shi'a centres and in the southern marshes (Commission on Human Rights resolution 1992/71 of 5 March 1992). The Security Council notes that this situation is confirmed by the reports of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/31, also circulated as document S/23685 and Add.1, and part I of the interim report circulated as document S/24386). The members of the Council recall their public meeting with Mr. Max van der Stoel on 11 August 1992.

Case 8

Situation in the former Yugoslavia

On 13 August 1992, the Security Council adopted resolution 771 (1992), concerning continuing reports of widespread violations of international humanitarian

⁴² See also chapter III.

⁴³ S/24836.

law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina. Recalling its presidential statement of 4 August 1992,⁴⁴ the Council called upon “States and, as appropriate, international humanitarian organizations” to collate substantiated information on violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia, and to make that information available to the Council.

At about the same time, the Commission on Human Rights, meeting in its first special session, adopted a resolution on 14 August on the situation of human rights in the territory of the former Yugoslavia,⁴⁵ in which it took note of the statement by the President of the Security Council on 4 August 1992, and requested its Chairman to appoint a special rapporteur to investigate at first hand the human rights situation in the territory of the former Yugoslavia, in particular within Bosnia and Herzegovina. The Commission requested the Special Rapporteur to report his findings and recommendations to the Commission on Human Rights as well as to the General Assembly, and requested the Secretary-General to make the reports of the Special Rapporteur available also to the Security Council.⁴⁶

At its meeting on 6 October 1992, the Security Council had before it the first report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia.⁴⁷ In his recommendations, the Special Rapporteur noted the need to prosecute those responsible for serious human rights violations and breaches of international humanitarian law. He recommended that a commission should be created to assess and further investigate specific cases in which

prosecution might be warranted.⁴⁸ At the same meeting, the Council adopted resolution 780 (1992), in which it requested “States, relevant United Nations bodies, and relevant organizations” to make available “information relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions ... being committed in the territory of the former Yugoslavia”. The Council also requested those entities “to provide other appropriate assistance to the Commission of Experts” which it requested the Secretary-General to establish to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992). In their explanations of vote, several Council members elaborated on their interpretation of paragraph 1 of the resolution. They stated their understanding that the Council’s request to “relevant United Nations bodies” included the Special Rapporteur of the Commission on Human Rights, and that the Special Rapporteur’s report should be taken into account by the impartial Commission of Experts.⁴⁹

The Security Council considered the matter further, under the item entitled “The situation in Bosnia and Herzegovina”, at its 3134th to 3137th meetings, from 13 to 16 November 1992. At its 3134th meeting, the Council invited the Special Rapporteur of the Commission on Human Rights to participate under rule 39 of its provisional rules of procedure. Some Council members reiterated their reservations concerning the appropriateness of inviting the Special Rapporteur to participate in a meeting of the Security Council, on the ground that, as he had been appointed by the Commission on Human Rights, he should report to that body.⁵⁰ The Council had before it the first report, and a further report,⁵¹ prepared by the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia.

At its 3137th meeting, on 16 November 1992, the Security Council adopted resolution 787 (1992). In a preambular paragraph of that resolution, the Council “not[ed] with grave concern the reports⁵² of the Special Rapporteur for Yugoslavia ... which ma[de] clear that

⁴⁴ S/24378. The presidential statement concerned reports of the imprisonment and abuse of civilians in camps, prisons and detention centres within the territory of the former Yugoslavia, and especially in Bosnia and Herzegovina, and called upon “all parties, States, international organizations and non-governmental organizations” to make available to the Council any further information they might possess.

⁴⁵ Resolution 1992/S-1/1.

⁴⁶ The Commission’s resolution was endorsed by the Economic and Social Council by decision 1992/305 of 18 August 1992.

⁴⁷ S/24516 of 3 September 1992.

⁴⁸ *Ibid.*, paras. 69 and 70.

⁴⁹ For the relevant statements, see S/PV.3119, p. 12 (United States), p. 13 (Hungary) and pp. 16-17 (France); see also p. 8 (Venezuela).

⁵⁰ S/PV.3134, pp. 9-11. See also chapter III.

⁵¹ S/24516 and S/24766, dated 3 September and 6 November, respectively.

⁵² *Ibid.*

massive and systematic violations of human rights and grave violations of international humanitarian law continue[d] in the Republic of Bosnia and Herzegovina”. In the operative paragraphs, the Council, *inter alia*, condemned all violations of international law, including in particular the practice of “ethnic cleansing” and the deliberate impeding of the delivery of food and medical supplies to the civilian

population of Bosnia and Herzegovina, and reaffirmed that the perpetrators of such acts would be held individually responsible. It also welcomed the establishment of the Commission of Experts, and asked the Commission to actively pursue investigations with regard to grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.⁵³

⁵³ Resolution 787 (1992), paras. 7 and 8.

Part III

Relations with the Trusteeship Council

Note

This part of chapter VI concerns the relationship between the Security Council and the Trusteeship Council in relation to those trust territories designated as “a strategic area or areas” under Articles 77 and 82 of the Charter. Article 83 (1) provides that “all functions of the United Nations” relating to strategic areas, “including the approval of the terms of the trusteeship agreements and of their alteration or amendment”, are to be exercised by the Security Council. Article 83 (3) further provides that the Security Council shall avail itself of the assistance of the Trusteeship Council to “perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas”. Those supervisory functions are specified in Articles 87 and 88 of the Charter. Only one Administering Authority designated a Trust Territory as a strategic area: the United States so designated the Pacific Islands, and a draft trusteeship agreement was approved by the Security Council in April 1947. In March 1949, the Security Council approved a proposal by which the Trusteeship Council was asked to exercise the above-mentioned supervisory functions in relation to this Trust Territory, and to submit to the Security Council its reports and recommendations thereon.

During the period under review, the Security Council adopted resolution 683 (1990), by which it terminated the applicability of the Trusteeship Agreement for the Trust Territory of the Pacific Islands with respect to three of the entities covered by the Agreement: the Federated States of Micronesia, the

Marshall Islands and the Northern Mariana Islands. The Council’s practice in this regard is considered in case 9 below. That left Palau as the sole remaining Trust Territory of the Pacific Islands. As it has done since 1949, the Trusteeship Council continued to submit reports annually to the Security Council on the Trust Territory. Those reports are listed in section B.

A. Practice relating to the partial termination of a trusteeship agreement under Article 83, paragraph 1, of the Charter

Case 9

By letter dated 7 December 1990,⁵⁴ the President of the Trusteeship Council transmitted to the President of the Security Council a draft resolution on the status of the Trust Territory of the Pacific Islands. The draft resolution highlighted, *inter alia*, the following:

- The Council’s responsibility relating to strategic areas, as set forth in Article 83 (1) of the Charter.
- The Administering Authority’s obligation to promote the development of the inhabitants of the Trust Territory towards self-government or independence.
- The negotiations between the Administering Authority and representatives of the Trust Territory, which had begun in 1969 and had resulted in the conclusion of a Compact of Free Association in the case of the Federated States of

⁵⁴ S/22008.

Micronesia and the Marshall Islands, and a Commonwealth Covenant in the case of the Northern Mariana Islands.

- The Council's satisfaction that the peoples of these entities had freely exercised their right to self-determination in approving their respective new status agreements in plebiscites observed by visiting missions of the Trusteeship Council, and that the legislatures of these entities had adopted resolutions approving the respective new status agreements.
- Trusteeship Council resolution 2183 (LIII) of 28 May 1986 and subsequent reports of the Trusteeship Council to the Security Council.

In an operative paragraph of the draft resolution, the Council would determine — in the light of the entry into force of the new status agreements for the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands — that the objectives of the Trusteeship Agreement had been fully attained, and that the applicability of the Trusteeship Agreement had terminated, with respect to those entities.

At its 2972nd meeting, on 22 December 1990, the Security Council included in its agenda the item entitled "Letter dated 7 December 1990 from the President of the Trusteeship Council addressed to the President of the Security Council". Following the adoption of the agenda, the representative of Cuba proposed that the meeting should be adjourned for three days. He did so on the ground, *inter alia*, that the Governor of the Northern Mariana Islands had requested that the consideration of the question of termination of the Trusteeship Agreement be delayed to give the representatives of the peoples of that Territory an opportunity to present to the members of the Council their position against termination.⁵⁵ In support, he contended that it was "perfectly reasonable" — even obligatory — before taking a decision to terminate the Trusteeship Council's mandate over this Territory to listen to the representative of its people.⁵⁶

Speaking in opposition to the proposal to adjourn the meeting, the representative of the United States of America said that the issues raised in the Governor's

letter concerned the Compact of Free Association entered into between the Commonwealth of the Northern Mariana Islands and the United States. He explained that a condition of the Compact was that it would replace the Trusteeship Agreement, which had been terminated by the Trusteeship Council in 1986, an act which had been recognized by the United States. The differences that had arisen from the Compact were being worked on and resolved under the terms of the Compact, through negotiations. It was important that the negotiations continue. As the Commonwealth of the Northern Marianas had chosen conclusively, through an act of its own legislature, to join the United States, it had become part of the United States. Its relationship to the United States was therefore clearly covered by Article 2 (7) of the Charter. As a result, he believed that the Council should move to accept immediately the original wishes of the people of the Commonwealth of the Northern Marianas, as expressed through their legislature and through a plebiscite held under United Nations supervision.⁵⁷ The Cuban proposal to adjourn the meeting was then put to the vote, but not adopted.⁵⁸

The Security Council proceeded to vote on a draft resolution⁵⁹ submitted by China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The draft resolution was identical to the one submitted and recommended for adoption by the Trusteeship Council. It was adopted, without amendment, as resolution 683 (1990), by 14 votes in favour, to 1 against (Cuba). By the resolution, the Security Council, *inter alia*, determined, "in the light of the entry into force of the new status agreements for the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands, that the objectives of the Trusteeship Agreement have been fully attained, and that the applicability of the Trusteeship Agreement has terminated, with respect to those entities".

Speaking after the vote, the five sponsors of the resolution — all of whom, as permanent members of the Security Council, were also members of the Trusteeship Council⁶⁰ — welcomed its adoption as giving effect to the results of the exercise by the peoples of the Federated States of Micronesia, the

⁵⁵ S/PV.2972, pp. 2-3, citing letter dated 20 December 1990 from the Governor of the Northern Mariana Islands to the President of the Security Council (S/22034, annex I).

⁵⁶ S/PV.2972, p. 3.

⁵⁷ *Ibid.*, pp. 6-7.

⁵⁸ *Ibid.*, p. 8.

⁵⁹ S/22001.

⁶⁰ Articles 86 and 23 of the Charter of the United Nations.

Marshall Islands and the Northern Mariana Islands of their right to self-determination. Several of them underlined that the peoples of those Territories had approved in referendums, monitored by the United Nations, agreements defining the new status of each Territory. The Trusteeship Council had then decided, by its resolution 2183 (LIII) of 23 May 1986, that the necessary conditions to terminate the trusteeship over the three Territories had been met.⁶¹ While some described the action just taken by the Security Council as an endorsement of the Trusteeship Council action, others stressed that, under the Charter, it was for the Security Council to take the final decision on ending the trusteeship status: it had the important task of ensuring that United Nations responsibilities with respect to strategic Trust Territories were carried out.⁶²

In explanation of his country's negative vote, the representative of Cuba expressed the view that the Security Council had not properly discharged its responsibilities with regard to this question. He maintained that the Council ought to have afforded the representatives of the peoples of the Territories concerned an opportunity to explain their reasons for not wanting the Council to take the action it had just taken.

⁶¹ For the relevant statements, see S/PV.2972, p. 13 (France); p. 27 (United Kingdom); and p. 28 (United States).

⁶² *Ibid.*, p. 13 (France); pp. 14-15 (China); and p. 28 (USSR).

B. Transmission of reports to the Security Council by the Trusteeship Council

From 1 January 1989 to 31 December 1992, the Secretary-General transmitted to the Council the following reports of the Trusteeship Council on the Trust Territory of the Pacific Islands, which continued to be the only Territory designated as a strategic area:

(a) Forty-first report, covering the period from 20 July 1988 to 1 August 1989;⁶³

(b) Forty-second report, covering the period from 2 August 1989 to 28 November 1990;⁶⁴

(c) Forty-third report, covering the period from 29 November 1990 to 19 December 1991;⁶⁵

(d) Forty-fourth report, covering the period from 19 December 1991 to 21 December 1992;⁶⁶

(e) Forty-fifth report, covering the period from 22 December 1992 to 18 January 1994.⁶⁷

⁶³ *Official Records of the Security Council, Forty-fourth Year, Special Supplement No. 1 (S/20843).*

⁶⁴ *Ibid.*, *Forty-fifth Year, Special Supplement No. 1 (S/22212).*

⁶⁵ *Ibid.*, *Forty-sixth Year, Special Supplement No. 1 (S/23554).*

⁶⁶ *Ibid.*, *Forty-seventh Year, Special Supplement No. 1 and corrigendum (S/25261 and Corr.1).*

⁶⁷ *Ibid.*, *Forty-eighth Year, Special Supplement No. 1 (S/1994/346).*

Part IV Relations with the International Court of Justice

Note

This part concerns the relationship between the Security Council and the International Court of Justice. Section A deals with the election of members of the Court, which depends upon action to be taken by the Security Council in conjunction with the General Assembly, both organs proceeding independently. During the period under review, three elections were held to elect seven members to fill ad hoc and regular vacancies (see cases 10, 11 and 12). Section B notes the discussion that arose in the Security Council in 1992 regarding the respective roles of the Council and

the Court, in connection with the situation concerning the alleged involvement of Libyan nationals in the destruction of two civilian airliners (see case 13).

A. Practice in relation to the election of members of the International Court of Justice

The procedure for the election of members of the Court is set out in Articles 4 and 8 and 10 to 14 of the Statute of the International Court of Justice; rules 40 and 61 of the provisional rules of procedure of the

Security Council; and rules 150 and 151 of the rules of procedure of the General Assembly. In each instance under consideration here, the Security Council began the election procedure to fill a vacancy by fixing the date of the election, in accordance with Article 14 of the Court's Statute. The Security Council and the General Assembly then proceeded independently with the elections. At the Security Council meetings, the President of the Council drew attention to a memorandum by the Secretary-General describing the composition of the Court and setting out the procedure to be followed in the conduct of the election.⁶⁸ He reminded the Council that, under Article 10 (1) of the Court's Statute, "those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected". He explained further that the voting would be by secret ballot.

Case 10

At its 2854th meeting, on 18 April 1989, the Council met to elect a member of the International Court of Justice, to fill a vacancy caused by the death of one of its members. On the first ballot, one candidate obtained the required majority of votes in the Council.⁶⁹ The President stated that he would communicate the result of the vote to the President of the General Assembly, and requested the Council to remain in session until the result of the voting in the General Assembly had been received. Subsequently, he informed the members of the Council that he had received a letter from the President of the General Assembly informing him that the same candidate had received an absolute majority in the General Assembly at the 91st plenary meeting of its forty-third session. The candidate in question was therefore elected a member of the Court. As the new member was elected to replace a member whose term of office had not expired, he was elected to the remainder of his predecessor's term of office, expiring on 5 February 1991.

Case 11

At its 2955th meeting, on 15 November 1990, the Council proceeded with the election of five members of the International Court of Justice, to fill the seats

⁶⁸ See, for example, memorandum by the Secretary-General of 12 April 1989 (S/20551).

⁶⁹ See S/PV.2854.

which would become vacant on 5 February 1991. The election required three rounds of voting, and a second meeting.⁷⁰ On the first ballot, three candidates obtained the required majority of votes in the Council. Since fewer than five candidates had received the required majority, the Council proceeded to a second ballot for the remaining two vacancies, in accordance with rule 61 of the Council's provisional rules of procedure. On the second ballot, two more candidates obtained the required majority. The Council then remained in session until the result of the voting at the 38th plenary meeting of the forty-fifth session of the General Assembly had been received. The results, when compared, revealed that the Security Council and the General Assembly had agreed on four candidates. Those four candidates had therefore been elected as members of the Court for a term of office of nine years, beginning on 6 February 1991. The President of the Council then stated that, in accordance with Article 11 of the Statute of the Court, the Council would proceed to hold another meeting to elect one candidate, by further ballot, for the seat remaining to be filled. He accordingly adjourned the first meeting and immediately called to order the second meeting — the 2956th meeting. On the first ballot, one candidate received the required majority of votes in the Council. At the 39th plenary meeting of the General Assembly, the same candidate obtained an absolute majority of votes in the Assembly. As both the Security Council and the General Assembly had agreed on the same candidate, the candidate in question was elected to the International Court of Justice for a term of office of nine years, beginning on 6 February 1991.

Case 12

At its 3021st meeting, on 5 December 1991, the Council proceeded with the election of one member of the International Court of Justice, to fill a vacancy that had occurred due to the recent death of one of the members of the Court. On the first ballot, no candidate received the required majority.⁷¹ The Council thus proceeded to a second ballot, in accordance with rule 61 of the provisional rules of procedure. On the second ballot, one candidate received the required majority of votes. The candidate in question, having also obtained an absolute majority of votes in the General Assembly, was accordingly elected a member

⁷⁰ See S/PV.2955 and 2956.

⁷¹ See S/PV.3021.

of the Court for the remainder of his predecessor's term of office, expiring on 5 February 1994.

B. Consideration of the relationship between the Security Council and the Court

Case 13

During consideration by the Council of the item entitled "Letters dated 20 and 23 December 1991 (S/23306, S/23307, S/23308, S/23309 and S/23317)",⁷² concerning the alleged involvement of Libyan nationals in the destruction of two civilian aircraft (Pan Am flight 103 over Lockerbie, Scotland, in 1988 and UTA flight 772 over the Niger in 1989), discussion arose concerning the respective roles of the Security Council and the International Court of Justice.

At the end of 1991, the Governments of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America presented to the Security Council the reports of judicial and police investigations which implicated officials of the Libyan Government in the bombings of the two airliners. The three Governments also presented specific demands to the Libyan authorities relating to the legal procedures that were under way: these included the demand that the Government of the Libyan Arab Jamahiriya surrender for trial the two Libyan officials charged with the destruction of Pan Am flight 103, that it accept responsibility for their actions, and that it pay appropriate compensation.

At its meeting on 21 January 1992, the Security Council considered the matter and unanimously adopted resolution 731 (1992), which urged the Government of the Libyan Arab Jamahiriya immediately to provide a full and effective response to the requests of the three Governments to cooperate fully in establishing responsibility for the terrorist acts against the two aircraft.

Speaking before the vote, the representative of the Libyan Arab Jamahiriya maintained that the issue before the Council was a legal one — "a dispute over the legal determination to be made in connection with a request for extradition". The Security Council was not,

therefore, competent to consider the matter. Instead, it should recommend settlement through the diverse legal channels that were available — in particular, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (the Montreal Convention), which provided for arbitration. The Council should bear in mind, moreover, that under Article 36 (3) of the Charter, "legal disputes should as a general rule be referred to the International Court of Justice in accordance with the provisions of the Statute of the Court". He added that the Libyan Arab Jamahiriya had formally requested that the dispute be referred to arbitration under the Montreal Convention and intended, if no agreement was reached on arbitration, to bring the matter before the Court.⁷³ A number of other speakers, who were not Council members, shared the view that the matter before them was essentially a legal one, and thought it inappropriate for the Security Council to consider it. They encouraged the Council to allow the question to be dealt with in a legal framework.⁷⁴

The representatives of the United States and the United Kingdom, on the other hand, stressed that the Council was confronted with a situation of State-sponsored terrorism, to which standard procedures were clearly inapplicable. The former stated that the issue at hand was not a difference of opinion or approach that could be mediated or negotiated. It was, as the Council had just recognized in adopting resolution 731 (1992), conduct that constituted a threat to international peace and security.⁷⁵ The representative of the United Kingdom stressed that it was the exceptional circumstance of government involvement in the destruction of the two flights which had made it appropriate for the Council to adopt a resolution urging the Libyan Arab Jamahiriya to comply with the requests that the accused be made available for trial in Scotland or the United States and to cooperate with the French judicial authorities. Under the circumstances, it was clear that the State which was itself implicated in the acts of terrorism could not try its own officials. Nor was the suggestion of a trial before an international tribunal practical, as there was

⁷³ See S/PV.3033, pp. 12, 14-15, 22-25.

⁷⁴ *Ibid.*, pp. 32-33 (Sudan); 52 (Mauritania, on behalf of the Arab Maghreb Union); 56 (Yemen); and 63-65 (Islamic Republic of Iran).

⁷⁵ *Ibid.*, pp. 78-79.

⁷² This item was considered by the Council at its 3033rd and 3063rd meetings, on 21 January and 31 March 1992, respectively. For details, see the case study in chapter VIII.

no international tribunal with criminal jurisdiction.⁷⁶ Several other speakers who supported the adoption of resolution 731 (1992) concurred that the attacks on the two aircraft were acts of terrorism that threatened international peace and security. They considered it entirely appropriate, therefore, for the Security Council — the United Nations body entrusted with the primary responsibility for the maintenance of international peace and security — to consider these terrorist acts.⁷⁷ A number of those speakers noted that this was not the first time that the problem of terrorism against civil aviation had appeared on the Council's agenda, and recalled that the Council's most recent resolution on the subject, resolution 635 (1989) of 14 June 1989, had condemned all acts of unlawful interference with the security of civil aviation.

On 3 March 1992, the Libyan Arab Jamahiriya instituted separate proceedings against the United Kingdom and the United States before the International Court of Justice, in respect of "a dispute" between them "over the interpretation or application of the Montreal Convention", arising from the aerial incident at Lockerbie. In its applications, the Libyan Arab Jamahiriya contended that the acts alleged in the indictment constituted an offence under the 1971 Montreal Convention and should be dealt with in the framework of that Convention, and that the United Kingdom and the United States were in breach of the Convention by virtue of the pressure they were applying on the Libyan Arab Jamahiriya to surrender the two Libyan nationals for trial. Later on the same day, the Libyan Arab Jamahiriya also filed a request for provisional measures to preserve the rights of the Libyan Arab Jamahiriya and to cause the United Kingdom and the United States "to abstain from any action capable of having a prejudicial effect on the Court's decision in the case, and to refrain from taking any step that might aggravate or extend the dispute, as would surely happen if sanctions were imposed against the Libyan Arab Jamahiriya or force were employed".⁷⁸ In the course of the oral proceedings

before the Court, the United Kingdom and the United States contended, inter alia, that the provisional measures sought by the Libyan Arab Jamahiriya should be refused as they were designed to fetter the Security Council in the exercise of its proper powers and to preclude the Security Council from acting in relation to a wider dispute involving allegations that the Libyan State was guilty of State terrorism.

On 31 March 1992 — three days after the close of the hearings and before the Court had rendered its decision on the request for provisional measures — the Security Council adopted resolution 748 (1992). Acting under Chapter VII of the Charter, the Council imposed aviation and diplomatic sanctions and an arms embargo on the Libyan Arab Jamahiriya, on the basis of its determination that the failure of the Libyan Arab Jamahiriya to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992), constituted a threat to international peace and security.

At the Council meeting at which resolution 748 (1992) was adopted, the representative of the Libyan Arab Jamahiriya had questioned the appropriateness of the Security Council once again considering this item. He contended that it was doing so without taking into consideration the framework in which the issue should be examined, namely, the legal framework; and without awaiting the final word on the subject from a neutral and objective jurisdiction. Why, he asked, was there such haste? Why did the other parties refuse to await the decision of the Court on the question? Why were they exerting pressure on the Council to consider the question at the same time as the Court was considering it?⁷⁹ Several speakers, including three Council members who abstained in the voting, expressed the view that the Council should have avoided adopting any resolution imposing sanctions pending a decision by the Court.⁸⁰ Some speakers also observed that, although nothing in the Charter precluded the parallel consideration of the dispute by the Court and the Security Council, these two principal organs should complement each other's efforts rather than proceed in a manner that could produce contradictory results.⁸¹

⁷⁶ Ibid., pp. 102-104.

⁷⁷ Ibid., pp. 43-46 (Italy); 47-48 (Canada); 70 (Zimbabwe); 82 (France); 83-84 (Belgium); 87-88 (Russian Federation); 91 (Hungary); 92 (Austria); and 94 (India).

⁷⁸ *Aerial incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 3 at p. 8. The corresponding order in the case against the United States is at ICJ Reports 1992, p. 114.

⁷⁹ S/PV.3063, pp. 4 and 14-15.

⁸⁰ Ibid., pp. 27 (Jordan, on behalf of the League of Arab States); 32 (Mauritania, on behalf of the Arab Maghreb Union); 46 (Cape Verde); 53 (Zimbabwe); and 58 (India).

⁸¹ Ibid., pp. 52-53 (Zimbabwe); 58 (India); and 84 (Venezuela).

The representative of Zimbabwe contended that, by invoking Chapter VII while the matter was still pending before the Court, the Security Council was “risking a major institutional crisis”.⁸²

Speaking in support of resolution 748 (1992), on the other hand, the representative of the United States stressed that the evidence of involvement by the Libyan Arab Jamahiriya in the acts of terrorism under consideration indicated a serious breach of international peace and security, which fully justified the adoption by the Council of measures pursuant to Chapter VII. The message sent by the resolution was the surest guarantee that the Security Council, using its specific, unique powers under the Charter, would preserve the rule of law and ensure the peaceful resolution of threats to international peace and security, then and in the future.⁸³ The representative of the United Kingdom rejected the Libyan suggestion that compliance with the requests in resolution 731 (1992) should await the outcome of the proceedings instituted by the Libyan Arab Jamahiriya in the Court. He believed that the Libyan application to the Court, while purporting to enjoin action by the United Kingdom against the Libyan Arab Jamahiriya, was in fact directed at interfering with the exercise by the Security Council of its rightful functions and prerogatives under the Charter. He stressed that the Security Council was fully entitled to concern itself with issues of terrorism and the measures needed to address acts of terrorism in any particular case or to prevent it in the future. Any other view, he stated, would undermine the primary responsibility for the maintenance of international peace and security conferred on the Council by Article 24 of the Charter.⁸⁴ A number of other Council members similarly stressed that terrorism was a threat to international peace and security, and stated that the

Security Council had acted appropriately in taking enforcement action.⁸⁵ The President of the Council, speaking in his capacity as the representative of Venezuela, observed that both the Council and the Court were independent of each other, and that each of these organs in the United Nations system must exercise its jurisdiction autonomously. It was important, however, that public opinion should understand that, although it would have been desirable for there to be a simultaneous decision by the two forums, the absence of such a simultaneous decision could not inhibit the actions which one or the other might take, and that their actions did not imply a disregard for their respective responsibilities.⁸⁶

Following the adoption of resolution 748 (1992), the Court invited the parties to submit their views on the possible implications of the resolution for the proceedings before it. After receiving these views, the Court found that the obligation of the Libyan Arab Jamahiriya, the United Kingdom and the United States to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter extended to the decision contained in resolution 748 (1992); and that, in accordance with Article 103 of the Charter, the obligations of the parties in that respect prevailed over their obligations under any other international agreement, including the Montreal Convention. Emphasizing that it was not at this stage called upon to determine definitively the legal effect of resolution 748 (1992), the Court considered that “whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Convention cannot now be regarded as appropriate for protection by the indication of provisional measures”. It declined, therefore, to indicate provisional measures.⁸⁷

⁸² *Ibid.*, p. 53.

⁸³ *Ibid.*, pp. 66-67.

⁸⁴ *Ibid.*, pp. 68-69.

⁸⁵ *Ibid.*, pp. 73-74 (France); 77 (Austria); and 79-80 (Russian Federation).

⁸⁶ *Ibid.*, p. 84.

⁸⁷ ICJ Reports 1992, pp. 15 and 126-127.

Part V Relations with the Secretariat

Note

This part is concerned with the functions other than those of an administrative nature entrusted to the Secretary-General by the Security Council under Article 98 of the Charter,⁸⁸ and with the Secretary-General's power of initiative under Article 99.

Article 98

The Secretary-General shall act in that capacity [as the chief administrative officer of the Organization] in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. ...

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.

A. Functions entrusted to the Secretary-General by the Security Council

Note

During the period under review, the Secretary-General was requested or authorized by the Security Council to carry out a broad range of actions, particularly in relation to the peaceful settlement of disputes and peacekeeping. Those actions included the following:⁸⁹

⁸⁸ The functions and powers of the Secretary-General in regard to the meetings of the Security Council, conferred under Article 98, are delineated in rules 21 to 26 of the Council's provisional rules of procedure; see chapter I, part IV.

⁸⁹ The practice cited is illustrative and does not purport to be comprehensive. For details of these and other instances of the Security Council entrusting functions to the Secretary-General, see the case studies in chapter VIII.

Measures to ascertain the facts

In a number of instances, the Secretary-General was asked to investigate the facts of a particular situation or his efforts to do so were endorsed:

(a) In relation to the situation in the occupied Arab territories, the Council welcomed the decision of the Secretary-General to send a mission to the region to "look into the circumstances surrounding the recent tragic events in Jerusalem and other similar developments in the occupied territories" and requested him to submit a report containing his findings and recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation;⁹⁰

(b) In relation to the same item, the Council requested the Secretary-General to "monitor and observe the situation regarding Palestinian civilians under Israeli occupation, making new efforts in this regard on an urgent basis";⁹¹

(c) In connection with the situation between Iraq and Kuwait, the Council requested the Secretary-General to "report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities";⁹²

(d) With regard to the situation in the former Yugoslavia, the Council requested the Secretary-General to collate the information submitted to the Council by States and international humanitarian organizations "relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia", and to submit a report summarizing the information and recommending

⁹⁰ Resolution 672 (1990) of 12 October 1990, para. 4; clarifying statement by the President conveyed to the Council on 12 October 1990 (S/PV.2948, p. 27); resolution 673 (1990) of 24 October 1990.

⁹¹ Resolution 681 (1990) of 20 December 1990, para. 7.

⁹² Resolution 688 (1991) of 5 April 1991, para. 4.

additional measures that might be appropriate in response to it;⁹³

(e) With regard to the same issue, the Council subsequently requested the Secretary-General to establish an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission of Experts might obtain through its own investigations or efforts, with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. The Council requested the Secretary-General to report to it on the Commission's conclusions;⁹⁴

(f) Also in relation to the situation in the former Yugoslavia, and specifically the situation in Bosnia and Herzegovina, the Council invited the Secretary-General to inform it of the findings of the inquiry into the circumstances of a fatal attack carried out against personnel of the United Nations Protection Force (UNPROFOR) near Sarajevo and similar incidents involving the United Nations activities in Bosnia and Herzegovina, and of any information which he could gather on the responsibility for those incidents.⁹⁵

Good offices

The Secretary-General was often requested to exercise or continue to exercise his "good offices" function — his independent political role in preventing or mediating conflicts between or within States — or his role in this regard was endorsed:

(a) In relation to the situation in Cyprus, the Secretary-General was requested to "continue to exercise his mission of good offices" to assist the two communities to reach a negotiated settlement of all aspects of the Cyprus problem. He acted on the basis of Security Council authorization, renewed semi-annually,⁹⁶ and in the context of a long-standing United

Nations peacekeeping operation (UNFICYP). In March 1990, the Council requested the Secretary-General "toward this end, to assist the two communities by making suggestions to facilitate the discussions".⁹⁷

(b) In connection with the item "Central America: efforts towards peace", the Council lent "its full support to the Secretary-General to continue his mission of good offices, in consultation with the Security Council, in support of the Central America Governments, in their effort to achieve the goals set forth in the Guatemala agreement".⁹⁸ It subsequently reiterated its full support for his mission of good offices in the region.⁹⁹ In the case of El Salvador, the Council "welcomed the efforts of the Secretary-General to promote the achievement of a negotiated political solution to the conflict in El Salvador".¹⁰⁰ It later commended the Secretary-General and his Personal Representative for Central America "for their efforts at good offices, and express[ed] its full support for their continuing efforts to facilitate a peaceful settlement to the conflict".¹⁰¹

(c) With regard to the situation between Iraq and Kuwait, shortly after Iraq's invasion of Kuwait, the Council "welcomed the Secretary-General's use of his good offices to advance a peaceful solution based on the relevant resolutions of the Council".¹⁰² More specifically, by resolution 674 (1990), the Council "repose[d] its trust in the Secretary-General to make available his good offices and, as he consider[ed] appropriate, to pursue them and to undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait, on the basis of resolutions 660 (1990), 662 (1990) and 664 (1990)".¹⁰³

⁹³ Resolution 771 (1992) of 13 August 1992, paras. 5 and 6.

⁹⁴ Resolution 780 (1992) of 6 October 1992, paras. 2 and 4.

⁹⁵ Statement by the President of the Security Council of 9 September 1992 (S/24539).

⁹⁶ The first authorizing resolution during this period was resolution 634 (1989) of 9 June 1989, para. 2; the last was resolution 796 (1992) of 14 December 1992, para. 2.

⁹⁷ Resolution 649 (1990) of 12 March 1990. See also statement by the President of 28 March 1991 (S/22415), para. 2.

⁹⁸ Resolution 637 (1989) of 27 July 1989, para. 5.

⁹⁹ Resolution 650 (1990) of 27 March 1990, third preambular paragraph.

¹⁰⁰ Resolution 654 (1990) of 4 May 1990, para. 3.

¹⁰¹ Resolution 693 (1991) of 20 May 1991, sixth preambular paragraph.

¹⁰² Resolution 670 (1990) of 25 September 1990, tenth preambular paragraph.

¹⁰³ Resolution 674 (1990), para. 12. In the resolutions cited, the Council, acting under Chapter VII, had, *inter alia*, demanded Iraq's immediate and unconditional withdrawal.

(d) In connection with the same item, the Secretary-General was also requested to “use his good offices to facilitate the delivery and distribution of foodstuffs” to the civilians in Kuwait and Iraq;¹⁰⁴ and to continue to exercise his good offices concerning the safety and well-being of third-State nationals in Iraq and Kuwait.¹⁰⁵

(e) In connection with items relating to the Libyan Arab Jamahiriya, the Council requested the Secretary-General “to seek the cooperation of the Libyan Government to provide a full and effective response” to the requests addressed to the Libyan authorities by France, the United Kingdom of Great Britain and Northern Ireland and the United States of America for the extradition of the suspects involved in two airline bombings.¹⁰⁶ The Secretary-General sent an Under-Secretary-General as his Special Envoy to Tripoli, emphasizing in his personal message to the Libyan leader, Colonel Muammar Al-Qadhafi, that he was “acting under the terms of paragraph 4 of resolution 731 and not as a mediator between the Security Council and the Libyan authorities”.¹⁰⁷

(f) At the conclusion of the first meeting of the Security Council held at the level of Heads of State and Government on 31 January 1992, the President of the Council made a statement on behalf of the members of the Council in which they invited the Secretary-General “to consider how greater use might be made of his good offices”.¹⁰⁸

Joint efforts to promote a political settlement

In several instances, the Secretary-General was asked to undertake diplomatic efforts in conjunction with regional arrangements or other actors:

(a) In the context of the situation in the Middle East, with regard to the situation in Lebanon, the members of the Council, in a presidential statement, invited the Secretary-General — in collaboration with the Ministerial Committee of the League of Arab States — “to make all possible efforts and to make all contacts which could be deemed useful” for putting an

end to the loss of human lives, alleviating the suffering of the Lebanese people and achieving an effective ceasefire indispensable for a settlement of the Lebanese crisis.¹⁰⁹ The members of the Council subsequently invited the Secretary-General to pursue all appropriate contacts, in liaison with the Tripartite High Committee set up to resolve the Lebanese crisis, to ensure observance of the ceasefire;¹¹⁰ welcomed the contacts he had maintained with the members of the Tripartite High Committee, and invited him to pursue those contacts.¹¹¹

(b) In relation to the situation concerning Western Sahara, the Council expressed its full support to the Secretary-General “in his mission of good offices, pursued jointly with the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity, with a view to settling the question of Western Sahara”.¹¹²

(c) In connection with the situation in the former Yugoslavia, in September 1991, the Council invited the Secretary-General “to offer his assistance” in relation to the Croatian aspect of the conflict, in consultation with the Government of Yugoslavia and those promoting the efforts to restore peace and dialogue in Yugoslavia, namely, the States members of the European Community with the support of the States participating in the Conference on Security and Cooperation in Europe.¹¹³

(d) In connection with the same item, in April 1992, the Council expressed alarm at the rapid deterioration of the situation in Bosnia and Herzegovina. It invited the Secretary-General “to dispatch urgently to the area his Personal Envoy for Yugoslavia to act in close cooperation with representatives of the European Community” whose efforts were “aimed at stopping the fighting and at bringing about a peaceful solution to the crisis”.¹¹⁴ The Council subsequently requested the Secretary-General to “keep close contacts with the developments within the framework of the Conference on Yugoslavia and to

¹⁰⁴ Resolution 666 (1990) of 13 September 1990, para. 7.

¹⁰⁵ Resolution 674 (1990) of 29 October 1990, para. 7.

¹⁰⁶ Resolution 731 (1992) of 21 January 1992, para. 4.

¹⁰⁷ Report of the Secretary-General of 11 February 1992 (S/23574), para. 2. See also report of the Secretary-General of 3 March 1992 (S/23672).

¹⁰⁸ S/23500, p. 4.

¹⁰⁹ Statement by the President of 24 April 1989 (S/20602), para. 3.

¹¹⁰ Statement by the President of 15 August 1989 (S/20790), para. 4.

¹¹¹ Statement by the President of 20 September 1989 (S/20855), para. 5.

¹¹² Resolution 658 (1990) of 27 June 1990, para. 4.

¹¹³ Resolution 713 (1991) of 25 September 1991, para. 3.

¹¹⁴ Statement by the President of 10 April 1992 (S/23802).

assist in finding a negotiated political solution for the conflict in Bosnia and Herzegovina.¹¹⁵

(e) With regard to the situation in Somalia, the Council, early in 1992, requested the Secretary-General, together with the Secretaries-General of the Organization of African Unity and the League of Arab States, “to contact all parties involved in the conflict, to seek their commitment to the cessation of hostilities in order to permit the humanitarian assistance to be distributed, to promote a ceasefire and compliance therewith, and to assist in the process of a political settlement of the conflict in Somalia.”¹¹⁶

(f) In relation to the same item, the Council also called upon the Secretary-General to continue, in close cooperation with the Organization of African Unity, the League of Arab States and the Organization of the Islamic Conference, “his consultations with all Somali parties, movements and factions towards the convening of a conference for national reconciliation and unity in Somalia”.¹¹⁷ This call was reiterated in several subsequent resolutions.¹¹⁸

Peacekeeping and implementation of peace agreements

The Secretary-General was also entrusted with a leading role in dispatching and directing a number of peacekeeping missions authorized by the Council.¹¹⁹ Some of these missions, such as those in Cyprus, the Middle East, and along the Iraq-Kuwait border, involved the interposition of military forces to monitor ceasefire lines. Other missions during this period were multifaceted operations, which assisted the parties in the implementation of complex peace agreements. They verified troop demobilizations, supervised elections, monitored human rights, and repatriated refugees. This was the case, for example, in the sizeable operations in Namibia, Cambodia, Mozambique and Central America.

¹¹⁵ Resolution 764 (1992) of 13 July 1992, para. 9.

¹¹⁶ Resolution 733 (1992) of 23 January 1992, para. 3.

¹¹⁷ Resolution 746 (1992) of 17 March 1992, para. 9.

¹¹⁸ Resolutions 751 (1992), para. 10; 767 (1992), para. 16; and 775 (1992), para. 10.

¹¹⁹ As peacekeeping missions are created as subsidiary organs of the Security Council, under Article 29 of the Charter, they are dealt with in chapter V.

B. Matters brought to the attention of the Security Council by the Secretary-General

Note

The period under consideration saw an explicit invocation of Article 99 by the then Secretary-General, Javier Pérez de Cuéllar. It occurred in August 1989 in connection with events in Lebanon and is considered briefly in case 14 below. At the end of 1992, the members of the Council formally endorsed the Secretary-General’s role in taking the initiative to draw potential conflicts to the attention of the Security Council, as an element of conflict prevention. They did so in a presidential statement of 30 November 1992, adopted in connection with their examination of the report of the Secretary-General entitled “An agenda for peace”. This is dealt with in case 15 below.

Case 14

By a letter dated 15 August 1989 addressed to the President of the Security Council,¹²⁰ the Secretary-General expressed deep concern about the tragic events in Lebanon, and reported that the violence in and around Beirut had escalated to a level unprecedented in 14 years of conflict. He stressed that the United Nations had a responsibility to prevent further bloodshed in Lebanon and to support the wider efforts, led by the Tripartite Committee,¹²¹ for a resolution of the conflict. As a step in that direction, an effective ceasefire was imperative. What was required, he believed, was a concerted effort by the Council as a whole to impress upon the parties to the conflict that there was an immediate need to halt all military activities and to adhere to a ceasefire so that the efforts of the Tripartite Committee might continue unimpeded. The Secretary-General concluded as follows: “In my opinion, the present crisis poses a serious threat to international peace and security. Accordingly, in the exercise of my responsibility under the Charter of the United Nations, I ask that the Security Council be convened urgently in order to contribute to a peaceful solution of the problem.” Looking back at the end of

¹²⁰ S/20789.

¹²¹ The Tripartite Committee comprised King Hassan II of Morocco, King Fahd bin Abdul-Aziz Al Saud of the Kingdom of Saudi Arabia, and President Chadli Bendjedid of Algeria.

1989 on these events in Lebanon, the Secretary-General recalled that in August he had “felt compelled, for the first time in [his] tenure as Secretary-General, to invoke Article 99 of the Charter”.¹²²

In response to the Secretary-General’s urgent appeal, the Security Council met immediately¹²³ and adopted a presidential statement¹²⁴ in which it appealed to all the parties to observe a total and immediate ceasefire, and expressed its full support for the Tripartite Committee of the Arab Heads of State in the efforts it was making with a view to the establishment of an effective and definitive ceasefire and the putting into effect of a plan for the settlement of the Lebanese crisis in all its aspects. The Council also appealed to all States and to all the parties to support the efforts of the Tripartite Committee, and invited the Secretary-General to pursue all appropriate contacts, in liaison with the Tripartite Committee, in order to ensure observance of the ceasefire.

Case 15

At the meeting of the Security Council held at the level of Heads of State and Government, held on 31 January 1992 to consider the responsibility of the Security Council in the maintenance of international peace and security, several Council members touched on the role of the Secretary-General under Article 99. They encouraged him to use his initiative to draw potential conflicts to the attention of the Council as part of a more active role he might usefully play in preventive diplomacy.¹²⁵ In a presidential statement

adopted at the conclusion of the summit, the members of the Council invited the Secretary-General to prepare an analysis and recommendations on strengthening the capacity of the United Nations for preventive diplomacy, peacemaking and peacekeeping.¹²⁶ In that context, he was asked to consider how greater use might be made of his good offices, and of his other functions under the Charter.

In his report of 17 June 1992 entitled “An agenda for peace”,¹²⁷ pursuant to the presidential statement of 31 January 1992 (S/23500), the Secretary-General stressed that preventive diplomacy required timely and accurate knowledge of the facts. An increased resort to fact-finding was needed, he said, initiated either by the Secretary-General — to enable him to meet his responsibilities under the Charter, including Article 99 — or by the Security Council or the General Assembly. He made a number of proposals in that regard on enhancing informal and formal fact-finding.

In a presidential statement adopted on 30 November 1992, in connection with their examination of the Secretary-General’s report, the members of the Council welcomed and supported the proposals on fact-finding in paragraph 25 of the report. They were of the view that “an increased resort to fact-finding as a tool of preventive diplomacy ... [could] result in the best possible understanding of the objective facts of the situation which [would] enable the Secretary-General to meet his responsibilities under Article 99 of the Charter and facilitate the Security Council’s deliberations”. In the same presidential statement, the members of the Council “welcome[d] the Secretary-General’s readiness to make full use of his powers under Article 99 of the Charter to draw the attention of the Security Council to any matter which in his opinion m[ight] threaten international peace and security”.

¹²² Report of the Secretary-General of 22 November 1989 on the situation in the Middle East (S/20971), para. 43.

¹²³ The agenda item was entitled: “The situation in the Middle East: letter dated 15 August 1989 from the Secretary-General addressed to the President of the Security Council”.

¹²⁴ S/20790.

¹²⁵ For the relevant statements, see S/PV.3046, pp. 68-69, 71 (Belgium); 82 (Cape Verde); 137-138 (United Kingdom); and 134 (Zimbabwe).

¹²⁶ S/23500, section entitled “Peacemaking and peacekeeping”.

¹²⁷ S/24111, paras. 23-27.

Part VI

Relations with the Military Staff Committee

Note

The Military Staff Committee, established pursuant to Article 47 of the Charter, is composed of the Chiefs of Staff of the permanent members or their representatives. Its function is “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 at its disposal, the regulation of armaments, and possible disarmament”.¹²⁸

During the period under review, the Military Staff Committee met every other week in closed session and remained prepared to carry out the functions assigned to it under Article 47.¹²⁹ In mid-1990, the Security Council adopted a resolution by which it contemplated a potential role for the Military Staff Committee in coordinating a naval interdiction authorized in the case of the situation between Iraq and Kuwait. There was some discussion by Council members of the role of the Committee in the debate before and after the vote on the resolution in question. This practice is considered in case 16 below. The Committee’s role was also referred to in various contexts at the Council’s summit meeting on the responsibility of the Security Council in the maintenance of international peace and security. This is dealt with in case 17.

Case 16

Situation between Iraq and Kuwait

By resolution 665 (1990) of 25 August 1990, the Security Council authorized those Member States

cooperating with the Government of Kuwait which were deploying maritime forces to the area to interdict maritime shipping in order to ensure compliance with the economic sanctions against Iraq and occupied Kuwait imposed by resolution 661 (1990). In paragraph 4 of resolution 665 (1990), the Council requested the States concerned “to coordinate their actions in pursuit of the above ... using, as appropriate, mechanisms of the Military Staff Committee”. The resolution was adopted by 13 votes to none, with two abstentions (Cuba and Yemen).

A number of Council members referred to the Military Staff Committee in statements made before or after the vote leading to the adoption of resolution 665 (1990). Some expressed concern that its exact role had not been made clear in the resolution. The representative of Cuba contended that the draft resolution violated several provisions of the Charter relating to the use of force, including Articles 46 and 47 (1). In his view, if the Council were really acting responsibly and seriously when it talked of using military force, then it should have drawn on those articles of Chapter VII that clearly spelled out how that responsibility and authority should be exercised. He noted, for example, that under Article 46, “Plans for the application of armed forces shall be made by the Security Council with the assistance of the Military Staff Committee”. Although there was a reference to the Military Staff Committee in paragraph 4 of the draft resolution, as far as he was aware, it had not been convened either formally or informally “to draw up any plan for the deployment of any forces in any part of the world”. Article 47, moreover, in specifying the functions of that Committee, provided, *inter alia*, that it should assist the Security Council in the “employment and command of forces placed at its disposal”. It was impossible, however, to find those criteria or requirements in the draft resolution before the Council.¹³⁰ The representative of Colombia noted that, in adopting the resolution, the Council would be establishing a naval blockade and that it would be acting pursuant to Article 42 even if the resolution did not say so. Although that did not cause him concern,

¹²⁸ Article 47. See also Articles 45 and 46, elaborating on the Military Staff Committee’s role in assisting the Security Council, respectively, in determining the readiness of national air force contingents made available for combined international enforcement action; and in making plans for the application of armed force. The Committee’s task in assisting the Council in formulating plans for the regulation of armaments is addressed in Article 26.

¹²⁹ See part III of the report of the Security Council for the periods 16 June 1988-15 June 1989; 16 June 1989-15 June 1990; 16 June 1990-15 June 1991; 16 June 1991-15 June 1992; and 16 June 1992-15 June 1993.

¹³⁰ S/PV.2938, pp. 12-17. See also the statement by the representative of Iraq (S/PV.2938, pp. 67-70).

other points of the draft resolution did, namely, the failure to specify to whom the Council was delegating authority, and the apparent lack of accountability for the exercise of the delegated powers. Looking to the future, he believed that the Council must be prepared to deal with situations of the kind under consideration so that it would not find itself faced with a fait accompli. To that end, his country believed that, “after 45 years, the Security Council must finally implement Article 43 — and, of course, the following articles — of the Charter”.¹³¹

Other Council members, speaking after the vote, indicated their readiness to consider a role for the Military Staff Committee in coordinating the naval interdiction. The representative of the United States stated in this regard: “In accordance with its responsibilities under this resolution and at the request of the legitimate Government of Kuwait, the Government of the United States will coordinate its actions with those of the many other nations that have sent naval forces to the region. ... We are also ready to discuss an appropriate role in this process for the Military Staff Committee.”¹³² The representative of the Union of Soviet Socialist Republics stated: “Our unambiguous support for the resolutions of the Security Council reflects the Soviet Union’s intention to act exclusively within the framework of collective efforts to settle this crisis. ... It is also important that the Security Council should continue to concern itself on an ongoing basis with this extremely grave problem. We are prepared to make full use of the opportunities offered by the machinery of the Military Staff Committee.”¹³³

Later in the year, in the discussion preceding the adoption by the Council of resolution 678 (1990), authorizing the use of “all necessary means” to ensure Iraq’s compliance with its previous resolutions,¹³⁴ the representative of Iraq argued that the draft resolution was unlawful. He contended that the Security Council

could act collectively under Article 42 and could use force to implement sanctions only in accordance with a mechanism provided for in Article 43. He added: “In other words ... only collective action under the command and control of the Security Council, in coordination with the Military Staff Committee, can lead to the use of force against any country”.¹³⁵ This view seems to have found support among two Council members.¹³⁶

Case 17

Summit meeting on the responsibility of the Security Council in the maintenance of international peace and security

At the Council’s 3046th meeting, held at the level of Heads of State and Government on 31 January 1992 in connection with the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”, two Council members alluded briefly to the role of the Military Staff Committee.

The President of France did so while making a proposal aimed at ensuring the greater effectiveness of peacekeeping operations. He stated that France was ready to make available to the Secretary-General a stand-by contingent for peacekeeping operations. He added that “such deployments would involve activity by the Military Staff Committee, as provided for in the Charter”.¹³⁷ The Minister for Foreign Affairs and Personal Emissary of the President of Zimbabwe addressed the role of the Military Staff Committee in future collective enforcement actions and in relation to multilateral disarmament. In relation to the first point, he expressed the view that, in order to avoid the misgivings expressed by some regarding the prosecution of the Gulf War, future collective enforcement operations must be fully accountable to the Security Council and should be truly representative. That could be achieved “by

¹³¹ Ibid., pp. 22-25.

¹³² Ibid., pp. 29-30.

¹³³ Ibid., pp. 41 and 43. At an earlier meeting in relation to the same item, the representative of the USSR expressed his delegation’s readiness “to undertake consultations immediately in the Military Staff Committee, which, under the Charter of the United Nations, can perform very important functions” (S/PV.2934, p. 12).

¹³⁴ Adopted at the 2963rd meeting on 29 November 1990 by 12 votes to 2 (Cuba, Yemen), with 1 abstention (China).

¹³⁵ S/PV.2963, p. 21. See also the statement by the representative of Iraq to the same effect in relation to resolution 665 (1990), authorizing the naval interdiction (S/PV.2938, pp. 67-70).

¹³⁶ See the statements by the representatives of Cuba and Malaysia (S/PV.2963, pp. 58 and 76, respectively). See also letter dated 13 February 1991 from the representative of Tunisia addressed to the President of the Security Council (S/22225, p. 6).

¹³⁷ S/PV.3046, p. 18.

strengthening Article 46 of the Charter, which gives a role to the Military Staff Committee". He added, however, that if the Military Staff Committee were to be given such an important role, its membership could not remain limited to only a few members of the Council. He stated: "Non-permanent members should also participate in all the work of the Committee. This would ensure that collective enforcement actions are not dominated by a single group of countries". On the question of disarmament, the Foreign Minister stated that, in tandem with the Arms Transfer Register, multilateral disarmament could further be boosted by the use of the provisions of Article 26 and of Article 47 (1), of the Charter, which empowered the Security Council, with the assistance of the Military Staff Committee, to put in place a system for the regulation of armaments. He contended that those provisions, which had been dormant since the founding of the Organization, would have rendered unnecessary the ad hoc creation by resolution 687 (1991) of the Special Commission dealing with the disarmament measures imposed on Iraq. In his view, an opportunity still existed to utilize them in implementing the disarmament measures for the wider Middle East region provided for in that resolution.¹³⁸

¹³⁸ Ibid., pp. 126-127.

Pursuant to the presidential statement¹³⁹ adopted at the conclusion of the summit meeting, the Secretary-General submitted to the Council on 17 June 1992 a report entitled "An Agenda for Peace: preventive diplomacy, peacemaking and peacekeeping".¹⁴⁰ In connection with "peacemaking", he expressed the view that the detailed approach governing the use of military force in Chapter VII of the Charter merited the attention of Member States. The special agreements foreseen in Article 43, in accordance with which Member States undertake to make available to the Security Council, on its call, armed forces, assistance and facilities, should be brought into being. He recommended, in that regard, "that the Security Council initiate negotiations in accordance with Article 43, supported by the Military Staff Committee, which may be augmented if necessary by others in accordance with Article 47, paragraph 2". He added that, in his view, "the role of the Military Staff Committee should be seen in the context of Chapter VII and not that of the planning or conduct of peacekeeping operations".¹⁴¹ These suggestions were not referred to by the Council in the series of presidential statements adopted following its consideration of the Secretary-General's report.¹⁴²

¹³⁹ S/23500.

¹⁴⁰ S/24111.

¹⁴¹ Ibid., paras. 42-43.

¹⁴² See S/24210 of 30 June 1992, S/24728 of 29 October 1992, S/24872 of 30 November 1992 and S/25036 of 30 December 1992.