
Chapter XI

Consideration of the provisions of Chapter VII of the Charter

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Introductory note

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

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

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

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

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

² S/23500.

³ By that statement, the members of the Council further expressed their agreement that the world

Part I

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

Article 39

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

Note

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

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

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

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

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

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

⁷ S/23500.

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

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

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

Other Council members uniformly condemned the Iraqi invasion of Kuwait's territory, with some describing it as an act of aggression.²⁴ Nine members jointly sponsored the draft resolution, adopted as resolution 660 (1990),²⁵ by which the Council determined that there existed a breach of international peace and security as regards the Iraqi invasion of

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

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

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

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

Case 7

Items relating to the Libyan Arab Jamahiriya

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

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

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

⁶³ In the preamble to resolution 748 (1992), th0 -1.1437ettlemeas2F0 -1.143

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

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

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

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

⁶² *Ibid.*, p. 23.

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

Decisions of the Security Council relating to Article 40

The situation between Iraq and Kuwait

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

⁷² Two explicit references were made to Article 40 during the Council's proceedings. During the consideration of the situation between Iraq and Kuwait, the representative of the United Kingdom welcomed the invocation of Articles 39 and 40 in resolution 660 (1990) (S/PV.2932, pp. 19-21). During the consideration of items relating to the Libyan Arab Jaahir9a 19-21e

parts of Iraq, most recently in Kurdish-populated areas, the consequences of which, it found, threatened international peace and security in the region. The Council demanded that Iraq, as a contribution to

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

The Council continued to reiterate its calls for the cessation of hostilities, the observance of ceasefire agreements and the withdrawal of arm8(s)ed 7(that-5(al of)-4.9(lcd)-5.es.48 259.74 661.8 Tm-0.8ion80 T9 Tw(90)Tj10

urged all parties to the conflict immediately to cease hostilities and agree to a ceasefire, and to promote the process of reconciliation and of political settlement in the country.⁹⁹ It also called upon the parties to facilitate the delivery by the United Nations, the specialized agencies and other humanitarian organizations of humanitarian assistance to all those in

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

Article 41

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

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

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

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

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

certain materials and supplies for essential humanitarian needs.¹¹⁶

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

the Secretary-General and ICRC on the deteriorating humanitarian situation in Iraq, the Committee established pursuant to 661 (1990) had decided “to make50tain-8.9(e)2.9(dee)](e)]()]T7 tohny1or1

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

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

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

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

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

¹¹⁵ On 22 March 1991, after having received reports from

By resolution 787 (1992) of 15 November 1992, the Council prohibited the trans-shipment of strategic goods through Yugoslavia in order to prevent their

against Iraq, Yugoslavia and the Libyan Arab
Jamahiriya.¹²⁹

Case 8

Measures imposed against Iraq

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

Case 9

Arms embargo imposed against the former Yugoslavia

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

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

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

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

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

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

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

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

¹³⁹ S/PV.3009, p. 6.

¹⁴⁰ *Ibid.*, p. 11.

¹⁴¹ *Ibid.*, p. 17.

¹⁴² *Ibid.*, pp. 52-53.

¹⁴³ *Ibid.*, p. 67.

¹⁴⁴ *Ibid.*, pp. 43-44.

¹⁴⁵ 3134th to 3137th meetings.

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

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

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

Case 10

Measures imposed against the Federal Republic of Yugoslavia

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

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

¹⁵⁴ S/PV.3134, pp. 16-17.

¹⁵⁵TD04 8.52 79.92 198.3 Tm0.0297(speak)-6.3(em)-ed

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

Case 11

Measures imposed against the Libyan Arab Jamahiriya

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

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

The representative of Hungary felt that the Council had to "take further measures to ensure

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

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

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

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

Case 14

Items relating to the situation in the former Yugoslavia

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

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

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

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

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

Case 15

Measures imposed against Iraq

One week after the adoption of resolution 661 (1991),²¹⁹ the United States informed the President of the Security Council that it had deployed military forces to the Gulf region.²²⁰ At a meeting held on the

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

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

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

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

²²⁹ Ibid., p. 32.

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

²³¹ S/PV.2938, p. 53.

²³² Ibid., p. 7. The representative also stated that, by the resolution, “unclear powers” were being granted “to r.3(by the)-5.9(‘)55TJs roleyb the bid.

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

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

4. Duration of measures imposed under Article 41

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

²⁴⁰ Pakistan expressed the hope that the draft resolution would result in “effective and complete enforcement of

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

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

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

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

The representative of India, on the other hand, noting the importance of an appropriate definition of the circumstances under which the sanctions would be lifted, regretted that, although the non-aligned members of the Council, as had indeed several other delegations, had explored with the sponsors the injection of more precision in the relevant paragraphs,

effectiveness of the United Nations peacekeeping operation.²⁹²

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

Article 41 provides that the Security Council may call upon the Members of the United Nations to apply the measures envisaged in that Article. However, in its resolutions creating or modifying State obligations in relation to the implementation of the measures imposed against Iraq,²⁹³ Yugoslavia,²⁹⁴ Somalia,²⁹⁵ the Libyan Arab Jamahiriya²⁹⁶ and Liberia,²⁹⁷ the Council

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

³⁰³ S/21585.

Part IV

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

Article 42

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

Note

During the period under review, the Security Council did not invoke Article 42 explicitly in any of its decisions. The Council did, however, adopt a number of resolutions by which it called upon States to take “all measures necessary”³⁰⁴ to enforce demands related to the restoration of international peace and

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

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

The situation between Iraq and Kuwait

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

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

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

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

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

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

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

³¹⁴

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

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

The situation between Iraq and Kuwait

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

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

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

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

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

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

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

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

³³⁴ Pakistan expressed the hope that the draft resolution would result in “effective and complete enforcement of the sanctions” (S/PV.3136, p. 33). Canada expressed its strong support for the provision of the draft resolution, calling upon all States to use necessary measures to ensure strict application of the sanctions regime, and noted that it had participated in the naval task force monitoring traffic on the Adriatic coast and was participating in sanctions monitoring in neighbouring countries (S/PV.3136, p. 47). Italy, speaking in its capacity as Chairman of the Western European Union, noted that the resolution would “greatly enhance the effectiveness of the embargo” and would help the naval forces of the Western European Union and NATO in the Adriatic Sea to discover and

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

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

It should be noted however, that, while the

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

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

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

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

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

³⁶⁰ S/PV.3114, pp. 11-12 (China).

Part V

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

Article 43

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

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

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

Article 44

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

Article 45

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

Article 46

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

Article 47

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

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

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

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

Note

In its decisions adopted during the period under

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

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

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

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

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

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

Other speakers, including in particular representatives of the sponsors of the resolution,

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

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

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

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

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

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

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

Following a declaration by the Iraqi leadership, on 15 February, which envisaged the possibility of an Iraqi withdrawal from Kuwait, several Member States expressed the view that offensive combat operations should be ceased or suspended forthwith,³⁸¹ or that at least options for a peaceful settlement of the conflict should be explored by the Council.³⁸² One Council

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

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

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

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

³⁸⁹ The draft resolution (S/21640) was sponsored by

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

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

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

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

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

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

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

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

⁴⁰¹

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

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

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

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

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

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

⁴²⁰ “All measures necessary” was the precise wording used in resolution 770 (1992), para. 2. In resolutions 665 (1990), para. 1; 787 (1992),

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

to a request made by the Council at that meeting.⁴⁴⁸ In his report, the Secretary-General observed that it was important “that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed”. Accordingly, the Secretary-General recommended “that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed”. Accordingly, the Secretary-General recommended “that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed”.

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

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

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

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

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

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

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

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

Case 21

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

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

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

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

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

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

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

⁴⁶⁹ Resolution 748 (1992), ninth preambular paragraph.

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

Case 22

*Items relating to the situation in the former Yugoslavia
(in connection with the implementation of measures*

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

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the

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

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

Case 24

The situation relating to Afghanistan

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

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

⁴⁹⁵ S/PV.2840, pp. 34-35.

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

⁴⁹⁷ S/20378.

⁴⁹⁸

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

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

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

⁵²¹

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

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

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

recognition of the independence of certain republics notwithstanding”.⁵⁴²

Case 27

The situation in Bosnia and Herzegovina

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

⁵⁴⁰ S/PV.2963, pp. 19-20. Previously, at the Council’s 2951st meeting, on 29 October 1990, the representative of Iraq had similarly argued that no State had the right to unilaterally use force against his country, as the Security Council was seized of the situation (S/PV.2951, pp. 13-17).

⁵⁴¹ S/PV.2963, p. 76. At a subsequent meeting, held on 15 February 1991, the representative of Malaysia stated his understanding that the military action against Iraq was a “United Nations-authorized international enforcement action under Chapter VII of the Charter, not a result of Article 51 and certainly not a war between any of the allied countries and Iraq per se”. The representative added that no country, however powerful, could “arrogate to itself the right to conduct the war entirely on the basis of its own imperatives and interests” (S/PV.2977 (Part II) (closed — resumption 1), p. 171).

The representative of Turkey suggested that “if the Bosnian Government had adequate means to defend itself, this would deter the aggressor from pursuing a policy based on the use of force and perhaps induce it to resort to dialogue to overcome differences”.⁵⁴⁵ Similarly, the representative of the Islamic Republic of Iran asserted that the selective lifting of the arms embargo was “the only effective means to stop the aggression, short of international military action”.⁵⁴⁶

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

In the following instances, Member States invoked the right of self-defence in correspondence which did not give rise to any significant constitutional discussion with direct relevance to Article 51.

The situation between Iran and Iraq

By a letter dated 7 January 1989 addressed to the Secretary-General,⁵⁵⁶ the representative of Iraq, referring to the alleged non-compliance of the Islamic Republic of Iran with the ceasefire concluded five months earlier, asserted that Iraq was “fully willing to defend itself”.

In response, the representative of the Islamic Republic of Iran, by a letter dated 23 January 1989 addressed to the Secretary-General,⁵⁵⁷ claimed that Iraq was relying on its right of self-defence merely in order “to justify its preparations to launch yet another war of aggression against the Islamic Republic of Iran”.

The situation in the Middle East

By a letter dated 29 May 1992 from the representative of Israel addressed to the Secretary-

paragraph, expressed its deep concern “at the threats to the territorial integrity of the Republic of Bosnia and Herzegovina, which, as a State Member of the United Nations, enjoys the rights provided for in the Charter of the United Nations”.

⁵⁵⁶ S/20376.

⁵⁵⁷ S/20413.

General,⁵⁵⁸ Israel asserted its right of self-defence “by engaging in operations against the terrorist organizations operating from the territory of Lebanon”.⁵⁵⁹

The situation relating to Nagorny-Karabakh

By a letter dated 20 August 1992 from the representative of Armenia to the President of the Security Council,⁵⁶⁰ Armenia requested an urgent meeting of the Security Council, alleging that Azerbaijan had launched “attacks of aggression” against Armenia.

By a letter dated 25 August 1992 from the representative of Azerbaijan addressed to the President of the Security Council,⁵⁶¹ Azerbaijan asserted that Armenia was “openly continuing its armed aggression against Azerbaijan”, and stated it had been “compelled to take the necessary measures to exercise its right of self-defence and re-establish its sovereignty and territorial integrity”.

⁵⁵⁸ S/24032.

⁵⁵⁹ See also for example the letter dated 27 January 1992 from the representative of Israel to the Secretary-General, in which Israel alleged that the Government of Lebanon was unwilling to take action against Hizbullah’s activities against Israel (S/23479). See also Israel’s statement at the 3151st meeting, held on 18 December 1992 under the agenda item “The situation in the occupied Arab territories”. At that meeting Israel asserted its right of self-defence against “the forces of terrorism”, referring in particular to recent attacks by organizations such as Hamas and Islamic Jihad (S/PV.3151, p. 24).

⁵⁶⁰ S/24470.

⁵⁶¹ S/24486.