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**Volume III**

**ARTICLE 40 (Supplement Nos. 7-9)**

**CONTENTS**

<b>Text of Article 40</b>	<i>Paragraphs</i>
Introductory note.....	1-4
Summary of Practice.....	5-30
I. Situations in which provisional measures were adopted by the Security Council with explicit reference to Article 40.....	5-9
<i>a. The situation between the Islamic Republic of Iran and Iraq...</i>	6
<i>b. The situation between Kuwait and Iraq.....</i>	7-9
II. Situations in which provisional measures were adopted by the Security Council without explicit reference to Article 40.....	10-28
<i>a. The situation in South Africa.....</i>	11
<i>b. The situation between the Islamic Republic of Iran and Iraq...</i>	12
<i>c. The situation in the former Yugoslavia.....</i>	13-19
<i>d. The situation in Somalia.....</i>	20
<i>e. The situation in Liberia.....</i>	21
<i>f. The situation in Angola.....</i>	22
<i>g. The situation in Haiti.....</i>	23
<i>h. The situation in Rwanda.....</i>	24
<i>i. The situation in the Great Lakes region.....</i>	25
<i>j. The situation in Albania.....</i>	26
<i>k. The situation in Sierra Leone.....</i>	27
<i>l. The situation in Afghanistan.....</i>	28
III. The last sentence of Article 40.....	29
IV. Further information.....	30

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<sup>1</sup> At the bilateral meeting between the Codification Division of the Office of Legal Affairs and the Security Council Affairs Division of the Department of Political Affairs, on 11 March 2011, it was agreed that in order to expedite the elimination of the backlog in volume III, studies on *Supplements* 7, 8 and 9 of the volume would be merged.

## ARTICLE 40

### TEXT OF ARTICLE 40

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

### INTRODUCTORY NOTE

1. During the period under review, the Security Council adopted two resolutions which were explicitly based on Article 40 of the Charter<sup>2</sup>. Those were resolution 598 (1987) of 20 July 1987 and resolution 660 (1990) of 2 August 1990. In both resolutions, Article 40 was invoked together with Article 39. No significant discussion regarding the interpretation or application of Article 40 arose, however, during the adoption of those resolutions. Consequently, this study consists only of a Summary of Practice.<sup>3</sup>

2. Several resolutions were adopted calling for provisional measures that might be interpreted as implicit references to Article 40 during the period under review. The types of measures called for included *inter alia*:

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<sup>2</sup> Provisions in the following are, if not indicated otherwise, those of the Charter of the United Nations.

<sup>3</sup> Note however that, during the consideration of items relating to the Libyan Arab Jamahiriya in March 1992, the representative of the latter country made the following statement concerning the interconnection between Article 40 on the one hand and Articles 39 and 41 on the other (S/PV.3063, p. 21): "Article 40 calls upon the Security Council, before making the recommendation or deciding upon the measures provided for in Article 39, to call upon the parties to a dispute to comply with such provisional measures as it deems necessary or desirable; the Security Council must take account of whether the parties to a dispute do or do not take such provisional measures. However, none of the above has taken place, and the sponsors of the draft resolution jumped directly to the following article, thus totally ignoring Articles 39 and 40."

- Demands that the independence, sovereignty and territorial integrity of States must be respected;
- Withdrawal of armed forces;
- Conclusion or observance of a ceasefire;
- Cessation of hostilities;
- Negotiation of differences and disputes;
- Calls for all concerned parties to respect the rights of civilians to refrain from acts of violence against them and to take measures to alleviate their suffering;
- Compliance with obligations under international humanitarian law;
- Creation of the conditions necessary for the unimpeded delivery of humanitarian assistance;
- Cooperation with peacekeeping efforts and humanitarian assistance.

Those resolutions are briefly outlined in the Summary of Practice.

3. Concerning the last sentence of Article 40 (“[t]he Security Council shall duly take account of failure to comply with such provisional measures”), relevant material is also discussed.

4. The General Assembly and the International Court of Justice took no decisions relevant to Article 40.

## **SUMMARY OF PRACTICE**

### **I. Situations in which provisional measures were adopted by the Security Council with explicit reference to Article 40**

5. During the period under review, the Security Council took two decisions in which Article 40 was explicitly invoked. In both resolutions, Article 40 was invoked together with Article 39.

*a. The situation between the Islamic Republic of Iran and Iraq*

6. In resolution 598 (1987) of 20 July 1987, which concerned the situation between the Islamic Republic of Iran and Iraq, the Council stated in the ninth and tenth paragraphs of the Preamble as well as in paragraph 1:

*“Determining* that there exists a breach of the peace as regards the conflict between Iran and Iraq,

*Acting* under Articles 39 and 40 of the Charter,

1. Demands that, as a first step towards a negotiated settlement, the Islamic Republic of Iran and Iraq observe an immediate ceasefire, discontinue all military actions on land, at sea and in the air, and withdraw all forces to the internationally recognized boundaries without delay;”.

*b. The situation between Kuwait and Iraq*

7. In resolution 660 (1990) of 2 August 1990, concerning the invasion of Kuwait on 2 August 1990 by the military forces of Iraq, the Council stated in the second and third paragraph of the Preamble and in paragraphs 1-3:

“*Determining* that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait,

*Acting* under Articles 39 and 40 of the Charter of the United Nations,

1. *Condemns* the Iraqi invasion of Kuwait;
2. *Demands* that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;
3. *Calls* upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;”.

8. During the deliberations on that resolution, one delegation made an explicit reference to Article 40, welcoming that provision (in conjunction with Article 39) as the basis for the resolution.<sup>4</sup> The Security Council adopted a number of subsequent resolutions on the situation between Kuwait and Iraq which were however not explicitly based on Article 40.<sup>5</sup> In particular, in resolution 678 (1990) of 29 November 1990, the Security Council noted that, despite all efforts by the United Nations, Iraq refused to comply with its obligations to implement Resolution 660 (1990) and subsequent resolutions. It demanded that Iraq fully comply with those resolutions, and decided, while maintaining all its decisions, to allow Iraq one final opportunity, “as pause of goodwill”<sup>6</sup>, to do so. It authorized Member States co-operating with the

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<sup>4</sup> S/PV.2932: United Kingdom (p. 21).

<sup>5</sup> S C resolutions 661 (1990), 662 (1990), 664 (1990), 667 (1990), 674 (1990) and 678 (1990). Amongst the measures requested were, *inter alia*: economic measures against Iraq to secure compliance with the previous resolution (S C resolution 661); demands of the departure from both countries involved of third-State nationals and access of consular officials to them (S C resolution 662); demands that Iraq rescind its orders for the closure of consular and diplomatic missions in Kuwait (resolutions 664 and 674); demands of the release of foreign nationals abducted from diplomatic premises as well as of the safety of diplomatic and consular staff in Kuwait (S C resolutions 667 and 674). See also S C resolutions 688 (1991) and 706 (1991) concerning the repression of the Iraqi civilian population in many parts of that country, in particular in the Kurdish-populated areas.

<sup>6</sup> S C resolution 678 (1990), para. 1.

Government of Kuwait, unless Iraq fully implemented those resolutions on or before 15 January 1991, “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area”.<sup>7</sup>

9. As to the binding effect of an order under Article 40, it should be noted that, during the deliberations of Resolution 598 (1987) of 20 July 1987, several States stressed the binding character of the demands made in that resolution, which did not result in any objections from other States.<sup>8</sup> Likewise, during the deliberations on Resolution 660 (1990) of 2 August 1990, several States recalled the binding character of that resolution without meeting any objections by other delegations.<sup>9</sup>

## **II. Situations in which provisional measures were adopted by the Security Council without explicit reference to Article 40**

10. Several resolutions were adopted calling for provisional measures that might be interpreted as implicit references to Article 40 during the period under review. These are briefly summarized below. In several of these resolutions, the implicit reference to article 40 was made together with a determination of the situation as constituting a threat to international peace and security.

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<sup>7</sup> *Ibid*, para 2.

<sup>8</sup> S/PV.2750: United Kingdom (p. 16), United States (p. 21), Germany (p. 27), France (p. 61).

<sup>9</sup> S/PV.2933: United States (p. 16), France (p. 21), Canada (p. 23), United Kingdom (p. 26) and China (p. 28).

*a. The situation in South Africa*

11. During the period 1985 to 1987, the Council adopted several resolutions with regard to the situation in South Africa, calling upon that country to take a number of specific measures.<sup>10</sup> Amongst those were the calls or demand for the release of all political prisoners and detainees<sup>11</sup>, the immediate, total and unconditional all acts of aggression against Botswana<sup>12</sup> to lift the state of emergency in numerous districts<sup>13</sup>, to unconditionally withdraw its occupation forces from the territory of Angola and respect that country's territorial integrity<sup>14</sup>, the immediate eradication of apartheid as the necessary step towards the establishment of a non-racial democratic society<sup>15</sup>, and the stay of execution and commutation of death sentences imposed on a group of protesters<sup>16</sup>.

*b. The situation between the Islamic Republic of Iran and Iraq*

12. In 1986, both the Islamic Republic of Iran and Iraq were called upon to observe an immediate ceasefire and cessation of hostilities on land, at sea and in the air and to withdraw their forces to the internationally recognized boundaries without delay while submitting all aspects of the conflict to mediation or to any other means of peaceful settlement of disputes.<sup>17</sup>

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<sup>10</sup> For more details and further measures requested by the Council with regard to the situation in South Africa, see the Chapter XI of the *Repertoire of the Practice of the Security Council* for the period 1985-1985, pp. 422-423 ([http://www.un.org/en/sc/repertoire/85-88/85-88\\_11.pdf#page=4](http://www.un.org/en/sc/repertoire/85-88/85-88_11.pdf#page=4)).

<sup>11</sup> S C resolutions 560 (1985), paras. 3 and 4; 569 (1985), para. 4.

<sup>12</sup> S C resolution 568 (1985), para. 3.

<sup>13</sup> S C resolution 569 (1985), para. 3.

<sup>14</sup> S C resolution 567 (1985), para. 3; see also S C resolutions 571 (1985), para. 3; 574 (1985), para. 3; 577 (1985), para. 4.

<sup>15</sup> S C resolution 581 (1986), para. 7.

<sup>16</sup> S C resolutions 610 (1988), para. 1; 615 (1988), para. 1.

<sup>17</sup> S C resolutions 582 (1986), paras. 3. As indicated earlier, in Resolution 598 (1997), the Council explicitly invoked Article 40 (see para. 6 above).

*c. The situation in the former Yugoslavia*

13. In 1991, the Security Council expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and security and encouraged them to settle their disputes peacefully and through negotiation.<sup>18</sup> It also strongly urged all States and parties to refrain from any action which might contribute to increasing tension.<sup>19</sup>

14. In 1992, the Council strongly urged all the parties to abide by the applicable Geneva and Sarajevo ceasefire agreements.<sup>20</sup> It further established the United Nations Protection Force (UNPROFOR),<sup>21</sup> urged all parties concerned to take all necessary action to ensure complete freedom of aerial movement for that force and called upon them not to resort to violence.<sup>22</sup>

15. By Resolutions 1021 (1995) and 1022 (1995), both of 22 November 1995, the Council recalled all its previous resolutions concerning the conflicts in the former Yugoslavia,<sup>23</sup> and determined that the situation in the region continued to constitute a threat to international peace and security<sup>24</sup>.

16. With regard to the situation in Bosnia and Herzegovina, the Council adopted Resolution 757 (1992) on 30 May 1992, and determined that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of

<sup>18</sup> S C resolution 713 (1991) of 25 September 1991.

<sup>19</sup> S C resolution 724 (1991) of 15 December 1991.

<sup>20</sup> S C resolutions 727 (1992) of 8 January 1992 (para. 4) and 743 (1992) of 21 February 1992 (para. 8).

<sup>21</sup> S C resolution 743 (1992) of 21 February 1992 (para. 2).

<sup>22</sup> S C resolution 749 (1992) of 7 April 1992, paras. 4-5.

<sup>23</sup> S C resolution 1022 (1995) of 22 November 1995, para. 1.

<sup>24</sup> *Ibid.*, tenth para. of the Preamble; S C resolution 1021 (1995) of 22 November 1995, fifth para. of the Preamble.



Yugoslavia constituted a threat to international peace and security.<sup>25</sup> This was reaffirmed in Resolutions 770 (1992) of 13 August 1992 and 787 (1992) of 16 November 1992.<sup>26</sup> In Resolution 749 (1992) of 7 April 1992, the Council appealed to all parties and others concerned to cooperate with efforts of the European Community to bring about a ceasefire and a negotiated political situation.<sup>27</sup> In Resolution 752 (1992) of 5 May 1992, it made several demands concerning, *inter alia*, a cessation of hostilities, an immediate ceasefire and the withdrawal of armed forces.<sup>28</sup> Deploring the fact that these demands had not been complied with, the Council subsequently imposed a broad range of economic, diplomatic and other measures against the Federal Republic of Yugoslavia (Serbia and Montenegro) in Resolution 757 (1992) of 30 May 1992. The Council also made more specific appeals in connection with efforts aimed at delivering humanitarian assistance to the people of Bosnia and Herzegovina, and repeatedly called on the parties and others concerned to cooperate in making such assistance possible.<sup>29</sup> Acting under Chapter VII, the Council decided in Resolution 771 (1992) of 13 August 1992 that all parties and others concerned must comply with demands to immediately cease and desist from breaches of international humanitarian law and grant relevant international humanitarian organizations access to camps, prisons and detention centres.<sup>30</sup>

17. During the period 1993 to 1994, the Council adopted several resolutions with regard to the situation in Bosnia and Herzegovina. In Resolution 819 (1993) of 16

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<sup>25</sup> S C resolution 757 (1992), seventeenth para. of the Preamble. See also the statement of the President of the Security Council of 24 April 1992 (S/23842).

<sup>26</sup> S C resolution 770 (1992), fifth preambular paragraph, and S C 787 (1992), second preambular paragraph.

<sup>27</sup> S C resolution 749 (1992), para. 6.

<sup>28</sup> S C resolution 752 (1992), paras. 1, 3 and 5.

<sup>29</sup> S C resolutions 757 (1992), para. 17; 758 (1992), para. 8; 761 (1992); 770 (1992).

<sup>30</sup> S C resolution 771 (1992), paras. 3 and 4.

April 1993, the Council demanded, *inter alia*, that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any hostile act as well as the immediate withdrawal of Bosnian Serb paramilitary units from areas surrounding Srebrenica and the cessation of armed attacks against the town.<sup>31</sup> By Resolution 824 (1993) of 6 May 1993, the Council, declaring that Sarajevo and other threatened areas should be treated as safe areas, demanded, *inter alia*, the end of the armed attacks and the withdrawal of all Bosnian Serb military or paramilitary units.<sup>32</sup> By Resolution 900 (1994) of 4 March 1994, the Council called on all parties to cooperate with the UNPROFOR in the consolidation of a ceasefire agreement signed on 23 February 1994 by the Government of Bosnia and Herzegovina and the Bosnian Croat sides.<sup>33</sup> By Resolution 941 (1994) of 23 September 1994, the Council demanded that the Bosnian Serb authorities immediately cease their campaign of ethnic cleansing and accord unimpeded access of humanitarian assistance to a number of areas of concern.<sup>34</sup>

18. In 1996, the Council adopted several resolutions concerning the situation in Croatia. For example, by Resolution 1037 (1996) of 15 January 1996, the Council strongly urged the parties to refrain from any unilateral actions which could hinder the handover from the United Nations Confidence Restoration Operation in Croatia (UNCRO) to the Transitional Administration or the implementation of the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (S/1995/951), signed on 12 November 1995 between the Government of the Republic

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<sup>31</sup> S C resolution 819 (1993), paras. 1 and 2. See also the statement of the President of the Security Council of 21 April 1993 (S/25646).

<sup>32</sup> S C resolution 824 (1993), para. 3. See also S C resolution 859 (1993) of 24 August 1993.

<sup>33</sup> S C resolution 900 (1994), para. 1.

<sup>34</sup> S C resolution 941 (1994), paras. 4 and 5. See also S C resolutions 998 (1995), 1004 (1995), 1010 (1995), 1031 (1995) and 1034 (1995).

of Croatia and the local Serbian community.<sup>35</sup> It called upon the parties to comply strictly with their obligations under that agreement and to cooperate fully with the Transitional Administration.<sup>36</sup> This demand was reiterated in Resolution 1079 (1996) of 15 November 1996.<sup>37</sup>

19. During the period 1998-1999, the Council adopted several resolutions with regard to the situation in Kosovo. For example, by Resolution 1199 (1998) of 23 September 1998, the Council demanded that all parties, groups and individuals immediately cease hostilities and maintain a ceasefire in Kosovo, Federal Republic of Yugoslavia, which would enhance the prospects for a meaningful dialogue between the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership and reduce the risk of a humanitarian catastrophe.<sup>38</sup> By Resolution 1244 (1999) of 10 June 1999, the Council demanded in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete a verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo would be synchronized.<sup>39</sup> It also demanded that the Kosovo Liberation Army and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the respective requirements for demilitarization.<sup>40</sup>

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<sup>35</sup> S C resolution 1037 (1996), para. 5.

<sup>36</sup> *Ibid.*, para. 7.

<sup>37</sup> S C resolution 1079 (1996), para. 3.

<sup>38</sup> S C resolution 1199 (1998), para. 1.

<sup>39</sup> S C resolution 1244 (1999), para. 3.

<sup>40</sup> *Ibid.*, para. 15.

*d. The situation in Somalia*

20. During the period 1992 to 1994, the Security Council adopted a number of resolutions concerning the situation in Somalia. In Resolution 733 (1992) of 23 January 1992, the Council [...] called on any State to refrain from any action which might contribute to increasing tension or to impeding or delaying a peaceful and negotiated outcome of the conflict in that country.<sup>41</sup> It also called upon the parties to facilitate the delivery of humanitarian assistance to all those in need of it,<sup>42</sup> and urged all parties to take all necessary measures to ensure the safety of personnel sent to provide humanitarian assistance.<sup>43</sup> In this regard, it also called upon all parties, movements and factions in Somalia to cooperate with the United Nations with a view of the deployment of United Nations security personnel mandated to escort deliveries of humanitarian supplies, and noted that in the absence of such cooperation it would not exclude other measures to deliver humanitarian assistance to Somalia.<sup>44</sup> By Resolution 814 (1993) of 26 March 1993, the Council expressed its concern that the situation in Somalia continued to threaten international peace and security in the region<sup>45</sup>, demanded that all Somali parties comply fully with the commitments undertaken in the agreements they had concluded at the “Informal Preparatory Meeting on Somali Political Reconciliation” in Addis Ababa in January 1993<sup>46</sup> and reiterated its demand that all parties immediately cease and desist from all breaches of international humanitarian law<sup>47</sup>. It strongly condemned, in Resolution 837 (1993) of 6 June 1993, the unprovoked armed attacks on United Nations personnel<sup>48</sup>. In 1994,

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<sup>42</sup> *Ibid.*, para. 7.

<sup>43</sup> *Ibid.*, para. 8. See also S C resolutions 746 (1992), paras. 3 and 8, and 767 (1992), para. 3.

<sup>44</sup> S C resolution 767 (1992), para. 4; see also S C resolutions 775 (1992), para. 5, and 794 (1992), paras. 3-5.

<sup>45</sup> S C resolution 814 (1993), twenty-sixth para. of the Preamble.

<sup>46</sup> *Ibid.*, para. 8.

<sup>47</sup> *Ibid.*, para. 13.

<sup>48</sup> S C resolution 813 (1993), para. 1.

by Resolution 897 (1994) of 4 February 1994, the Council demanded again that all Somali parties refrain from any acts of intimidation or violence against personnel engaged in humanitarian or peace-keeping work in Somalia.<sup>49</sup>

*e. The situation in Liberia*

21. In Resolution 788 (1992) of 19 November 1992, the Security Council determined that the situation in Liberia constituted a threat to international peace and security,<sup>50</sup> imposed under Chapter VII an arms embargo,<sup>51</sup> and called upon all parties to the conflict strictly to respect the provisions of international humanitarian law<sup>52</sup> and to respect and implement the ceasefire and the various accords of the peace process<sup>53</sup>. It reaffirmed these demands in Resolution 813 (1993) of 26 March 1993, and further demanded that the parties concerned refrain from any action that might impede or obstruct the delivery of humanitarian assistance.<sup>54</sup>

*f. The situation in Angola*

22. With regard to the situation in Angola, the Council determined in Resolution 864 (1993) of 15 September 1993 that, as a result of military actions of the National Union for the Total Independence of Angola (UNITA), the situation in Angola constituted a threat to international peace and security.<sup>55</sup> By Resolution 890 (1993) of 15 December 1993, the Council, deeply concerned that an effective ceasefire had not been attained, urged the parties to stop immediately all military actions as well as to

<sup>49</sup> S C resolution 897 (1994), para. 8.

<sup>50</sup> S C resolution 788 (1992), fifth para. of the Preamble.

<sup>51</sup> *Ibid.*, paras. 8 and 9.

<sup>52</sup> *Ibid.*, para. 5.

<sup>53</sup> *Ibid.*, para. 6.

<sup>54</sup> S C resolution 813 (1993), in particular paras. 7 and 15.

<sup>55</sup> S C resolution 864 (1993), Part B, fourth para. of the Preamble. See also the statement of the President of the Security Council of 1 November 1993 (S/26677).

agree on the modalities for the establishment of an effective and sustainable ceasefire.<sup>56</sup> The Council adopted several other resolutions on the situation in Angola<sup>57</sup>, *inter alia* expressing grave concern at the serious difficulties in the peace process<sup>58</sup> and deploring the failure by UNITA to comply fully with the Lusaka Protocol attempting to end the civil war in Angola.<sup>59</sup>

*g. The situation in Haiti*

23. By Resolution 917 (1994) of 6 May 1994, the Council expressed its concern that the situation created by the failure of the military authorities in Haiti to fulfil their obligations under the Governors Island Agreement and to comply with relevant Council resolutions constituted a threat to peace and security in the region.<sup>60</sup> It further called upon the parties to the Governors Island Agreement and any other authorities in Haiti to cooperate fully with the Special Envoy of the Secretaries-General of the United Nations and Organization of American States to bring about the full implementation of the Governors Island Agreement and thus end the political crisis in Haiti.<sup>61</sup>

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<sup>56</sup> S C resolution 890 (1993), para. 6. Such calls were subsequently reiterated in S C resolutions 903 (1994), 922 (1994), 932 (1994), 945 (1994) and 952 (1995). See also the statements of the President of the Security Council of 10 February 1994 (S/PRST/1994/7), 12 August 1994 (S/PRST/1994/45) and 4 November 1994 (S/PRST/1994/63).

<sup>57</sup> S C resolutions 1045 (1996), 1055 (1996), 1064 (1996), 1075 (1996), 1087 (1996), 1127 (1997), 1130 (1997), 1135 (1997), 1173 (1998), 1176 (1998), 1219 (1998), 1221 (1999) and 1229 (1999). See also the statement of the President of the Security Council of 24 August 1999 (S/PRST/1999/26). For more details and further measures requested by the Council, see the Chapter XI of the *Repertoire of the Practice of the Security Council* for the period 1996-1999, pp. 1128-1129 ([http://www.un.org/en/sc/repertoire/96-99/96-99\\_11.pdf#page=17](http://www.un.org/en/sc/repertoire/96-99/96-99_11.pdf#page=17)).

<sup>59</sup> See, for example, S C resolutions 1127 (1997), para. 2; 1135 (1997), sixth para. of the Preamble; and 1173 (1998), para. 1.

<sup>60</sup> S C resolution 917 (1994), tenth para. of the Preamble.

<sup>61</sup> *Ibid.*, para. 1.

*h. The situation in Rwanda*

24. By Resolution 918 (1994) of 17 May 1994, the Council determined that the situation in Rwanda constituted a threat to peace and security in the region.<sup>62</sup> It also demanded that all parties to the conflict immediately cease hostilities, agree to a cease-fire,<sup>63</sup> and bring an end to the mindless violence and carnage engulfing Rwanda, and that parties in Rwanda cooperate fully with the United Nations Assistance Mission for Rwanda (UNAMIR) in the implementation of its mandate and in particular in ensuring its freedom of movement and the unimpeded delivery of humanitarian assistance. It further called upon them to treat Kigali airport as a neutral zone under the control of UNAMIR.<sup>64</sup> By Resolution 929 (1994) of 22 June 1994, the Council further demanded that all parties to the conflict and others concerned immediately bring to an end all killings of civilian populations in areas under their control.<sup>65</sup> By Resolution 965 (1994) of 30 November 1994, the Council strongly urged the Government of Rwanda to continue its cooperation with UNAMIR in the implementation of its mandate and in particular in ensuring unimpeded access to all areas of the country by UNAMIR forces, personnel of the International Tribunal for Rwanda and human rights officers.<sup>66</sup>

*i. The situation in the Great Lakes region*

25. By Resolution 1078 (1996) of 9 November 1996, the Council expressed grave concern about the deteriorating situation in the Great Lakes region,<sup>67</sup> and determined that the magnitude of the humanitarian crisis in eastern Zaire constituted a threat to

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<sup>62</sup> S C resolution 918 (1994), eighteenth para. of the Preamble.

<sup>63</sup> *Ibid.*, para. 1.

<sup>64</sup> *Ibid.*, para. 10.

<sup>65</sup> S C resolution 929 (1994), para. 9.

<sup>66</sup> S C resolution 965 (1994), para. 4.

<sup>67</sup> S C resolution 1078 (1996), first para. of the Preamble.

peace and security in the region.<sup>68</sup> It also condemned all violence and called for an immediate ceasefire and a complete cessation of all hostilities in the region,<sup>69</sup> as well as for all States in the region to create the conditions necessary for the speedy and peaceful resolution of the crisis and to desist from any act that may further exacerbate the situation.<sup>70</sup> That resolution was reaffirmed in Resolution 1080 (1996) of 15 November 1996, by which the Council reiterated its condemnation of all acts of violence, and its call for an immediate ceasefire and a complete cessation of all hostilities in the region.<sup>71</sup>

*j. The situation in Albania*

26. By Resolution 1101 (1997) of 28 March 1997, determining that the situation in Albania constituted a threat to peace and security in the region, the Council called upon all those concerned in Albania to cooperate with the multinational protection force and international humanitarian agencies for the safe and prompt delivery of humanitarian assistance.<sup>72</sup> By Resolution 1114 (1997) of 19 June 1997, the Council underlined the need for all concerned to refrain from hostilities and acts of violence, and called on the parties involved to continue the political dialogue and facilitate the electoral process.<sup>73</sup>

*k. The situation in Sierra Leone*

27. By Resolution 1132 (1997) of 8 October 1997, the Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the

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<sup>68</sup> *Ibid.*, eighteenth para. of the Preamble.

<sup>69</sup> *Ibid.*, para. 1.

<sup>70</sup> *Ibid.*, para. 2.

<sup>71</sup> S C resolution 1080 (1996), para. 1.

<sup>72</sup> S C resolution 1101 (1997), para. 5. See also the statement of the President of the Security Council of 13 March 1997 (S/PRST/1997/14).

<sup>73</sup> S C resolution 1114 (1997), eighth para. of the Preamble.



region.<sup>74</sup> Acting under Chapter VII, it demanded that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order.<sup>75</sup> The Council also reiterated its call upon the junta to end all acts of violence and to cease all interference with the delivery of humanitarian assistance to the people of that country.<sup>76</sup> On 22 October 1999, the Council adopted Resolution 1270 (1999) in which it determined that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region.<sup>77</sup>

#### *l. The situation in Afghanistan*

28. In 1998, by Resolution 1214 (1998) of 8 December 1998, the Council considered the situation in Afghanistan, and demanded, *inter alia*, that the Taliban stopped providing sanctuary and training for international terrorists and their organizations, and that all Afghan factions cooperate with efforts to bring indicted terrorists to justice.<sup>78</sup> By Resolution 1267 (1999) of 15 October 1999, the Council determined that the failure to respond to these demands constituted a threat to international peace and security.<sup>79</sup> Acting under Chapter VII of the Charter, it reaffirmed the above-mentioned demands, and also demanded the turn-over of Usama bin Laden without further delay to appropriate authorities in third countries.<sup>80</sup>

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<sup>74</sup> S C resolution 1132 (1997), ninth para. of the Preamble.

<sup>75</sup> *Ibid.*, para. 1.

<sup>76</sup> *Ibid.*, para. 2.

<sup>77</sup> S C resolution 1270 (1999), fifth para. of the Preamble.

<sup>78</sup> S C resolution 1214 (1998), para. 13.

<sup>79</sup> S C resolution 1267 (1999), eighth para. of the Preamble.

<sup>80</sup> *Ibid.*, paras. 1 and 2. See also the statement of the President of the Security Council of 22 October 1999 (S/PRST/1999/29).

### *III. The last sentence of Article 40*

29. The last sentence of Article 40 states that “[t]he Security Council shall duly take account of failure to comply with such provisional measures”. Although not explicitly based on this provision, the Security Council included in a number of resolutions warnings of further measures in the event of failure to comply with those resolutions. Those warnings could be regarded as having the last sentence of Article 40 as their basis. They were expressed, for example, in the following ways:

- a decision to meet again as necessary to ensure compliance with the resolution,<sup>81</sup>
- a decision to remain actively seized of the matter and to consider further steps to achieve a peaceful solution in conformity with relevant Council resolutions,<sup>82</sup>
- a call for cooperation with the United Nations to all parties, movements and factions in a civil war, in the absence of which other measures to deliver humanitarian assistance would not be excluded,<sup>83</sup>
- the expression of readiness to consider the imposition of further measures under the Charter of the United Nations unless an effective ceasefire has been established,<sup>84</sup>

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<sup>81</sup> S C resolution 660 (1990) of 2 August 1990, para. 4 (in connection with the situation between Iraq and Kuwait).

<sup>82</sup> S C resolution 752 (1992), para. 14 (in connection with the situation in the former Yugoslavia); in this context, see also S C resolution 757 (1992), fourteenth paragraph of the Preamble; S C 761 (1992), para. 4; S C resolution 771 (1992), para. 7; S C resolution 781 (1992), para. 6; S C resolution 786 (1992), para. 6; and S C resolution 787 (1992), para. 5.

<sup>83</sup> S C resolution 767 (1992), para. 4 (in connection with the situation in Somalia).

<sup>84</sup> S C resolution 864 (1993), para. 26 (in connection with the situation in Angola); in this context, see also S C resolutions 903 (1994), para. 10; 932 (1994), para. 5.

- a warning that, in the event of failure to comply with the demand to refrain from taking any further military action, further measures will be considered to ensure such compliance,<sup>85</sup>
- the expression of readiness to consider the imposition of further measures, such as trade and financial restrictions,<sup>86</sup>
- to consider further action and additional measures to maintain or restore peace and stability,<sup>87</sup>

#### ***IV. Further information***

30. For detailed information regarding the Council's practice, in particular concerning the above-mentioned resolutions which either made explicitly or implicitly reference to Article 40, see Chapter XI of the *Repertoire of the Practice of the Security Council*:

[http://www.un.org/en/sc/repertoire/85-88/85-88\\_11.pdf#page=4](http://www.un.org/en/sc/repertoire/85-88/85-88_11.pdf#page=4) (during 1985 - 1988);

[http://www.un.org/en/sc/repertoire/89-92/89-92\\_11.pdf#page=14](http://www.un.org/en/sc/repertoire/89-92/89-92_11.pdf#page=14) (during 1989-1992);

[http://www.un.org/en/sc/repertoire/93-95/93-95\\_11.pdf#page=9](http://www.un.org/en/sc/repertoire/93-95/93-95_11.pdf#page=9) (during 1993 -1995); and

[http://www.un.org/en/sc/repertoire/96-99/96-99\\_11.pdf#page=17](http://www.un.org/en/sc/repertoire/96-99/96-99_11.pdf#page=17) (during 1996 -1999).

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<sup>85</sup> S C resolution 994 (1995), para. 10 (in connection with the situation in Croatia).

<sup>86</sup> S C resolution 1127 (1997), para. 9 (in connection with the situation in Angola); in this context, see also S C resolutions 1135 (1997), para. 6; and 1173 (1998), para. 16.

<sup>87</sup> S C resolution 1199 (1998), para. 16 (in connection with the situation in the former Yugoslavia).