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ARTICLE 41

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TEXT OF ARTICLE 41

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

INTRODUCTORY NOTE

1. In compliance with the decision of the Inter-Departmental Committee on Charter Repertory,¹ this study exceptionally combines practices of the Security Council and those of the General Assembly pertaining to Supplements 7, 8 and 9, of the Repertory, ranging from 1985 to 1999.

2. Unlike the study in the Supplement 6 and due to increasing activities of the Security Council during the period under review, this study contains a general survey and an analytical summary of practices of the Security Council and those of the General Assembly concerning Article 41.

I. GENERAL SURVEY

A. In the Security Council

3. During the period under review, the Security Council adopted two resolutions in connection with items “Children and armed conflict”² and “Protection of civilians in armed conflict”³ in which it explicitly referred to Article 41.

¹ See A/66/201, para. 13.

² S C resolution 1261 (1999), para. 17 (c).

³ S C resolution 1265 (1999), para. 16.

4. At the same period, the Security Council adopted several resolutions under chapter VII of the Charter, by which it took measures in the areas referred to in Article 41. The Council's decisions related, *inter alia*, to the situation in the following States: Afghanistan, Angola, Bosnia and Herzegovina, Haiti, Iraq-Kuwait, Kosovo, Liberia, Libyan Arab Jamahiriya, Sierra Leone, Somalia, South Africa, the Sudan, Rwanda and the former Yugoslavia.

5. At the same period, the Security Council terminated the measures that it had earlier adopted in relation to the situation in the following States: Haiti, South Africa and the former Yugoslavia, and suspended the measure taken against the Libyan Arab Jamahiriya.

6. During the period under review, the Security Council, acting under chapter VII of the Charter, established the United Nations Compensation Commission for Iraq, two ad hoc tribunals, i.e., the International Tribunal for Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR), and two transitional administrative authorities in East Timor and Kosovo.⁴

7. During this period, the Security Council considered several draft resolutions relating to the South African question which contained explicit references to Article 41, but they were either not put to a vote or were voted upon but not adopted.⁵

8. In view of the interrelationship between Article 41 and Articles 39 and 42, the studies on those two Articles should also be consulted.

B. In the General Assembly

9. During the period under review, the General Assembly adopted two resolutions in which it explicitly referred to Article 41 of the Charter and stressed "the importance of economic and other measures not involving the use of armed forces in maintaining international peace and security, in accordance with Article 41 of the Charter."⁶

⁴ See section III, paras. 115-126.

⁵ See Section III, paras. 127-130.

⁶ GA resolutions 47/120 A, the preamble, and 47/120 B, annex IV.

10. Explicit references were also made to Article 41 of the Charter in the course of consideration by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization of the working paper entitled “Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation.”⁷

11. During the same period, the General Assembly adopted a number of resolutions concerning the situation in South Africa, in which it referred to Chapter VII of the Charter and declared that comprehensive mandatory sanctions were “the most effective measures to ensure South Africa's compliance with the resolutions and decisions of the United Nations.”⁸ The General Assembly also urged the Security Council on several occasions to impose comprehensive mandatory sanctions against that country as provided for in Chapter VII of the Charter of the United Nations.⁹

12. During the period covered, the General Assembly adopted a resolution, containing, *inter alia*, an annex pertaining to criteria concerning the imposition, implementation and lifting of United Nations mandatory sanctions.¹⁰

⁷ Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization presented to the fifty-first session of the General Assembly, U N Document A/51/33, p. 10, para. 51; Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization presented to the fifty-fourth session of the General Assembly, U N Document A/54/33, p. 6, para. 40.

⁸ G A resolutions 40/79 of 13 December 1985, para. 16; 40/64 A of 10 December 1985, the preamble; 41/39 B of 20 November 1986, para. 14; 41/35 B, the preamble; 42/23 C, para. 2; 43/50 C, para. 4; and 45/176 A, para. The Preamble.

⁹ G A resolutions 40/79, para. 74; 40/64 A of 10 December 1985, para. 7; 41/39 A of 20 November 1986, para. 77; 41/39 B of 20 November 1986, para. 12; 41/35 B, para. 5 and 6; 41/35 G, paras. 5 and 6; 42/23 C, paras. 3 and 4; 42/23 G, para. 5; 43/50 C, paras. 5 and 7; 43/50, K, para. 5; 43/26 A, para. 66; 44/27 C, para. 4; 44/27 K, para. 5; and 45/176 A, the preamble.

¹⁰ G A resolution 51/242, annex II. See also analytical summary, section III.

II. ANALYTICAL SUMMARY OF PRACTICE

A. In the Security Council

(i) Explicit references to Article 41

13. During the period under review, the Security Council adopted two resolutions in which Article 41 was explicitly referred to. By its resolution 1261 (1999), adopted on the agenda item “Children and armed conflict,” the Security Council reaffirmed its “readiness when dealing with situations of armed conflict, whenever adopting measures under Article 41 of the Charter of the United Nations, to give consideration to their impact on children, in order to consider appropriate humanitarian exemptions.”¹¹

14. Also, by its resolution 1265 (1999), adopted under the agenda item “Protection of civilians in armed conflict,” the Security Council reaffirmed its “readiness whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions.”¹²

(ii) Adoption of Measures under Chapter VII in the areas referred to in Article 41

15. During the period covered, the Security Council adopted many resolutions under Chapter VII of the Charter, by which it imposed against many States and entities, *inter alia*, a wide range of measures falling within the scope of Article 41. The practice of the Council in this regard is summarized below.

¹¹ S C resolution 1261 (1999) of 25 August 1999, para. 17 (c).

¹² S C resolution 1265 (1999) of 17 September 1999, para. 16.

a. Afghanistan: Measures taken in connection with the Taliban

16. The Security Council, by its resolution 1267 (1999) imposed a flight embargo and financial restrictions against the Taliban.¹³ It decided that all States shall deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban. The Council exempted flights on the grounds of humanitarian need, including flights for the performance of the Hajj, which had to be approved by the Sanctions Committee.¹⁴

17. Under the same resolution, the Council also demanded that all States freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, except for funds that might be authorized by the Sanctions Committee on a case-by-case basis on the grounds of humanitarian need.¹⁵

18. The Council further decided to establish a Committee of the Security Council consisting of all members of the Council to monitor the implementation of the measures and to report to the Council.¹⁶

b. Angola: Measures taken in connection with UNITA

19. By its resolution 864 (1993), the Security Council decided that “all States shall prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment and spare parts for [the União Nacional para a Independência Total de Angola (“UNITA”)], as well as of petroleum and petroleum products, whether or not originating in their territory, to the territory of Angola other than through named points of entry [...]”¹⁷

¹³ S C Council resolution 1267 (1999), para. 2, “demand[ed] that the Taliban turn over Usama bin Laden [...] to appropriate authorities in a country where [a] he has been indicted, or [b] he will be returned [...], or [c] he will be arrested and effectively brought to justice.

¹⁴ *Ibid.*, para. 4 (a).

¹⁵ *Ibid.*, para. 4 (b).

¹⁶ *Ibid.*, para. 6.

¹⁷ S C resolution 864 (1993), para. 19.

20. By the same resolution, the Council established a committee to monitor the implementation of the sanctions imposed against UNITA.¹⁸

21. By its resolutions 903 (1994),¹⁹ 922 (1994),²⁰ 932 (1994),²¹ 1045 (1996),²² 1055 (1996)²³ 1064 (1996),²⁴ 1075 (1996),²⁵ and 1087 (1996),²⁶ the Security Council reaffirmed the obligation of all States to implement fully the provisions of paragraph 19 of resolution 864 (1993).

22. By its resolution 1127 (1997), the Council decided that all States should “prevent the entry into or transit through their territories of all senior officials of UNITA and of adult members of their immediate families [...], except for officials necessary for the full functioning of the Government of Unity and National Reconciliation [...].²⁷ The Council also decided that all States should “suspend or cancel all travel documents, visas or residence permits issued to senior officials of UNITA and adult members of their immediate families [...]”.

23. By the same resolution, the Council also demanded that all States to close immediately and completely all offices of UNITA in their territories.²⁸ It further called upon States to take specific measures with a view to prohibiting flights of aircraft by or for UNITA, the supply of any aircraft or aircraft components to UNITA and the insurance, engineering and servicing of UNITA aircraft.²⁹

24. By the same resolution, the Council further decided that the measures shall not apply to cases of medical emergency or to flights of aircraft carrying food, medicine, or supplies for

¹⁸ Ibid., para. 22.

¹⁹ S C resolution 903 (1994), para. 9.

²⁰ S C resolution 922 (1994), para. 8.

²¹ S C resolution 932 (1994), para. 8.

²² S C resolution 1045 (1996), para. 19.

²³ S C resolution 1055 (1996), para. 19.

²⁴ S C resolution 1064 (1996), para. 18.

²⁵ S C resolution 1075 (1996), para. 16.

²⁶ S C resolution 1087 (1996), para. 15.

²⁷ S C resolution 1127 (1997) of 28 August 1997, para. 4 (a).

²⁸ Ibid., para. 4 (b).

²⁹ Ibid., para. 4 (d).

essential humanitarian needs.³⁰ It requested the Sanctions Committee established pursuant to resolution 864 (1993) to monitor the implementation of the measures.³¹

25. By its resolution 1173 (1998) of 12 June 1998, the Council decided that all States, except Angola, in which there were funds and financial resources, including any funds derived or generated from property of UNITA as an organization or of senior officials of UNITA or adult members of their immediate families designated pursuant to resolution 1127 (1997), to freeze them and ensure that they were not made available directly or indirectly to or for the benefit of UNITA.³² By the same resolution, the Council decided that all States should take the necessary measures to prevent all official contacts with the leadership of UNITA in areas of Angola to which State administration has not been extended [...].³³ The Council also prohibited the direct or indirect import from Angola of all diamonds not controlled through the certificate of origin issued by the Government of Angola.³⁴

26. During the period under review, the Security Council called on Member States on a number of occasions to implement fully the relevant provisions of resolutions 864 (1993) of 15 September 1993, 1127 (1997) of 28 August 1997 and 1173 (1998) of 12 June 1998.³⁵

c. Measures taken in connection with Haiti

27. The Security Council, by its resolution 841 (1993), *inter alia*, imposed the following measures against Haiti:

- (a) Decided that “all States shall prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of petroleum or petroleum products or arms and related *matériel* of all types, including weapons and ammunition, military

³⁰ Ibid., para. 5.

³¹ Ibid., para. 11.

³² S C resolution 1173 (1998), para. 11.

³³ Ibid., para. 12 (a).

³⁴ Ibid., para. 12 (b).

³⁵ S C resolutions 1190 (1998), para. 11; 1195 (1998), para. 5; 1202 (1998), para. 13; 1213 (1998), para. 9; 1219 (1998), para. 6; and 1237 (1999), para. 5.

vehicles and equipment, police equipment and spare parts [...] to any person or body in Haiti...”,³⁶

- (b) In order to give effect to the above sanctions, the Council decided “to prohibit any and all traffic from entering the territory or territorial sea of Haiti carrying petroleum or petroleum products, or arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for [Haiti] ,” in violation of the sanctions;³⁷
- (c) The Council further demanded that States freeze all funds, including any funds derived from property of the Government of Haiti or of the *de facto* authorities in Haiti, wherever located or organized, owned or controlled by such Government or authorities to ensure that they are not made available directly or indirectly to or for the benefit of the *de facto* authorities in Haiti.³⁸

28. By the same resolution, the Council established a Committee of the Security Council consisting of all the members of the Council to monitor the implementation of the above measures and to report on its work to the Council with its observations and recommendations.³⁹ The Committee was also mandated to “authorize on an exceptional case-by-case basis under a no-objection procedure the importation, in non-commercial quantities and only in barrels or bottles, of petroleum or petroleum products, including propane gas for cooking, for verified essential humanitarian needs...”⁴⁰

29. By its resolution 861 (1993), the Security Council decided to suspend the measures imposed against Haiti under resolution 841 (1993),⁴¹ referred to above. The Council also expressed its readiness to terminate the suspension of the measures should the Secretary-General inform the Council that “the parties to the Governors Island Agreement or any other authorities

³⁶ S C resolution 841 (1993), adopted on 16 June 1993, para. 5.

³⁷ *Ibid.*, para. 6.

³⁸ *Ibid.*, para. 8.

³⁹ *Ibid.*, para. 10.

⁴⁰ *Ibid.*, para. 7.

⁴¹ S C resolution 861 (1993), adopted on 27 August 1993, para. 1.

in Haiti have not complied in good faith with the Agreement.”⁴² The Council also expressed its readiness to review all the measures imposed under its resolution 841 (1993) “with a view to lifting them definitively” once the Secretary-General “informs the Security Council that the relevant provisions of the Governors Island Agreement have been fully implemented.”⁴³

30. By its resolution 873 (1993), the Security Council, decided to terminate the suspension of the measures set out in paragraphs 5 to 9 of resolution 841 (1993).⁴⁴ The Council also decided that the “funds that are required to be frozen pursuant to paragraph 8 of resolution 841 (1993) may be released at the request of President Aristide or Prime Minister Malval of Haiti.”⁴⁵

31. By the same resolution, the Council confirmed “its readiness to consider urgently the imposition of additional measures if the Secretary-General informs the Security Council that the parties to the Governors Island Agreement or any other authorities in Haiti continue to impede the activities of UNMIH ... or have not complied in full with relevant Security Council resolutions and the provisions of the Governors Island Agreement.”⁴⁶

32. By its resolution 917 (1994), the Security Council expanded the sanctions against the military authorities in Haiti in order to ensure their compliance of the provisions of previous Security Council decisions and those of the Governors Island Agreement. The new measures included, *inter alia*:

- (a) embargo on air traffic with the exception of regularly scheduled commercial passenger flights, flights on the grounds of humanitarian needs and the flights approved by the Sanctions Committee;⁴⁷
- (b) travel restrictions for all officers of the Haitian military, including the police, and their immediate families and the major participants in the *coup d'état* of 1991 and in the illegal governments since the *coup d'état*, and their immediate families; and those

⁴² Ibid., para 2.

⁴³ Ibid., para. 3.

⁴⁴ S C resolution 873 (1993) of 13 October 1993, para. 1.

⁴⁵ Ibid., para. 2.

⁴⁶ Ibid., para. 4.

⁴⁷ S C resolution 917 (1994) of 6 May 1994, para. 2.

employed by or acting on behalf of the Haitian military, and their immediate families;⁴⁸ in that regard, the Security Council requested the Sanctions Committee to maintain an updated list of the persons falling within this paragraph;

- (c) trade embargo with the exception of supplies intended strictly for medical purposes and foodstuffs.⁴⁹

d. Measures imposed in the case of Iraq-Kuwait

33. By its resolution 660 (1990), the Security Council condemned the invasion of Kuwait by Iraq, demanded that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990 and called upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences⁵⁰. Having noted that the said resolution had not been implemented, the Security Council adopted resolution 661 (1990), by which it imposed a broad range of measures against Iraq and Kuwait in order to secure their compliance with the Council's demand that Iraq withdraw its forces from the territory of Kuwait and to restore the authority of the legitimate Government of Kuwait.⁵¹ These measures included, in particular, a comprehensive ban on international trade, except for import of medicine and health supplies, and on humanitarian grounds, food stuffs.⁵²

34. The Council also banned the transfer of any "funds or any other financial or economic resources" to the "Government of Iraq, or to any commercial, industrial or public utility undertaking in Iraq or Kuwait" except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs.⁵³

⁴⁸ Ibid., para 3.

⁴⁹ Ibid., paras. 6-9.

⁵⁰ S C resolution 660 (1990) of 2 August 1990

⁵¹ S C resolution 661 (1990) adopted on 6 August 1990 by 13 votes to none, with two abstentions (Cuba and Yemen).

⁵² Ibid., para 3 (a) and (b).

⁵³ Ibid., para 4.

35. By the same resolution, the Council established a Sanctions Committee to monitor the implementation of the measures imposed.⁵⁴

36. By its resolution 666 (1990), the Security Council asked the Committee established pursuant to resolution 661 (1990) to keep the situation regarding foodstuffs in Iraq and Kuwait under constant review, and to make the necessary determination as to whether humanitarian circumstances had arisen.⁵⁵ The Council reconfirmed that resolution 661 (1990) did not apply to “supplies intended strictly for medical purposes”, but it recommended that “medical supplies should be exported under the strict supervision of the Government of the exporting State or by appropriate humanitarian agencies.”⁵⁶

37. By its resolutions 667 (1990) and 670 (1990), the Security Council reminded States of their obligations under resolutions 661 (1990), 662 (1990), 664 (1990), 665 (1990) and 666 (1990)⁵⁷ and called upon them to ensure strict and complete compliance with resolution 661 (1990).⁵⁸ The Council also confirmed that resolution 661 (1990) applied to all means of transport, including aircraft.⁵⁹

38. By its resolution 687 (1991), the Security Council decided that Iraq was “liable under international law for any direct loss, damage—including environmental damage and the depletion of natural resources—or injury to foreign Governments, nationals or corporations as a result of its unlawful invasion and occupation of Kuwait.”⁶⁰ Having noted that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait, the Council also decided that “the prohibitions against the sale or supply to Iraq of commodities or products other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990), shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) or,

⁵⁴ Ibid., para. 8.

⁵⁵ S C resolution 666(1990), para. 1.

⁵⁶ Ibid., para. 8.

⁵⁷ S.C. resolution 662 (1990) of 9 August 1990, S.C. resolution 664 (1990) of 18 August 1990, S.C. resolution 665 (1990) of 25 August 1990, S C resolution 667 (1990), para. 5; and S C resolution 670 (1990), para.

⁵⁸ S C resolution 670 (1990), para. 1.

⁵⁹ Ibid., para. 2.

⁶⁰ S C resolution 687 (1991), 3 April 1991, para 16; see also paras. 119 below.

with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs... and in any further findings of humanitarian need by the Committee”⁶¹

39. By the same resolution, the Council linked the termination of measures imposed by resolution 661 (1990), in so far as they applied to Iraq, to the latter’s compliance with certain disarmament requirements, and arrangements for compensation for the above-mentioned direct loss, damage or injury suffered by foreign governments, nationals and corporations as a result of Iraq’s unlawful invasion and occupation of Kuwait.⁶² The Council also decided that “the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect” upon the Council’s agreement that Iraq has completed all actions contemplated in paragraphs 8 to 13 of the resolution.⁶³

40. By resolution 688 (1991),⁶⁴ the Council condemned the repression of civilians in many parts of Iraq and insisted that Iraq allow immediate access by humanitarian organizations to all those in need.

41. By its resolution 706 (1991), the Security Council authorized, subject to certain conditions, all 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 foodstuff, medicines and materials and supplies for essential civilian needs.⁶⁵ The authorization was, *inter alia*, limited to a period of six months and to a value to be determined by the Council, but not to exceed US \$ 1.6 billion. The resolution mandated the United Nations to establish an escrow account administered by the Secretary-General, to which the full amount of each purchase of Iraqi petroleum and petroleum products had to be directly deposited by the purchaser in the State concerned.⁶⁶ Each petroleum and

⁶¹ Ibid, para. 20.

⁶² Ibid., para. 19 and 22.

⁶³ Ibid. para. 22.

⁶⁴ S.C. resolution 688 (1991) of 5 April 1991

⁶⁵ S C resolution 706 (1991) of 15 August 1991, para. 1.

⁶⁶ Ibid., para. 1 (b).

petroleum product purchase had to be approved by the Sanctions Committee.⁶⁷ Petroleum imports also remained subject to approval by the Council under the scheme for the purchases of humanitarian supplies. In addition to purchases of humanitarian supplies, the proceeds of sale were to be used to finance war reparation,⁶⁸ and costs incurred by the United Nations in carrying out the mandated activities under the said resolution and any other necessary humanitarian activities in Iraq.⁶⁹

42. Security Council resolution 712 (1991), provided for detailed provisions and modalities of the implementation⁷⁰ of resolution 706 (1991), and reaffirmed that the escrow account to be established by the United Nations and administered by the Secretary-General to meet the purposes of resolution 706 (1991) and 712 (1991), shall enjoy the privileges and immunities of the United Nations.⁷¹

43. By its resolution 778 (1992), the Council deplored Iraq's refusal to cooperate in the implementation of resolutions 706 (1991) and 712 (1991). In order to generate the funds required for the purposes specified in its resolution 706 (1991), and subject to certain conditions, the Council demanded "all States in which there are funds of the Government of Iraq, or its State bodies, corporations, or agencies, that represent the proceeds of sale of Iraqi petroleum or petroleum products", paid for after 6 August 1990, to transfer those funds to the escrow account established in accordance with resolutions 706 (1991) and 712 (1991).⁷² Under the same resolution, all States in which Iraqi petroleum or petroleum products existed were also required to take all feasible steps to purchase or arrange for the sale of petroleum or petroleum products at fair market value, and thereupon to transfer the proceeds to the escrow account mentioned above.⁷³

44. By its resolution 986 (1995), the Security Council, notwithstanding the provisions of resolution 661 (1990) and subsequent relevant resolutions, authorized States, under certain

⁶⁷ Ibid., para. 1 (a).

⁶⁸ Ibid., para. 4.

⁶⁹ Ibid., paras 2 and 3.

⁷⁰ S C resolution 712 (1991) of 19 September 1991, para. 3.

⁷¹ Ibid., para. 6.

⁷² S C resolution 778 (1992) of 2 October 1992, para. 1.

⁷³ Ibid., para 2.

conditions, to permit the import of petroleum and petroleum products originating in Iraq, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days⁷⁴ and requested the Secretary-General to establish an escrow account⁷⁵ for the purposes of financing the export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs⁷⁶The Council extended the authorization provided for in this resolution or modified its provisions under several resolutions it adopted at later stages.⁷⁷

45. By its resolution 1137 (1997), the Security Council condemned the Government of Iraq for violating its obligations under the relevant resolutions of the Council, and for not cooperating fully with the Special Commission.⁷⁸By the same resolution, the Council demanded States to deny “entry into or transit through their territories of all Iraqi officials and members of the Iraqi armed forces who were responsible for or participated in the instances of non-compliance detailed in paragraph 1 of the resolution”.⁷⁹The Council also decided to “designate... a list of individuals whose entry or transit will be prevented under the provisions of paragraph 4” of the resolution and requested the Sanctions Committee established by resolution 661 (1990) to develop guidelines and procedures as appropriate for the implementation of these measures for transmission, with the list of individuals designated, to all Member States.⁸⁰

46. By its resolutions 1210 (1998) and 1284 (1999), the Security Council, *inter alia*, directed, under certain conditions, “the Committee established by resolution 661 (1990) to authorize, on the basis of specific requests, reasonable expenses related to the Hajj pilgrimage, to be met by funds in the escrow account established by resolution 986 (1995).”⁸¹

⁷⁴ S C resolution 986 (1995) of 14 April 1995, para. 1.

⁷⁵ S C resolution 986 (1995) of 14 April 1995, para. 7.

⁷⁶ *Ibid.*, para. 8 (a).

⁷⁷ S C resolutions 1111 (1997), para. 1; 1129 (1997), para. 1.; 1143 (1997), para. 1; 1153 (1998), para. 1; 1158 (1998), para. 1; 1175 (1998), para. 1 ; 1210 (1998), para. 8; 1242 (1999), paras 1, 2, 7 and 8; 1284 (1999), paras. 15, 16 and 17.

⁷⁸ S C resolution 1137 (1997) of 12 November 1997, para. 1. The Special Commission was established pursuant to paragraph 9(b) (i) of S C resolution 687 (1991) to carry out on-site inspection of Iraq’s chemical, biological and missile capabilities.

⁷⁹ *Ibid.*, para. 4.

⁸⁰ *Ibid.*, para 5.

⁸¹ S C resolutions 1210 (1998), para. 3; 1284 (1999), para. 26.

e. Measures taken concerning Liberia

47. The Security Council, by its resolution 788 (1992), for the purposes of establishing peace and stability in Liberia imposed a “complete embargo on all deliveries of weapons and military equipment to Liberia until the Security Council decides otherwise.”⁸² The Council also decided that the embargo “shall not apply to weapons and military equipment destined for the sole use of the peace-keeping forces of ECOWAS in Liberia.”⁸³

48. During the period under review, the Security Council adopted eleven other resolutions on the situation in Liberia in which it, *inter alia*, called upon all States to “comply strictly with the embargo on the deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992)”,⁸⁴ “to take all actions necessary to ensure strict implementation of the embargo,”⁸⁵ and to bring all instances of the violations of the embargo before the Committee established pursuant to resolution 985 (1995).⁸⁶

f. Measures taken against the Libyan Arab Jamahiriya

49. Having, *inter alia*, urged the Libyan Government, in its resolution 731 (1992), to provide a full and effective response to the requests addressed to it by France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America in connection with the legal procedures related to the attacks carried out against Pan Am flight 103 and *Union de transports aériens* flight so as to contribute to the elimination of international terrorism⁸⁷, the Security Council, in its resolution 748 (1992)⁸⁸, *inter alia*, imposed the following measures against the Libyan Arab Jamahiriya:

⁸² S C resolution 788 (1992) of 19 November 1992

⁸³ *Ibid.*, para. 8.

⁸⁴ S C resolutions 1001 (1995), para. 10; 1014 (1995), para. 11; 1020 (1995), para. 11; 1041 (1996), para. 11; 1071 (1996), para. 12; 1100 (1997), para. 9; and 1116 (1997), para. 7.

⁸⁵ S C resolutions 1071 (1996), para. 12; 1100 (1997), para. 9; and 1116 (1997), para. 7.

⁸⁶ S C resolutions 1001 (1995), para. 10; 1014 (1995), para. 11; 1020 (1995), para. 11; 1041 (1996), para. 11; 1071 (1996), para. 12; 1100 (1997), para. 9; and 1116 (1997), para. 7; 950 (1994), para. 6; 972 (1995), para. 6; 985 (1995), para. 4.

⁸⁷ S C resolution 731 (1992) adopted unanimously on 21 January 1992, para. 3.

⁸⁸ S C resolution 748 (1992) adopted on 31 March 1992 by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco and Zimbabwe).

- (a) banned all international flights to and from Libyan Arab Jamahiriya, with the exception of flights on grounds of significant humanitarian need;⁸⁹ prohibited the supply of any aircraft or aircraft components to Libya, including the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components;⁹⁰ and demanded all States to prevent the operation of all Libyan Arab Airlines offices;⁹¹
- (b) imposed a ban on the supply of arms and related material and demanded all States to withdraw any of their officials or agents present in Libya to advise the Libyan authorities on military matters;⁹²
- (c) demanded all States to reduce significantly the number and level of the staff in Libyan diplomatic and consular missions and to impose travel restrictions on the remaining staff;⁹³
- (d) also demanded all States to deny entry to or expel Libyan nationals who had been denied of entry to or expelled from other States because of their involvement in terrorist activities.⁹⁴

50. After automatically renewing the above sanctions four times over a period of 15 months⁹⁵, the Security Council, by its resolution 883 (1993), strengthened the measures that it had adopted against the Libyan Arab Jamahiriya by its resolution referred to above. Under the terms of resolution 883 (1993), the Council demanded States to freeze the funds or other financial resources which were directly or indirectly owned or controlled by the Libyan Government, public authorities, entities, wherever located or organized, or persons identified by States as acting on behalf of the Libyan Government or public authorities.⁹⁶ However, the

⁸⁹ Ibid., para. 4 (a).

⁹⁰ Ibid., para. 4 (b).

⁹¹ Ibid., para. 6 (b).

⁹² Ibid., para. 5.

⁹³ Ibid., para. 6.

⁹⁴ Ibid., para 6 (c).

⁹⁵ See S/PV/3312

⁹⁶ S C resolution 883 (1993), para. 3.

Council exempted the application of these measures of constraint to the funds or other financial resources derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, and of the agricultural products or commodities originating in Libya [...] on the condition that such funds were deposited in separate bank accounts exclusively for these funds.⁹⁷

51. In addition, the Security Council demanded all States to close immediately and completely all offices of Libyan Arab Airlines within their territories.⁹⁸ The Council also imposed further sanctions by, *inter alia*, calling upon all States to prohibit the supply of materials and services to Libyan civilian or military airfields⁹⁹ and to deny any provision of advice, assistance, or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya.¹⁰⁰

52. By the same resolution, the Security Council expressed its readiness to review the measures referred to above and in resolution 748 (1992) with a view to suspending them immediately if the Secretary-General reported to the Council that the Libyan Government had ensured the appearance of those charged with the bombing of Pan Am 103 for trial before the appropriate United Kingdom or United States court and had satisfied the French judicial authorities with respect to the bombing of UTA 772, with a view to lifting them immediately when Libya complies fully with the requests and decisions in resolutions 731 (1992) and 748 (1992).¹⁰¹

53. In the deliberations of the Security Council held in connection with the adoption of resolution 883 (1993), the representative of the Libyan Arab Jamahiriya observed that his Government had complied with resolution 731 (1992) except for the fact that it had not extradited two alleged suspects in the terrorist attacks against Pan Am flight 103 and UTA

⁹⁷ Ibid., para. 4.

⁹⁸ Ibid., para 6 (a)

⁹⁹ Ibid., para. 6 (d).

¹⁰⁰ Ibid., para. 6 (e).

¹⁰¹ Ibid., para 16.

flight 772. In his view, the question at stake was a legal dispute over which country had competence to try the suspects which should have been dealt with under Chapter VI.¹⁰²

54. The representative of the Sudan, speaking on behalf of the League of Arab States, expressed the view that the crisis between the Libyan Arab Jamahiriya, on the one hand, and the United States, France and the United Kingdom, on the other hand, arose from a legal dispute which should have been addressed in accordance with Article 33, (Chapter VI). Taking action under Chapter VII was not appropriate as it concerned threats to international peace and security and not legal disputes.¹⁰³

55. The representative of the United States noted that, for the pursuit of justice, sanctions by the Security Council must be adopted when necessary. In her view, by strengthening sanctions, the Council had again shown the flexibility of sanctions as a diplomatic tool and added that: “the more we demonstrate that this Council can impose, lift, suspend or strengthen sanctions at will, the better the sanctions stick can serve our diplomacy.” This viewpoint was shared by a number of members of the Council.¹⁰⁴

56. The Chinese delegation was of the view, however, that the only effective means that could lead to a solution of this question was negotiation and consultation. He stated that the intensification of sanctions against the Libyan Arab Jamahiriya would not help to settle the question. On the contrary, it would further complicate the matter, by making the Libyan people suffer more, and creating even greater economic difficulties for the neighboring and other countries concerned.¹⁰⁵ In a similar vein, the representative of Pakistan was unable to support resolution 883 (1993). The representative of Russia, on the other hand, explained that his delegation fully concurred with the resolution’s reiteration of the resolve of the Security Council to eradicate international terrorism, underlining that it attached particular importance to its

¹⁰² S/PV. 3312, pp. 22-23.

¹⁰³ Ibid., p. 31.

¹⁰⁴ Ibid., p. 40-42.

¹⁰⁵ Ibid., p. 53.

paragraph 11 providing that “... nothing in this resolution affects Libya’s duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt”).¹⁰⁶

57. By its resolution 910 (1994), the Security Council decided that paragraph 4 of resolution 748 (1992) shall not apply in respect of the United Nations aircraft flying to or from Libya for the purpose of conveying the Secretary-General’s reconnaissance team.¹⁰⁷

58. By its resolution 915 (1994), the Council decided that “paragraph 4 of resolution 748 (1992) shall not apply in respect of aircrafts flying to or from the Libyan Arab Jamahiriya for the purpose of conveying UNASOG.¹⁰⁸

59. By its resolution 1192 (1998), the Council reaffirmed that the measures adopted in its resolutions 748 (1992) and 833 (1993) remained in effect and binding on all Member States, and in that context reaffirmed the provisions of paragraph 16 of resolution 883 (1993), and decided that the measures shall be suspended immediately if the Secretary-General reported to the Council that the two suspects had arrived in the Netherlands for the purpose of trial, and that the Libyan Government had satisfied the French judicial authorities with regard to the bombing of UTA 772.¹⁰⁹

60. In the course of the deliberation of the Security Council that led to the adoption of resolution 1192 (1998), the representative of the Libyan Arab Jamahiriya recalled that the International Court of Justice had confirmed that the dispute between his country and the United States, the United Kingdom and France was a legal dispute in nature, for which the ICJ had jurisdiction. He further observed that the Council must take the necessary measures to give effect to the Judgments rendered by the Court on 27 February 1998 and, *inter alia*, it should

¹⁰⁶ Ibid., p. 39.

¹⁰⁷ S C resolution 910 (1994), para. 1.

¹⁰⁸ By its resolution 915 (1994) the Security Council decided to “establish the United Nations Aouzou Strip Observer Group (UNASOG) and authorizes the deployment of nine United Nations observers and six support staff to observe the implementation of the agreement signed on 4 April 1994 at Surt (Libya); paras. 2 and 4.

¹⁰⁹ S C resolution 1192 (1998) of August 27 1998, paragraph 8.

promptly and urgently refrain from renewing the sanctions imposed on the Libyan Arab Jamahiriya pursuant to resolutions 748 (1992) and 883 (1993).¹¹⁰

61. The representative of the United States, however, expressed the view that the ruling of the International Court of Justice in no way questioned the legality of the Security Council's actions affecting the Libyan Arab Jamahiriya or the merits of the criminal cases against the two suspects. He stated that, contrary to the assertions of the Government of the Libyan Arab Jamahiriya, the Court was not calling for the review or suspension of the Security Council resolutions.¹¹¹ The representatives of the United States and the United Kingdom contended that the sanctions were carefully targeted to minimize their impact on the Libyan population and that the vast majority of Libya's imports and exports were unaffected, including food, medicines, clothing or other humanitarian supplies, whilst oil production had increased. They accordingly concluded that the causes of economic hardship alleged by Libya was not the result of sanctions. Moreover, they asserted that, if the Libyan Arab Jamahiriya wanted the sanctions lifted, it should surrender the two suspects so that they could receive a fair trial in the appropriate criminal court.¹¹²

g. Measures taken in connection with Sierra Leone

62. By its resolution 1132 (1997)¹¹³, the Security Council, decided that all States shall prevent the entry into or transit through their territories of members of the military junta and adult members of their families, unless the travel of any of such persons was authorized for verified humanitarian purposes or the restoration of the democratically-elected Government and a return to constitutional order by the Sanctions Committee.¹¹⁴ By the same resolution, the Security Council also decided that all States shall prevent the sale or supply to Sierra Leone of petroleum, and petroleum products, as well as the supply of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment.¹¹⁵

¹¹⁰ S/PV. 3864 and corr. 1, p. 11.

¹¹¹ Ibid., p. 13

¹¹² Ibid., p. 13 (United States); and p. 30 (United Kingdom).

¹¹³ Adopted unanimously on 8 October 1997.

¹¹⁴ SC resolution 1132 (1997), para. 5. Under para. 10 (f) of the resolution, the Sanctions Committee was to designate the military junta and adult members of their families whose entry or transit was to be prevented.

¹¹⁵ Ibid., para. 6.

63. Under the terms of the same resolution, the Council established a Sanctions Committee to monitor the implementation of sanctions¹¹⁶ and to approve, on a case-by-case basis, applications by the democratically-elected Government of Sierra Leone for the importation of petroleum or petroleum products. The resolution also authorized the Sanctions Committee to approve applications of any other government or by United Nations Agencies for the importation of petroleum or petroleum products for verified humanitarian purposes, or for the needs of the Military Observer Group of ECOWAS (ECOMOG).¹¹⁷ Acting under Chapter VIII of the Charter, the Council further authorized ECOWAS to ensure strict implementation of the provisions of this resolution relating to the supply of the above-mentioned products by halting inward maritime shipping in order to inspect and verify their cargoes and destinations, and called upon all States to cooperate with ECOWAS in this regard.¹¹⁸

64. By its resolution 1156 (1998),¹¹⁹ the Council decided to terminate, with immediate effect, the prohibition on the sale or supply to Sierra Leone of petroleum and petroleum products referred to in paragraph 6 of resolution 1132 (1997).

65. By its resolution 1171 (1998),¹²⁰ the Council, decided, *inter alia*, to terminate the remaining prohibitions imposed by paras. 5 and 6 of resolution 1132 (1997)¹²¹ and further decided that all States shall prevent the sale or supply, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related *matériel* of all types to Sierra Leone other than the Government of Sierra Leone through named points of entry on a list to be supplied by the Government to the Secretary-General¹²². The Council also decided that the latter restrictions shall not apply to the sale or supply of arms and related material for the sole use in Sierra Leone of the Military Observer Group of the Economic Committee of West African States (ECOMOG) or the United Nations¹²³.

¹¹⁶ Ibid. para. 10.

¹¹⁷ Ibid., para. 7.

¹¹⁸ Ibid, para. 8.

¹¹⁹ Adopted unanimously on 16 March 1998.

¹²⁰ Adopted unanimously on 5 June 1998.

¹²¹ SC resolution 1171 (1998), para. 1.

¹²² Ibid, para. 2.

¹²³ Ibid, para. 3.

66. By its resolution 1181 (1998), the Council reaffirmed the obligation of all States to comply strictly with the terms of the embargo on the sale or supply of arms and related *matériel* to Sierra Leone imposed by resolution 1171 (1998), and demanded them to bring all instances of violations of the arms embargo before the Sanctions Committee.¹²⁴

67. By its resolution 1231 (1999), the Council once again reaffirmed the obligation of all States to comply strictly with the provisions of the embargo on the sale or supply of arms and related *matériel* imposed by its resolution 1171 (1998).¹²⁵

68. As at 31 December 1999, the sanctions imposed by the Security Council against Sierra Leone remained in force, with the above mentioned exemptions.

h. Measures taken in connection with Somalia

69. By its resolution 733 (1992), the Security Council, for the purposes of establishing peace and stability in Somalia, imposed a general and complete embargo on all deliveries of weapons and military equipment to Somalia.¹²⁶

70. By its resolution 751 (1992), the Council established a Sanctions Committee to monitor the implementation of the measures imposed under resolution 733 (1992), make recommendations to the Council on ways to increase the effectiveness of the embargo, and recommend appropriate measures in response to its violations.¹²⁷

71. By its resolutions 775 (1992),¹²⁸ 814 (1993),¹²⁹ 886 (1993),¹³⁰ 897 (1994),¹³¹ 923 (1994)¹³² and 954 (1994)¹³³, the Security Council reaffirmed the obligations of States to

¹²⁴ S C resolution 1181 (1998), para. 13.

¹²⁵ S C resolution 1231 (1999), para. 7.

¹²⁶ S C resolution 733 (1992), para. 5.

¹²⁷ S C resolution 751 (1992), para. 11.

¹²⁸ S C resolutions 775 (1992), para. 12.

¹²⁹ S C resolution 814 (1993), para. 11.

¹³⁰ S C resolution 886 (1993), para. 11.

¹³¹ S C resolution 897 (1993), para. 9.

¹³² S C resolution 923 (1994), para. 6.

¹³³ S C resolution 954 (1994), para. 12.

implement fully the embargo on all deliveries of weapons and military equipment to Somalia imposed by paragraph 5 of resolution 733 (1992).

i. Measures taken against South Africa

72. By its resolution 574 (1985), adopted by the Security Council on the question of Angola, the Council called upon all States “to implement fully the arms embargo imposed against South Africa in Security Council resolution 418 (1977).”¹³⁴

73. By its resolution 591 (1986), the Security Council further reaffirmed its resolution 418 (1977)¹³⁵, and called upon States to prohibit the export of spare parts for embargoed aircraft and other military equipment¹³⁶, defining the term “arms and related material” referred to in resolution 418 (1977), to include, in addition to all nuclear, strategic and conventional weapons, all military, paramilitary and police vehicles and equipment, as well as weapons and ammunitions, spare parts and supplies for the aforementioned and the sale or transfer thereof.”¹³⁷

74. By resolution 919 (1994) of 25 May 1994, the Council terminated the arms embargo and other restrictions imposed on South Africa by resolution 418 (1977) and dissolved the Sanctions Committee established pursuant to resolution 421 (1977).¹³⁸

j. Measures taken against the Sudan in the case concerning the assassination attempt of 26 June 1995 on the life of the President of the Arab Republic of Egypt

75. In the case concerning the assassination attempt of 26 June 1995 on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, after it expressed alarm that the Government of Sudan failed to comply with its requests set out in paragraph 4 of resolution

¹³⁴ S C resolution 574 (1985), para. 5.

¹³⁵ S C resolution 418 (1977) was adopted prior to the period under review and imposed, under chapter VII of the Charter, a comprehensive arms embargo against South Africa, the implementation of which was entrusted to a Sanctions Committee established under SC resolution 421 (1977) of 9 December 1977.

¹³⁶ S C resolution 591 (1986), para. 2.

¹³⁷ Ibid., para. 4.

¹³⁸ S C resolution 919 (1994) of 25 May 1994. The Sanctions Committee established by resolution 421 (1977) was the longest standing sanctions Committee then ever established.

1044 (1996) to, *inter alia*, undertake immediate action to extradite to Ethiopia for prosecution the three suspects sheltering in the Sudan and wanted in connection with the assassination attempt on the basis of the 1964 Extradition Treaty between Ethiopia and the Sudan, the Security Council, adopted resolution 1054 (1996) by which it decided that all States shall: “(a) Significantly reduce the number and the level of the staff at Sudanese diplomatic missions and consular posts and restrict or control their movement within their territory of all such staff who remain; (b) Take steps to restrict the entry into or transit through their territory of members of the Government of Sudan, officials of that Government and members of the Sudanese armed forces.”¹³⁹

76. By the same resolution, the Council called upon “all international and regional organizations not to convene any conference in Sudan.”¹⁴⁰

77. By its resolution 1070 (1996), the Security Council reiterated its demand that Sudan comply fully and without delay with the requests set out in the above resolutions, and decided that all States shall deny aircraft permission to take off from, land in, or overfly their territories if the aircraft is registered in Sudan, or owned, leased or operated by or on behalf of Sudan Airways or by the Government or public authorities of Sudan.¹⁴¹

k. Measures taken in connection with Rwanda

78. The Security Council, by its resolution 918 (1994), decided that all States “shall prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts.”¹⁴² The Council also decided that these measures shall not apply to activities related to UNAMIR and UNOMUR.¹⁴³

¹³⁹ S C resolution 1054 (1996) of 26 April 1996, para. 3.

¹⁴⁰ *Ibid.*, para. 4.

¹⁴¹ S C resolution 1070 (1996) of 16 August 1996, para. 3.

¹⁴² S C resolution 918 (1994) of 17 May 1994, para. 13.

¹⁴³ *Ibid.*, para. 16.

79. By the same resolution the Council decided also to establish a Committee of the Security Council consisting of all the members of the Council, to monitor the implementation of the measures and to report on its work to the Council with its observations and recommendations.¹⁴⁴

80. By its resolution 997 (1995), the Security Council expanded the scope of the sanctions against Rwanda to include the sale or supply of arms and *matériel* to persons in the States neighboring Rwanda, if that sale or supply was for the purpose of use of such arms or *matériel* within Rwanda.¹⁴⁵

81. By its resolution 1005 (1995), the Security Council decided to waive the sanctions against Rwanda in respect of “appropriate amounts of explosives intended exclusively for use in established humanitarian demining programmes.”¹⁴⁶

82. By its resolution 1011 (1995), the Security Council lifted the sanctions imposed by resolution 918 (1994) with regard to the sale or supply of arms and related *matériel* to the Government of Rwanda through named points of entry.¹⁴⁷ However, so as to prohibit their sale or supply to non-governmental forces for use in Rwanda, the Council decided that all States shall continue the prohibition of the sale or supply of such arms and related *matériel* to Rwanda, or persons in neighboring States, for use within Rwanda, other than to the Government of Rwanda.¹⁴⁸

83. By its resolutions 1053 (1996) and 1161 (1998), having expressed grave concerns at allegations and reports of the sale and supply of arms and related *matériel* to former Rwandan government forces and militias in violation of the imposed embargo, and considering that it posed a threat to peace and stability in the Great Lakes region, the Security Council respectively reaffirmed its determination that such embargo should be implemented and declared its willingness to consider further other measures in this regard..¹⁴⁹

¹⁴⁴ Ibid., para. 14.

¹⁴⁵ S C resolution 997 (1995), para. 4.

¹⁴⁶ S C resolution 1005 (1995) of 17 July 1995.

¹⁴⁷ S C resolution 1011 (1995) of 16 August 1995, para. 7.

¹⁴⁸ Ibid., para. 9.

¹⁴⁹ S C resolution 1053 (1996), para. 3; and SC resolution 1161 (1998), para. 8.

l. Measures imposed against the former Yugoslavia

84. Following the outbreak of hostilities in the territory of the former Yugoslavia, the Security Council, by its resolution 713 (1991) decided that “all States shall, for the purposes of establishing peace and stability in the former Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to the former Yugoslavia.”¹⁵⁰

85. Subsequently, the Council, under its resolution 724 (1991), requested all States to report to the Secretary-General on the measures they have instituted for meeting the obligations set out in paragraph 6 of resolution 713 (1991)¹⁵¹ and established a Sanctions Committee to monitor the implementation of measures imposed under resolution 713 (1991).¹⁵²

86. The Security Council, in its resolution 727 (1992), which was adopted after the disintegration of the former Yugoslavia, reaffirmed the continued application of the embargo imposed under paragraph 6 of resolution 713 (1991) and paragraph 5 of resolution 724 (1991) to all areas that had been part of the former Yugoslavia, notwithstanding any decisions on the question of recognition of the independence of certain republics.¹⁵³

m. Measures taken against the Federal Republic of Yugoslavia (Serbia and Montenegro)

87. By its resolution 757 (1992), the Security Council imposed a broad range of sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro),¹⁵⁴ including *inter alia*, a ban on all international trade,¹⁵⁵ with the exception of “supplies intended for strictly medical

¹⁵⁰ S C resolution 713 (1991) of 25 September 1991, para. 6.

¹⁵¹ S C resolution 724 (1991) of 15 December 1991, para. 5 (a)

¹⁵² Ibid., para. 5 (b).

¹⁵³ S C resolution 727 (1992) of 8 January 1992, para. 6, and document S/23363 of 5 January 1992, *Further Report of the Secretary-General pursuant to S C resolution 721 (1991)*, referred to therein, para. 33.

¹⁵⁴ The objective of those measures was to ensure compliance with resolution 752 (1992) of 15 May 1992, by which the Council had demanded that all parties involved in Bosnia and Herzegovina stop fighting immediately and respect the ceasefire of 12 April 1992; that all forms of interference from outside Bosnia and Herzegovina cease immediately; that action be taken regarding units of the Yugoslav People’s Army in Bosnia and Herzegovina.

¹⁵⁵ Security Council resolution 757 (1992) of 30 May 1992, para. 4.

purposes and foodstuffs,”¹⁵⁶ as well as commodities and products trans-shipped through the Federal Republic of Yugoslavia (Serbia and Montenegro)¹⁵⁷. The ban further applied to financial transactions,¹⁵⁸ and international flights.¹⁵⁹ The Council also demanded all States to reduce in their territories “the level of the staff of diplomatic missions and consular posts of the Federal Republic of Yugoslavia (Serbia and Montenegro),”¹⁶⁰ to prevent the participation in sporting events on their territory¹⁶¹ and suspend “scientific and technical cooperation and cultural exchanges and visits involving persons or groups officially sponsored by or representing the Federal Republic of Yugoslavia (Serbia and Montenegro)”.¹⁶²

88. By its resolution 787 (1992), the Security Council imposed further restrictions by, *inter alia*, prohibiting the trans-shipment of strategic goods¹⁶³ through the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to prevent their diversion in violation of resolution 757 (1992)¹⁶⁴ and calling upon States, acting nationally or through regional agencies or arrangements, “to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, and all shipping on the Danube River, in order to inspect and verify their cargoes and destinations.”¹⁶⁵

n. Measures taken in connection with Bosnia and Herzegovina

89. By its resolution 781 (1992), the Security Council banned military flights in the airspace of Bosnia and Herzegovina, with the exception of the United Nations Protection Force flights and other flights supporting the United Nations operations, including humanitarian assistance.¹⁶⁶

¹⁵⁶ Ibid., paras. 4 (c), 5 and 7.

¹⁵⁷ Ibid., para. 6

¹⁵⁸ Ibid., para. 5.

¹⁵⁹ Ibid., para 7.

¹⁶⁰ Ibid., para. 8 (a).

¹⁶¹ Ibid., para. 8 (b).

¹⁶² Ibid., para. 8 (c).

¹⁶³ i.e., Crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types unless such transshipment was specifically authorized on a case-by-case basis by the Sanctions Committee.

¹⁶⁴ S C resolution 787 (1992), of 15 November 1992, para. 9.

¹⁶⁵ Ibid., paras. 12 and 13.

¹⁶⁶ S C resolution 781 (1992) of 9 October 1992, para. 1.

90. By its resolution 786 (1992), the Council reaffirmed its ban on military flights in the airspace of Bosnia and Herzegovina¹⁶⁷ and reiterated its determination to take further measures necessary to enforce the ban on military flights in the airspace of Bosnia and Herzegovina.¹⁶⁸ The Council extended the above-mentioned ban to cover flights by all fixed-wing and rotary-wing aircraft in the airspace of the Republic of Bosnia and Herzegovina, with the exception of flights authorized by UNPROFOR by its resolution 816 (1993).¹⁶⁹ By that resolution, the Security Council also authorized Member States, acting nationally or through regional organizations or arrangements, to take under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, “all necessary measures”, proportionate to the specific circumstances and the nature of flights, to ensure compliance with the ban on flights in the event of further violations.¹⁷⁰

91. By its resolution 820 (1993), the Council strengthened the implementation of the measures imposed by its previous resolutions. The Council prohibited imports to, exports from, and transshipment of goods through the United Nations Protected Areas in Croatia, and those areas of Bosnia and Herzegovina under the control of Serb forces unless specifically authorized by the Committee established pursuant to resolution 724 (1991).¹⁷¹ Moreover, the Council demanded all States to freeze funds and assets of the Government of Federal Republic of Yugoslavia (Serbia and Montenegro) with a view to ensure that they were not made available directly or indirectly to or for the benefit of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro).¹⁷² It also prohibited all commercial maritime traffic from entering the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro), except when authorized on a case-by-case basis by the Committee established by resolution 724 (1991) or in case of force majeure.¹⁷³

¹⁶⁷ S C resolution 786 (1992), of 10 November 1992, para. 1.

¹⁶⁸ Ibid., para. 6.

¹⁶⁹ S C resolution 816 (1993) of 31 March 1993, para. 1.

¹⁷⁰ Ibid., para. 4.

¹⁷¹ S C resolution 820 (1993) of 17 April 1993, para. 12.

¹⁷² Ibid., para. 21.

¹⁷³ Ibid., para. 28.

92. By its resolution 942 (1994), the Council further reinforced the measures imposed by its previous resolutions with regard to those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces.¹⁷⁴ It decided, *inter alia*, that States shall prevent economic activities carried out within their territories which are controlled by any person or any entity in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.¹⁷⁵ It also decided that the provision of services, both financial and non-financial, to any person or body for the purposes of any business carried on in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces shall be prohibited, except for the supply of (a) telecommunications, postal services and legal services consistent with that resolution or earlier relevant resolutions, (b) services whose supply may be necessary for humanitarian or other exceptional purposes, specifically allowed by the Committee established pursuant to resolution 724 (1991) and (c) services authorized by the Government of Bosnia and Herzegovina.¹⁷⁶

93. By the same resolution, the Council also decided that States shall prevent the entry into their territories of, *inter alia*, “the members of the authorities, including legislative authorities, in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces and officers of the Bosnian Serb military and paramilitary forces, and those acting on behalf of such authorities or forces.”¹⁷⁷ The Council also called on States to, on the one hand, prohibit all commercial riverine traffic from entering ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, except when authorized on a case-by-case basis by the Sanctions Committee established under resolution 724 (1991), or by the Government of the Republic of Bosnia and Herzegovina for its territory, or in case of force majeure, and, on the other hand, to tighten controls on the shipment of goods destined for those areas of the Republic of Bosnia and Herzegovina under the control of Serb forces, so as to prevent the diversion of goods to such areas.¹⁷⁸

¹⁷⁴ Those measures were aimed at preventing the economic activities of and links with Bosnian Serb entities found in areas under the control of the Bosnian Serb military.

¹⁷⁵ S C resolution 942 (1994) of 23 September 1994, para. 7(a).

¹⁷⁶ *Ibid.*, para. 13.

¹⁷⁷ *Ibid.*, para. 14 (a).

¹⁷⁸ *Ibid.*, paras. 15-16.

o. Measures taken in connection with the Federal Republic of Yugoslavia, including Kosovo

94. By its resolution 1160 (1998), the Security Council decided that “all States shall, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related *matériel* of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent arming and training for terrorist activities there.”¹⁷⁹

95. By the same resolution, the Security Council also decided to establish a Committee to monitor the implementation of the resolution.¹⁸⁰

96. By resolution 1199 (1998) of 23 September 1998, the Council called for additional measures to maintain or restore peace and stability in the region.¹⁸¹

(iii) *Authorization to use force for the implementation of sanctions*

97. During the period under review, the Security Council authorized the use of force to ensure the implementation of sanctions imposed against Iraq, Yugoslavia, Sierra Leone and Haiti.

98. In the case of Iraq, the Council authorized “those Member States co-operating with the Government of Kuwait ... to use such measures commensurate to the specific circumstances ... 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).”¹⁸²

¹⁷⁹ S C resolution 1160 (1998) of 31 March 1998, para. 8.

¹⁸⁰ *Ibid.*, para. 9.

¹⁸¹ S C resolution 1199 (1998) of 23 September 1998, para. 4.

¹⁸² S C resolution 665 (1990) of 25 August 1990, para. 1.

99. In the case of the former Yugoslavia, the Security Council, by its resolution 787 (1992) called upon States, acting nationally or through regional agencies or arrangements, “to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, and all shipping on the Danube River, in order to inspect and verify their cargoes and destinations.”¹⁸³

100. In the case of Sierra Leone, the Security Council, acting under chapter VIII of the Charter, authorized ECOWAS to ensure strict implementation of the provisions of its resolution 1132 (1997) “relating to the supply of petroleum and petroleum products, and arms and related *matériel* of all types, including, where necessary and in conformity with applicable international standards, by halting inward maritime shipping in order to inspect and verify their cargoes and destinations, and called upon all States to cooperate with ECOWAS in this regard.”¹⁸⁴

101. In the case of Haiti, the Security Council, by its resolution 875 (1993), acting under chapter Chapters VII and VIII of the Charter of the United Nations, called upon Member States, acting nationally or through regional agencies or arrangements, cooperating with the legitimate Government of Haiti, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to ensure strict implementation of the provisions of resolutions 841 (1993) and 873 (1993) relating to the supply of petroleum or petroleum products or arms and related *matériel* of all types, and in particular to halt inward maritime shipping as necessary in order to inspect and verify their cargoes and destinations.”¹⁸⁵

102. As indicated in previous paragraphs, the above mentioned resolutions were adopted under chapter VII and/ or chapter VIII of the United Nations Charter, without explicit references to article 41.

¹⁸³ S C resolution 787 (1992), paras. 12 and 13. The resolution was adopted unanimously at the 3822nd Meeting of the Security Council on 8 October 1997. See S/PV. 3822, p. 17.

¹⁸⁴ S C resolution 1132 (1997), of 8 October 1997, para. 8.

¹⁸⁵ S C resolution 875 (1993) of 16 October 1993, para. 1. The resolution was adopted unanimously at the 3293 rd Meeting of the Security Council on 16 October 1993. See S/PV.3293, p. 15.

103. During the deliberations of the Security Council in connection with the adoption of resolution 664, on 18 August 1990,¹⁸⁶ the representative of Iraq considered that, by arrogating themselves the right to set up a maritime blockade against Iraq to ensure the implementation of resolution 661 (1990), the United States and the United Kingdom attempted to impose a certain interpretation of Article 51 of the Charter of the United Nations. In this regard, during the Council's deliberations relating to the adoption of resolution 665 (1990), held on 25 August 1991, the representative of the United States noted that the naval forces had initially been deployed "at the request of the legitimate Government of Kuwait, in accordance with the inherent right of individual and collective self-defense confirmed in Article 51 of the United Nations Charter and consistent with the Security Council resolution 661 (1990)", considering that the latter resolution "specifically affirms that exercise of that right in response to the Iraqi armed attack on Kuwait". In the view of the representative, resolution 665 (1990) therefore provided "an additional and most welcome basis under United Nations authority for actions to secure compliance with the sanctions mandated by resolution 661 (1990)".¹⁸⁷

104. The representative of France noted that the resolution provided for "appropriate measures" to ensure respect for the embargo, "including the minimum use of force", but stressed that such measures had to be applied only as "a last resort" and that they ought to be "limited to what is strictly necessary." In his view, the resolution could not be understood "as a blanket authorization for the indiscriminate use of force". The representative also underlined that, in each case, the use of coercion would require "notification of the Security Council".¹⁸⁸

105. 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."¹⁸⁹

¹⁸⁶ S/PV. 2937, pp. 42-46. SC resolution 664 (1990) was adopted unanimously.

¹⁸⁷ S/PV. 2938, pp. 26-31. S C resolution 665 (1990) was adopted by 13 votes in favor, none against and two abstentions.

¹⁸⁸ Ibid., p. 32.

¹⁸⁹ Ibid., p. 43.

106. For the representative of the United Kingdom, resolution 665 (1990) “was the result of mounting evidence of breaches of sanctions on a large scale”, considering that there was a “string of tankers carrying Iraqi oil from Iraqi ports outwards from the Persian Gulf”. The representative also reminded the Council that, while it chose “the best course for dealing with such maritime breaches of economic sanctions... there already existed sufficient legal authority to take action under Article 51 of the Charter and the request... received from the Government of Kuwait.”¹⁹⁰

107. The representative of China, while voting in favour of resolution 665 (1990), contended that it was limited to the implementation of resolution 661 (1990) and that the reference to “such measures commensurate to the specific circumstances as may be necessary” did not contain the concept of using force. The representative also recalled that the reference to a “minimum use of force” had been intentionally deleted from the draft resolution. He thus concluded by appealing to the parties concerned to exercise restraint, refrain from using force and seek the peaceful settlement of the crisis through negotiations and dialogue.¹⁹¹

108. The representative of Yemen, who abstained, 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.”¹⁹² The representative of Cuba, who also abstained, expressed the view that Article 41 precluded the use of force to give effect to economic measures imposed by the Council.¹⁹³ Reservations were also expressed by the representative of Colombia, who believed that, by adopting the resolution, the Council was in fact establishing a naval blockade and therefore acting pursuant to Article 42 of the Charter.¹⁹⁴

109. After recalling that the Chinese Government has always actively advocated the settlement of all disputes in international relations through dialogue and negotiation, and opposes the use or

¹⁹⁰ Ibid, p. 48.

¹⁹¹ Ibid., p. 53-55.

¹⁹² Ibid., p. 7.

¹⁹³ Ibid., p. 17.

¹⁹⁴ Ibid., p. 67-70.

threat of use of force, the representative of China noted that his Government was “not in favour of the use of force in any form in the settlement of the conflict in Bosnia and Herzegovina.”¹⁹⁵

(iv) *Suspension and/or termination of sanctions*

110. By its resolution 919 (1994), the Security Council lifted the arms embargo and other restrictions imposed on South Africa by its resolution 418 (1977). By the same resolution, the Council ended all other measures against South Africa contained in subsequent resolutions and dissolved the Committee on the question of South Africa established pursuant to resolution 421 (1977)¹⁹⁶.

111. By its resolution 944 (1994), the Security Council decided to terminate the measures regarding Haiti set out in resolutions 841 (1993), 873 (1993) and 917 (1994), on the day after the return to Haiti of President Jean-Bertrand Aristide.¹⁹⁷ By the same resolution, the Council also decided to dissolve the Committee established under resolution 841 (1993).¹⁹⁸

112. By its resolution 943 (1994), the Security Council suspended certain sanctions on the former Yugoslavia which included, *inter alia*,: all civilian passenger flights to and from Belgrade airport carrying only passengers and personal effects;¹⁹⁹ the provision of goods and services, the participation in sporting events and cultural exchanges²⁰⁰ and re-introduced the ferry service for passengers and personal effects between Bar in the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bari and Italy, for an initial period of 100 days.²⁰¹

113. By its resolution 1021 (1995), the Security Council set out the terms of termination of arms embargo. It specified, in particular, that the embargo on deliveries of weapons and military equipment imposed by resolution 713 (1991) shall be terminated, “beginning from the day the Secretary-General submits to the Council a report stating that the Republic of Bosnia and

¹⁹⁵ Ibid., p. 16.

¹⁹⁶ S C resolution 919 (1994) of 25 May 1994, paras 1 to 3.

¹⁹⁷ S C resolution 944 (1994) of 29 September 1994, para 4.

¹⁹⁸ Ibid., para. 5.

¹⁹⁹ S C resolution 943 (1994) of 23 September 1994, para. 1 (i).

²⁰⁰ Ibid., para. 1 (iii).

²⁰¹ Ibid., para. 1 (ii).

Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia have formally signed the Peace Agreement.”²⁰²

114. By its resolution 1022 (1995), the Security Council decided to suspend indefinitely, subject to certain conditions set out in the same resolution, the measures it had imposed by or reaffirmed in resolutions 757 (1992), 787 (1992), 820 (1993), 942 (1994), 943 (1994), 988 (1995), 992 (1995), 1003 (1995) and 1015 (1995).²⁰³

115. Following the elections held in Bosnia and Herzegovina on 14 September 1996, the Security Council, by its resolution 1074 (1996), terminated with immediate effect, the measures referred to in paragraph 1 of resolution 1022 (1995).²⁰⁴

116. On 5 April 1999 the Secretary-General informed the Council that the condition set forth in resolution 1192 (1998) for the immediate suspension of the measures provided in resolution 748 (1992) and 883 (1993) concerning Libyan Arab Jamahiriya had been met.²⁰⁵ In its Presidential Statement issued on 8 April 1999, the Council recalled that the measures set forth in these resolutions had been suspended as of 5 April 1999,²⁰⁶ through a statement of the President of the Security Council to the press²⁰⁷ and reaffirmed its intention to lift those measures, in conformity with the relevant resolutions, in a subsequent Presidential Statement²⁰⁸ issued after the Secretary-General had reported to the Security Council on compliance by the Libyan Arab Jamahiriya with the remaining provisions of its resolution 731 (1992) and 748 (1992).²⁰⁹

117. As at 31 December 1999, the Security Council had not yet formally lifted the measures against Libyan Arab Jamahiriya.

²⁰² S C resolution 1021 (1995) of 22 November 1995, para. 1.

²⁰³ S C resolution 1022 (1995) of 22 November 1995, para. 1.

²⁰⁴ S C resolution 1074 (1996) of 1 October 1996, para. 2

²⁰⁵ Letter dated 5 April 1999 from the Secretary-General addressed to the President of the Security Council, UN document S/1999/378.

²⁰⁶ S/PRST/1999/10, dated 5 April 1999.

²⁰⁷ SC/6662

²⁰⁸ S/PRST/1999/22, dated 9 July 1999.

²⁰⁹ S/1999/726 of 30 June 1999, *Report of the Secretary-General submitted pursuant to paragraph 16 of Security Council resolution 883 (1993) and paragraph 8 of resolution 1192.*

(v) *Establishment of International Administrative and Judicial Institutions*

118. During the period under review, the Security Council acting under chapter VII of the Charter established a number of international administrative and judicial institutions and defined their mandates and responsibilities.

a. *Establishment of the United Nations Compensation Commission (UNCC)*

119. Pursuant to Security Council's resolution 687 (1991)²¹⁰ and further to the Secretary-General's report of 2 May 1991²¹¹, the Security Council decided, by its resolution 692 (1991)²¹², to establish the UN Compensation Fund and the UN Compensation Commission to pay compensation for losses, damage and injury resulting directly from Iraq's invasion and occupation of Kuwait. The Security Council also decided that the Governing Council of the Commission shall be located at the United Nations Office at Geneva and that the Governing Council may decide to carry out some of its activities elsewhere.²¹³

b. *Establishment of the International Tribunal for the former Yugoslavia*

120. By its resolution 827 (1993),²¹⁴ the Security Council decided "to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the [Secretary-General's] report."²¹⁵

121. During the deliberations held in connection with the adoption of resolution 827 (1993), delegations generally expressed support for the establishment of the Tribunal. Some Council

²¹⁰ S C resolution 687 (1991), para. 18. See also above para. 38.

²¹¹ S/22559, *Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)*.

²¹² S C resolution 692 (1991), para. 3.

²¹³ *Ibid.*

²¹⁴ S C resolution 827 (1993) was unanimously adopted on 25 May 1993.

²¹⁵ *Ibid.*, para. 2.

members expressed the view that the crisis in the former Yugoslavia constituted a threat to international peace and security which justified the Council's decision under Chapter VII to establish the Tribunal.²¹⁶ The representative of the Russian Federation emphasized that his delegation supported the International Tribunal because they saw it as an instrument of justice which was called upon to restore international legality and the faith of the world community in the triumph of justice and reason.²¹⁷

122. The representative of China supported the establishment of the Tribunal because of the particular circumstances in the former Yugoslavia and "the urgency of restoring and maintaining world peace." However, he emphasized that the political position of China should not be construed as the endorsement of the legal approach involved. In the view of the Chinese delegate, international tribunals should in principle be established by concluding a treaty and the Council should, in the future, avoid setting up of tribunals under Chapter VII of the Charter. He concluded that the Tribunal established under chapter VII could only be an *ad hoc* arrangement suited to the special circumstances of the former Yugoslavia and should not constitute any precedent.²¹⁸

c. Establishment of the International Criminal Tribunal for Rwanda

123. By its resolution 955 (1994), the Security Council, having received the request of the government of Rwanda,²¹⁹ decided "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda..."²²⁰

²¹⁶ S/PV. 3217, p. 12 (France); p. 20 (Japan); and p. 23 (Japan).

²¹⁷ Ibid., p. 20.

²¹⁸ Ibid., pp. 33-34.

²¹⁹ S/1994/1115, *Letter dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council.*

²²⁰ S C resolutions 955 (1994) of 8 November 1994, para.1.

124. During the deliberations held in connection with the adoption of resolution 955 (1994), the majority of Council members expressed their support for the establishment of the Tribunal, expressing the view that it demonstrated the international community's determination to bring to justice the offenders of the most heinous crimes, and considering that the Tribunal would contribute to the process of reconciliation in Rwanda.

125. Though Brazil voted in favour of the creation of the Tribunal, it made clear, as stated in the case of the Tribunal for the former Yugoslavia, that it was not convinced that "the competence to establish and/or to exercise an international criminal jurisdiction [was] among the constitutional powers of the Security Council or that the option of resorting to a resolution of the Security Council [was] the most appropriate method for such a purpose" as "the authority of the Security Council [was] not self-constituted. Brazil thus considered that the Council's powers and responsibilities under the Charter should be strictly construed, and cannot be created, recreated or reinterpreted by decisions of the Council itself. Its preferred method for the creation of an international criminal tribunals was thus the conclusion of a convention by the international community clearly setting up the tribunal's jurisdiction and terms of reference.²²¹

126. The representative of China, who had abstained from voting, repeated the position expressed on the occasion of the establishment of International Criminal Tribunal for the former Yugoslavia. China was not "in favour of invoking at will Chapter VII of the Charter to establish an international tribunal through the adoption of a Security Council resolution."²²²

127. The representative of Rwanda, who voted against the resolution, voiced his Government's serious concerns about, *inter alia*, the following issues: (i) the *ratione temporis* competence of the Tribunal underlining that the causes of the genocide and its planning were to be taken into account and that the refusal to consider the pilot projects that preceded the major genocide of April 1994 could not be of any use to Rwanda, because it would not contribute to eradicating the culture of impunity; (ii) the tribunal's composition and structure which, in Rwanda's view, were ineffective, inappropriate given the magnitude of the task awaiting the

²²¹ S/PV.3453, p. 9.

²²² *Ibid.*, p. 11.

staff of the Tribunal and the need for speedy and exemplary action; (iii) the fact that the role of some countries who had been involved in the perpetration of the genocide was being ignored and (iv) the fact that, under the draft Statute, it was proposed that those condemned be imprisoned outside Rwanda and that those countries be given the authority to reach decisions about the detainees, a matter which was for the Tribunal or at least Rwandese people to decide.²²³

128. By its resolution 1244 (1999), the Security Council authorized the Secretary-General, with the assistance of relevant international organizations, to establish “an international civil presence in Kosovo in order to provide an interim administration for Kosovo ... which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.”²²⁴

129. By its resolution 1272 (1999), the Security Council established the United Nations Transitional Administration in East Timor (UNTAET), which was “endowed with overall responsibility for the administration of East Timor” and was “empowered to exercise all legislative and executive authority, including the administration of justice.”²²⁵

(vi) *Draft resolutions that were not put to vote or were not adopted*

130. During the period under review, the Council considered several draft resolutions relating to the South African question which contained explicit references to Article 41, but these resolutions were either not put to vote or were voted on but not adopted. During the consideration of the item from 13 to 15 November 1985, two draft resolutions²²⁶ submitted to the Security Council called upon the Council to act under chapter VII, and specifically, invoke article 41, and to impose on South Africa selective mandatory sanctions. The first draft resolution (S/17631) was not put to vote, while the second draft resolution (S/17633) was voted

²²³ Ibid., p. 15.

²²⁴ S C resolution 1244 (1999), of 10 June 1999, para. 10.

²²⁵ S C resolution 1272 (1999) of 25 October 1999, para. 1.

²²⁶ Both draft resolutions were sponsored by Burkina Faso, Egypt, India, Madagascar, Peru and Trinidad and Tobago. Both draft resolutions called for mandatory sanctions, *inter alia*, (a) economic sanctions; (b) an oil embargo; and (c) an arms embargo.

upon at the 2629th meeting of the Council but was not adopted due the negative votes of two permanent members of the Council.²²⁷

131. During the consideration of the situation in Namibia from 6 to 9 April 1987, a draft resolution²²⁸ was presented to the Council, which called upon the Council to act under Chapter VII, invoking Article 41 and imposing comprehensive mandatory sanctions on South Africa. The draft resolution was put to a vote but not adopted due to the negative votes of two permanent members of the Council.²²⁹

132. In the course of the consideration of the South African question in February 1987, a draft was submitted which called upon the Council to act under Chapter VII, invoking Article 41 and imposing mandatory selective sanctions against South Africa.²³⁰ Following extensive debates, the proposal was put to vote and was not adopted due to negative votes of two permanent members.²³¹

133. The South African question was the subject of further consideration in the month of March 1988, during which a draft resolution was submitted calling upon the Council to act under Chapter VII, invoking article 41 and imposing mandatory sanctions against South Africa.²³² The draft resolution was put to vote at the 2729th meeting of the Council but was not adopted due to negative votes of two permanent members of the Council.²³³

B. In the General Assembly

134. In his report to the fiftieth session of the General Assembly entitled “Supplement to an Agenda for Peace”,²³⁴ the Secretary-General noted that the objectives of sanctions had not

²²⁷ Draft resolution contained in document S/17633 received 12 votes in favour, 2 against and 1 abstention.

²²⁸ Draft resolution S/18785 was sponsored by Argentina, the Congo, Ghana, the United Arab Emirate and Zambia.

²²⁹ Draft resolution S/18785 received 9 votes in favour, 3 against and 3 abstentions.

²³⁰ Draft resolution circulated as UN document S/18705, which was sponsored by Argentine, the Congo, Ghana, the United Arab Emirates and Zimbabwe.

²³¹ The draft resolution received 10 votes to 3, with two abstentions.

²³² Draft resolution S/19585 was sponsored by Algeria, Argentina, Nepal, Senegal and Zimbabwe.

²³³ Draft resolution S/19585 received 10 votes to 2, with three abstentions. S/PV. 2797, p. 20.

²³⁴ S/1995/1-A/50/60 of 25 January 1995.

always been clearly defined. He emphasized that, when the Council decided to impose sanctions, it should define objective criteria for determining that their purpose had been achieved. The Secretary-General called on Member States to consider ways of ensuring that the work of humanitarian agencies was facilitated when sanctions were imposed. He proposed that, when Member States imposed sanctions, provisions should be considered to facilitate the work of humanitarian agencies. It was, therefore, necessary to avoid banning imports that were required by local health industries, and also to allow applications for exemptions for humanitarian supplies, which should be quickly processed.²³⁵

135. The Secretary-General also recalled the proposals contained in his earlier report entitled “An Agenda for Peace”,²³⁶ concerning collateral damage due to sanctions. He noted that, while the heads of the international financial institutions acknowledged the collateral effects of sanctions, they proposed that this should be dealt with under existing mandates for providing aid to affected countries. He thus suggested the establishment of a new mechanism that would carry out the following five functions: assess the potential impact of sanctions on the target country and on third countries; monitor application of the sanctions; measure their effect; ensure the delivery of humanitarian assistance to vulnerable groups; and explore ways of assisting Member States suffering collateral damage.²³⁷

136. After the deliberation of the report of the Secretary-General, the General Assembly in annex II to its resolution 51/242,²³⁸ made several recommendations to Member States and the Security Council concerning the imposition, implementation and lifting of mandatory sanctions. The annex included, *inter alia*, the following recommendations:

²³⁵ Ibid., para. 66-77.

²³⁶ A/47/277-S/24111, 17 June 1992.

²³⁷ S/1995/1-A/50/60 of 25 January 1995, para. 77.

²³⁸ Adopted on 15 September 1996.

“Question of sanctions imposed by the United Nations”

1. An effectively implemented regime of collective Security Council sanctions can operate as a useful international policy tool in the graduated response to threats to international peace and security. As Security Council action under Chapter VII of the Charter of the United Nations, sanctions are a matter of the utmost seriousness and concern. Sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate. The Council should give as thorough consideration as possible to the short-term and long-term effects of sanctions, having due regard to the need for the Council to act speedily in certain cases.

2. Sanctions should be established in strict conformity with the Charter, with clear objectives, provision for regular review and precise conditions for their lifting. The implementation of sanctions must adhere to the terms of the applicable Security Council resolutions. In this context, the Council must act in accordance with Article 24, paragraph 2, of the Charter. At the same time, the Council's ability to act speedily, in the objective interest of maintaining international peace and security, must be recognized.

3. The Security Council has the ability to determine the time-frame of sanctions. This question is of the greatest importance and should be seriously considered in connection with the objective of changing the behavior of the target party while not causing unnecessary suffering to the civilian population. The Council should define the time-frame for sanctions regimes taking these considerations into account.

4. While there is a need to maintain the effectiveness of sanctions imposed in accordance with the Charter, unintended adverse side effects on the civilian

population should be minimized by making the appropriate humanitarian exceptions in the Security Council resolutions. Sanctions regimes must also ensure that appropriate conditions are created for allowing an adequate supply of humanitarian material to reach the civilian population.

5. The purpose of sanctions is to modify the behavior of a party that is threatening international peace and security and not to punish or otherwise exact retribution. Sanctions regimes should be commensurate with these objectives.

6. Clarity should be a goal in the formulation of Security Council resolutions imposing sanctions. The steps required from the target country for the sanctions to be lifted should be precisely defined.

7. Before sanctions are applied, a clear warning could be expressed in unequivocal language to the target country or party.

8. The Security Council could also provide for imposing sanctions that may be partially lifted, in the event the target country or party complies with previously defined requirements imposed by specific resolutions. It could also consider the possibility of introducing a range of sanctions and lifting them progressively as each target is achieved.

...

12. International monitoring by the Security Council or by one of its subsidiary organs of compliance with sanctions measures, in accordance with relevant Security Council resolutions, can contribute to the effectiveness of United Nations sanctions. ...

...

30. The sanctions committees should give priority to handling applications for the supply of humanitarian goods meant for the civilian population. Those applications should be dealt with expeditiously.

31. The sanctions committees should give priority to the humanitarian problems that could arise from the application of sanctions. ...

32. Likewise, when a committee considers that a sanctions enforcement problem has arisen, it should bring the situation to the attention of the Security Council. The committees may suggest changes in specific sanctions regimes to address particular enforcement issues with a view to taking urgent corrective steps.

...”