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ARTICLE 42

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TEXT OF ARTICLE 42

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

I. INTRODUCTORY NOTE

1. Unlike the studies in the Supplements 6-9 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, the General Assembly and the Secretariat concerning Article 42.

II. GENERAL SURVEY

A. In the Security Council

2. During the period under review, the Security Council did not explicitly invoke Article 42 in any of its resolutions. The use of Article 42 presupposes the conclusion of agreements between Member States and the Security Council on the use of Member States' resources under Article 43. No such agreements have been concluded.

3. The Security Council did, however, adopt several resolutions that are relevant to the interpretation of Article 42, when it authorized Member States or groups of Member states to use "all necessary measures,"¹ "all necessary means,"² "necessary action,"³ or "the necessary steps"⁴ to fulfill their mandates under Chapter VII.

¹ Regarding the situation in Iraq, see SC resolution 1511 (2003), para. 13; regarding the situation in Afghanistan, see SC resolution 1386 (2001), para. 3; regarding the situation in Bosnia and Herzegovina, see SC resolutions 1305 (2000), para. 11 and 1575 (2004), para. 14; regarding the situation in the Democratic Republic of the Congo, see SC resolution 1484 (2003), para. 4 and 1671 (2006), para. 8; regarding the situation between Iraq and Kuwait, see SC resolution 1511 (2003), para. 13; regarding the situation in Liberia, see SC resolution 1497 (2003), para. 5; regarding the situation in Chad, the Central African Republic and the subregion, see SC resolution 1778 (2007), para. 6; regarding the question concerning Haiti, see SC resolution 1529 (2004), para. 6; regarding the situation in

4. Such authorizations were given directly to Member States in relation to the situations in Afghanistan,⁵ Iraq-Kuwait,⁶ Liberia,⁷ Haiti,⁸ and Somalia.⁹ Groups of States were also authorized to use necessary measures in relation to the situations in Bosnia and Herzegovina,¹⁰ Côte d'Ivoire,¹¹ the Democratic Republic of the Congo,¹² Somalia,¹³ and Chad, the Central African Republic and the subregion.¹⁴

5. The Council created five United Nations operations that were authorized to use “all necessary measures,” “all necessary means,” “necessary action” or “necessary steps” to fulfill their mandates in relation to the situations in the Democratic Republic of the Congo,¹⁵ East Timor,¹⁶ Burundi,¹⁷ Haiti,¹⁸ and the Sudan.¹⁹ During the period under review, the mandates of

Somalia, see SC resolution 1744 (2007), para. 4.

² Regarding the situation in Cote d'Ivoire, see SC resolutions 1528 (2004), paras. 8 and 16; and 1739 (2007), paras. 5 and 8; regarding the situation in Burundi, see SC resolution 1545 (2004), para. 5; regarding the situation in Somalia, see SC resolution 1816 (2008), para. 7.

³ Regarding the situation in the Democratic Republic of the Congo, see SC resolution 1291 (2000), para. 8; regarding the situation in East Timor, see SC resolution 1410 (2002), para. 6; regarding the situation in Sierra Leone, see SC resolution 1289 (2000), para. 10; regarding the situation in the Middle East, see SC resolution 1701 (2006), para. 12; regarding the situation in the Sudan, see SC resolutions 1590 (2005), para. 16 and 1769 (2007), para. 15.

⁴ Regarding the situation in Cote d'Ivoire, see SC resolution 1464 (2003), para. 9.

⁵ See SC resolution 1386 (2001).

⁶ Authorization for a multinational force under unified command. See SC resolution 1511 (2003).

⁷ Authorization for Member States to create a multinational force. See SC resolution 1497 (2003).

⁸ Authorization for Member States to create a Multinational Interim Force. See SC resolution 1529 (2004).

⁹ Authorization given to designated Member States cooperating with the Transitional Federal Government in the fight against piracy and armed robbery at sea. See SC resolution 1816 (2008).

¹⁰ Authorization for states acting through or in cooperation with the North Atlantic Treaty Organization. See SC resolution 1305 (2000). Additional authorization for states acting through or in cooperation with the European Union. See SC resolution 1575 (2004).

¹¹ Authorization for states acting through or in cooperation with the Economic Community of West African States. See SC resolution 1464 (2003).

¹² Authorization for the European Union force (Eufor) to support the United Nations Organization Mission in the Democratic Republic of the Congo. See SC resolution 1671 (2006).

¹³ Authorization for Member States of the African Union. See SC resolution 1744 (2007).

¹⁴ Authorization for states acting through or in cooperation with the European Union. See SC resolution 1778 (2007).

¹⁵ The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was authorized to take “necessary action” – see SC resolution 1291 (2000), para. 8.

¹⁶ The United Nations Mission of Support in East Timor (UNMISSET) was authorized to take “necessary steps” – see SC resolution 1410 (2002), para. 9.

¹⁷ The United Nations Operation in Burundi was authorized to use “all necessary means” – see SC resolution 1545 (2004), para. 5.

¹⁸ The United Nations Stabilization Mission in Haiti (MINUSTAH) was authorized to use “all necessary measures” – see SC resolution 1542 (2004), para. 6.

¹⁹ The United Nations Mission in Sudan (UNMIS) was authorized to take “necessary action” – see SC resolution 1590 (2005), para. 16.

existing United Nations operations in Sierra Leone²⁰ and Lebanon²¹ were amended to include similar language. Additionally, a joint United Nations and African Union operation was created and authorized to take “necessary action” in relation to the situation in the Sudan.²²

6. Implicit or explicit references to Article 42 were made during thematic Security Council debates on the following topics: the non-proliferation of weapons of mass destruction;²³ the protection of civilians in armed conflict;²⁴ the strengthening of the international rule of law and the maintenance of international peace and security;²⁵ and United Nations peacekeeping operations.²⁶

B. In the General Assembly

7. During the period under review, the General Assembly did not adopt any resolutions referring to Article 42 explicitly or implicitly.

8. The 2005 *World Summit Outcome Document*,²⁷ and a follow-up note,²⁸ provided for taking “collective action” through the Security Council, in accordance with the Charter, including Chapter VII, in the context of protecting populations from genocide, war crimes, ethnic cleansing or crimes against humanity.

²⁰ The United Nations Mission in Sierra Leone (UNAMSIL) was authorized to take “necessary action” - see SC resolution 1289 (2000), para. 10.

²¹ The United Nations Interim Force in Lebanon (UNIFIL) was authorized to take “necessary action” - see SC resolution 1701 (2006), para. 12.

²² The African Union/UN Hybrid operation in Darfur (UNAMID). See SC resolution 1769 (2007), para. 15.

²³ S/PV.4950 and S/PV. 4950 (Resumption 1).

²⁴ S/PV.5100, S/PV.5209, S/PV.5319, S/PV.5476, S/PV.5703, S/PV.5898, S/PV. 6066, S/PV.6066 (Resumption 1), S/PV.6151, S/PV.6216, S/PV.6216 (Resumption 1).

²⁵ S/PV.5474, S/PV.5474 (Resumption 1). A later discussion was held under the shortened title “maintenance of international peace and security.” S/PV. 6108, S/PV. 6108 (Resumption 1).

²⁶ S/PV.4970.

²⁷ GA resolution 60/1, paras. 138-139. See also A/63/958, p. 4.

²⁸ A/63/958, p. 4.

C. In the Secretariat

9. The use of force and collective action were mentioned in three reports of the Secretary-General to the General Assembly in the context of protecting citizens from their State's failure to prevent genocide, war crimes or crimes against humanity.²⁹

III. ANALYTICAL SUMMARY

A. In the Security Council

(i) The Situation in Afghanistan

10. By its resolution 1386 (2001) of 20 December 2001, the Security Council authorized the establishment, for a period of 6 months, of the International Security Assistance Force (ISAF). Member States participating in ISAF were authorized to take "all necessary measures" to "assist in the maintenance of security for Kabul and its surrounding areas."³⁰ ISAF's mandate was subsequently extended several times.³¹

(ii) The Situation in Bosnia And Herzegovina

11. By its resolution 1305 (2000) of 21 June 2000, the Security Council authorized Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), to take "all necessary measures" to fulfil its mandate as determined in the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) annex 1-A.³² It mandated

²⁹ *Report on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility* (2004), see A/59/565 (2004); *In Larger Freedom: Towards Development, Security and Human Rights for All*, see A/59/2005 (2005), para. 126; See also follow up plan of action A/59/2005/Add.3. *Implementing the Responsibility to Protect*, see A/63/677 (2009).

³⁰ The International Security Assistance Force was established and participating Member States were authorized to use "all necessary measures" to fulfill their mandate by SC resolution 1386 (2001), para. 3. The Force's mandate was laid out in the *Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions* (the Bonn Agreement); see S/2001/1154, para. 3.

³¹ SC resolutions 1413 (2002), paras. 1 and 2; 1444 (2002), paras. 1 and 2; 1510 (2003), paras. 3 and 4; 1563 (2004), paras. 1 and 2; 1623 (2005), paras. 1 and 2; 1707 (2006), paras. 1 and 2; 1776 (2007), paras. 1 and 2; 1833 (2008), paras. 1 and 2; and 1890 (2009), paras. 1 and 2.

³² SC resolution 1305 (2000), paras. 10 and 11.

relevant Members States to “take all necessary measures” at the request of the NATO Stabilization Force (SFOR), in its defense, to assist it in carrying out its mission, to ensure compliance with rules and procedures created by the SFOR Commander, and to take command and control of the airspace.³³

12. By its resolution 1575 (2004) of 22 November 2004, the Security Council authorized the Member States acting through or in cooperation with the European Union to establish, for an initial period of twelve months, a multinational stabilization force (EUFOR) as a legal successor to SFOR. EUFOR was authorized to use “all necessary measures to effect the implementation of Annexes 1-A and 2 of the Dayton Agreement, in cooperation with NATO.”³⁴ The mandates of both the EUFOR and the NATO presence were extended several times by subsequent resolutions.³⁵

(iii) The Situation in Côte D’Ivoire

13. By its resolution 1464 (2003) of 4 February 2003, the Security Council authorized Member States participating in the forces of the Economic Community of West African States (ECOWAS), together with the French forces supporting them, to “take the necessary steps to guarantee the security and freedom of movement of their personnel” and to ensure “the protection of civilians immediately threatened with physical violence within their zones of operation.”³⁶ This mandate was renewed once.³⁷

14. By its resolution 1528 (2004) of 27 February 2004, the Security Council established, as of 4 April 2004 and for an initial period of twelve months, the United Nations Operation in Côte d’Ivoire (UNOCI), and authorized it to use “all necessary means” within its capabilities and its areas of deployment to carry out its mandate. The mission’s wide ranging mandate included (i) monitoring of the ceasefire and movements of armed groups; (ii) disarmament, demobilization,

³³ *Ibid*, paras. 12 and 13.

³⁴ SC resolution 1575 (2004), para. 14.

³⁵ SC resolutions 1639 (2005), paras. 10, 11, 14, 15, and 16; 1722 (2006), paras. 10, 11, 14, 15, and 16; 1785 (2007), paras. 10, 11, 14, 15, and 16; 1845 (2008), para. 14; 1895 (2009) paras. 15, 16.

³⁶ SC resolution 1464 (2003), para. 9.

³⁷ SC resolution 1498 (2003), para. 1.

reintegration, repatriation, and resettlement; (iii) protection of United Nations personnel, institutions, and civilians; (iv) support for humanitarian assistance; (v) support for the implementation of the peace process; (vi) assistance in the field of human rights; (vii) public information; and (viii) law and order.³⁸ By the same resolution, the Security Council authorized French forces to use “all necessary means” to support UNOCI.³⁹ This mandate was slightly expanded and renewed several times.⁴⁰

15. By its resolution 1739 (2007) of 10 January 2007, the Security Council modified UNOCI’s mandate to include the identification of the population and the registration of voters. The French forces were further tasked with contributing to the drawing up of a plan on the restructuring of the Defence and Security Forces, and to the preparation of possible seminars on security sector reform, and were re-authorized to use “all necessary means” in achieving their mandate.⁴¹ These mandates were extended six times.⁴²

(iv) The Situation concerning the Democratic Republic of the Congo

16. By its resolution 1291 (2000) of 24 February 2000, the Security Council amended the mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)⁴³ and authorized the Mission to “take the necessary action [...] to protect United Nations and co-located Joint Military Commission personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.”⁴⁴ This mandate was extended by five subsequent resolutions.⁴⁵

³⁸ See SC resolution 1528 (2004), para. 6.

³⁹ *Ibid*, para. 16.

⁴⁰ See SC resolutions 1584 (2005), para. 2; 1594 (2005), para. 1; 1600 (2005), para. 5; 1603 (2005), para. 11; 1652 (2006), para. 1; and 1726 (2006), para. 1.

⁴¹ See SC resolution 1739 (2007), paras. 1, 2, 5 and 8.

⁴² See SC resolutions 1763 (2007), para. 1; 1765 (2007), para. 1; 1795 (2008), para. 4; 1826 (2008), para. 1; 1865 (2009), para. 15; and 1880 (2009), paras. 19 and 30.

⁴³ MONUC was established prior to the period under review, in accordance with SC resolution 1279 (1999), para. 4.

⁴⁴ See SC resolution 1291 (2000), paras. 4, and 8.

⁴⁵ See SC resolutions 1323 (2000), para. 1; 1332 (2000), para. 1; 1355 (2001), para. 29; 1417 (2002), para. 1; and 1489 (2003), para. 1.

17. By its resolution 1484 (2003) of 30 May 2003, the Security Council authorized the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC, and authorized the participating Member States “to take all necessary measures to fulfill its Mandate.”⁴⁶

18. By its resolution 1493 (2003) of 28 July 2003, the Security Council authorized an increase in personnel for MONUC, restated and slightly expanded the Mission’s mandate and reiterated the authorization for the Mission to “take the necessary measures” in fulfilling its duties.⁴⁷ By the same resolution, the Mission was also authorized to “use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu.”⁴⁸ This mandate was slightly modified and renewed in several resolutions.⁴⁹

19. By its resolution 1671 (2006) of 25 April 2006, the Security Council authorized the temporary deployment of a European Union force (Eufor R.D.Congo) to support MONUC during the election period in the Democratic Republic of the Congo. Eufor R.D.Congo was authorized to take “all necessary measures” to: (i) support MONUC in stabilizing the situation, in case the United Nations Mission faced serious difficulties in fulfilling its mandate within its existing capabilities; (ii) contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment and without prejudice to the responsibility of the Government of the Democratic Republic of the Congo; (iii) contribute to airport protection in Kinshasa; (iv) ensure the security and freedom of movement of the personnel as well as the protection of the installations of Eufor R.D. Congo; and (v) execute operations of limited character in order to extract individuals in danger.⁵⁰

20. Resolution 1794 (2007) of 21 December 2007 renewed the mandate of MONUC and expanded it to allow the use of “all necessary means” to support the integrated brigades of the Armed Forces of the Democratic Republic of the Congo with a view to disarming the recalcitrant

⁴⁶ See SC resolution 1484 (2003), paras. 1 and 4.

⁴⁷ See SC resolution 1493 (2003), para. 25.

⁴⁸ *Ibid.*, para. 26.

⁴⁹ See SC resolutions 1533 (2004), para. 3; 1555 (2004), para. 1; 1565 (2004), paras. 1, 4, 5 and 6; and 1592 (2005), paras. 1 and 7.

⁵⁰ See SC resolution 1671 (2006), para. 8.

foreign and Congolese armed groups, in particular the Forces Démocratiques de Libération du Rwanda (FDLR), ex-Rwandan Armed Forces/Interahamwe and the dissident militia of Mr. Laurent Nkunda, in order to ensure their participation in the disarmament, demobilization, repatriation, resettlement and reintegration processes.⁵¹ MONUC's mandate was slightly altered and renewed by three subsequent resolutions.⁵²

(v) The Situation in Timor-Leste

21. By its resolution 1410 (2002) of 17 May 2002, the Council decided to establish, as of 20 May 2002 and for an initial period of 12 months, the United Nations Mission of Support in East Timor (UNMISET), with the following mandate: (a) to provide assistance to core administrative structures critical to the viability and political stability of East Timor; (b) to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in East Timor, the East Timor Police Service; and (c) to contribute to the maintenance of the external and internal security of East Timor.⁵³ UNMISET was authorized to “take necessary actions, for the duration of its mandate, to fulfil its mandate.”⁵⁴ The composition and strength of the military and police components of the Mission were modified once,⁵⁵ and extended once.⁵⁶

(vi) The Situation between Iraq and Kuwait

22. By its resolution 1511 (2003) of 16 October 2003, the Security Council authorized a multinational force under unified command “to take all necessary measures to contribute to the maintenance of security and stability in Iraq,” including for the purpose of (a) ensuring the necessary conditions for the implementation of the timetable and programme for the drafting of a new constitution for Iraq and for the holding of democratic elections and (b) contributing to the security of the United Nations Assistance Mission for Iraq, the Governing Council and other

⁵¹ See SC resolution 1794 (2007), paras. 1 and 5.

⁵² See SC resolutions 1843 (2008) (personnel increase only); 1856 (2008), para. 5; and 1906 (2009), para. 6.

⁵³ See SC resolution 1410 (2002), paras. 1 and 2.

⁵⁴ *Ibid*, para. 6.

⁵⁵ See SC resolution 1473 (2003), para. 1.

⁵⁶ See SC resolution 1480 (2003), para. 1.

institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure.⁵⁷ This mandate was reaffirmed by Security Council resolution 1546 (2004).⁵⁸

23. At its 4625th meeting, on 16 October 2002, the Security Council held an open debate on the situation between Iraq and Kuwait.⁵⁹ The representative of South Africa noted that it would be inconsistent with the spirit and letter of the Charter if the Security Council were to authorize the use of military force against Iraq at a time when Iraq had indicated its willingness to abide by Security Council resolutions.⁶⁰ Similarly, the representative of Tunisia underlined that an “ill-advised” act of force would undermine all the principles of the Charter, including the prohibition of the use of force.⁶¹

24. At its 4721st meeting, on 19 March 2003, the Security Council met at ministerial level to discuss Iraq’s progress on complying with relevant resolutions. For the representative of France, war could only be of last resort, while collective responsibility remained the rule, and the choice before the Security Council was between two visions of the world: one with those who opt to use force and think that they can resolve the world’s complexity through swift preventive action, and one with those who, in contrast, opt for resolute action and a long-term approach, taking into account the manifold crises and their many dimensions, including the cultural and religious ones.⁶² The representative of Germany, echoed by the Russian Federation, stated that, under the existing circumstances, the policy of military intervention was not advisable as there was no basis in the Charter for “regime change by military means.”⁶³ On the contrary, the representative of Spain stated that the legitimate recourse to the use of force to disarm Iraq of its weapons of mass destruction was based on “the logical linking of resolutions 660 (1990), 678 (1990), 687 (1991) and 1441 (2002), adopted pursuant to Chapter VII of the Charter.”⁶⁴ The United States and the United Kingdom did not address the question of the legal basis for the use of force although the United Kingdom expressed the view that “any action which the United Kingdom

⁵⁷ See SC resolution 1511 (2003), para. 13.

⁵⁸ See SC resolution 1546 (2004), paras. 1, 9 and 10.

⁵⁹ See S/PV.4625 and Corr.1.

⁶⁰ *Ibid.*, p. 5.

⁶¹ *Ibid.*, pp. 23-24.

⁶² See S/PV.4721, p. 5 and 6 (France).

⁶³ *Ibid.*, p. 4 (Germany); and p. 8 (Russian Federation).

⁶⁴ *Ibid.*, p. 15.

has to take in this matter will be in accordance with international law and based on relevant resolutions of the Security Council”.

25. At its 4726th meeting, on 26 March 2003, following the commencement of the United States-led military action against Iraq on 20 March 2003, the Security Council continued its discussion on the use of force against Iraq, with a particular focus on the legality of the military action undertaken. Several representatives strongly objected to the use of force by coalition members, as a unilateral action which had failed to receive Security Council authorization.⁶⁵ A number of speakers concurred that the military action was a violation of the Charter, calling it “unilateral action,” an “act of aggression” and a “unilateral attack”.⁶⁶ Others stressed that the “pre-emptive” use of force threatened the foundation of international law.⁶⁷ By contrast, other Member States argued that failure to take action against the Iraqi regime would have been tantamount to tolerating breaches of the law and persistent disregard of the obligations to the United Nations.⁶⁸ The representatives the United Kingdom and of the United States of America stated that the actions of the coalition were in accordance with international law because resolutions 678 (1990), 687(1991) and 1441 (2002) provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region.⁶⁹

(vii) The Situation in Liberia

26. By its resolution 1497 (2003) of 1 August 2003, the Security Council authorized Member States to establish a Multinational Force in Liberia to: (a) support the implementation of the 17 June 2003 ceasefire agreement; (b) help to establish and maintain security in the period after the departure of the President of Liberia and the installation of a successor authority; (c)

⁶⁵ See S/PV.4726, pp. 8-7 (Malaysia, on behalf of the Non-Aligned Movement); pp. 8-9 (League of Arab States); p. 20 (South Africa); p. 22 (Cuba); pp. 31-32 (Viet Nam); pp. 33-34 (Islamic Republic of Iran); and p. 35 (Lebanon); and S/PV.4726 (Resumption 1), pp. 26-28 (Russian Federation); p. 28 (China); and pp. 28-29 (France).

⁶⁶ See S/PV.4726, p. 19 (Indonesia); pp. 21-22 (Cuba); p. 28 (Brazil); p. 32 (Viet Nam); and p. 9 (United Republic of Tanzania).

⁶⁷ *Ibid.*, p. 8 (Malaysia, on behalf of the Non-Aligned Movement); p. 13 (Yemen); and p. 32 (Viet Nam).

⁶⁸ See S/PV.4726, pp. 14-16 (Kuwait); pp. 24-25 (Poland); p. 27 (Australia); pp. 38-39 (Japan); pp. 39-40 (the former Yugoslav Republic of Macedonia); pp. 42-43 (Nicaragua); and pp. 47-48 (Mongolia); S/PV. 4726 ,

⁶⁹ See S/Pv.4726 (Resumption 1), pp. 22-24 (United Kingdom).and pp. 25-26 (United States).

secure the environment for the delivery of humanitarian assistance; and (d) prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force. Participating Member States were authorized to “take all necessary measures” to fulfill this mandate.⁷⁰

(viii) The Situation in Sierra Leone

27. By its resolution 1289 (2000) of 7 February 2000, the Security Council amended the mandate of the United Nations Mission in Sierra Leone (UNAMSIL) and authorized it to “take the necessary action” to ensure the security and freedom of movement of its personnel, as well as to afford protection to civilians under imminent threat of physical violence.⁷¹ This mandate was extended three times.⁷²

(ix) The Situation in Burundi

28. By its resolution 1545 (2004) of 21 May 2004, the Security Council established the United Nations Operation in Burundi (ONUB) and authorized it to use “all necessary means” to fulfill a broad mandate to, in part: ensure respect of ceasefire agreements; carry out disarmament and demobilization activities; monitor the quartering of the Armed Forces of Burundi and their heavy weapons; monitor the illegal flow of arms across the national borders; contribute to the creation of the necessary security conditions for the provision of humanitarian assistance and facilitate the voluntary return of refugees and internally displaced persons; contribute to the successful completion of the electoral process; protect civilians under imminent threat of physical violence; ensure the protection of United Nations personnel, facilities, installations and equipment, as well as the security and freedom of movement of ONUB’s personnel; and to

⁷⁰ See SC resolution 1497 (2003), paras. 1 and 5.

⁷¹ See SC resolution 1289 (2000), para. 10.

⁷² See SC resolutions 1537 (2004), para. 1; 1562 (2004), para. 1; and 1610 (2005), para. 1.

coordinate and conduct, as appropriate, mine action activities in support of its mandate.⁷³ The mandate of ONUB was extended five times.⁷⁴

(x) The Situation in Chad, the Central African Republic and the Subregion

29. By its resolution 1778 (2007) of 25 September 2007, the Security Council authorized the European Union to deploy, for a period of one year, an operation aimed at supporting the United Nations Mission in the Central African Republic and Chad (MINURCAT), and authorized the operation to take “all necessary measures,” within its capabilities and its area of operation in eastern Chad and the northeastern Central African Republic, to fulfil its mandate to: (i) contribute to protecting civilians in danger, particularly refugees and displaced persons; (ii) facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel; and (iii) contribute to protecting United Nations personnel, facilities, installations and equipment and to ensuring the security and freedom of movement of its staff and United Nations and associated personnel.⁷⁵ The mission was authorized by the same resolution to take “all appropriate measures” to achieve an orderly disengagement.⁷⁶

30. Security Council Resolution 1861 (2009) of 14 January 2009 renewed this mandate and further authorized the mission to take “all necessary measures” in the north-eastern Central African Republic, by establishing a permanent military presence in Birao and in liaison with the Government of the Central African Republic, to fulfil the following functions: (i) contribute to the creation of a more secure environment; (ii) execute operations of a limited character in order to extract civilians and humanitarian workers in danger; (iii) protect United Nations personnel, facilities, installations and equipment and to ensure the security and freedom of movement of its staff and United Nations and associated personnel.⁷⁷

⁷³ See SC resolution 1545 (2004), paras. 2, 5, 6 and 7.

⁷⁴ See SC resolutions 1577 (2004), para. 1; 1602 (2005), para. 1; 1641 (2005), para. 1; 1650 (2005), para. 2; and 1692 (2006), para. 1.

⁷⁵ See SC resolution 1778 (2007), para. 6.

⁷⁶ *Ibid.*

⁷⁷ See SC resolution 1861 (2009), para. 7.

(xi) The Situation in Haiti

31. By its resolution 1529 (2004) of 29 February 2004, the Security Council authorized the deployment of the Multinational Interim Force (MIF) in Haiti for a period of “not more than three months.”⁷⁸ By the same resolution, the MIF was authorized to take “all necessary measures” to: (i) contribute to a secure and stable environment in the Haitian capital and elsewhere in the country; (ii) facilitate the provision of humanitarian assistance and the access of international humanitarian workers to the Haitian people in need; (iii) facilitate the provision of international assistance to the Haitian police and the Haitian Coast Guard in order to establish and maintain public safety and law and order and to promote and protect human rights; (iv) support the establishment of conditions for international and regional organizations, including the United Nations and the Organization of American States (OAS), to assist the Haitian people; and (v) coordinate, as needed, with the OAS Special Mission and with the United Nations Special Adviser for Haiti, to prevent further deterioration of the humanitarian situation.⁷⁹

32. By its resolution 1542 (2004) of 30 April 2004, the Security Council established the United Nations Stabilization Mission in Haiti (MINUSTAH), requested that authority be transferred from MIF to MINUSTAH on 1 June 2004, and authorized MIF to continue to operate during a transition period not exceeding thirty days after this date.⁸⁰ By the same resolution, additional tasks in support of the political process and the Transitional Government were added to MINUSTAH’s mandate.⁸¹ MINUSTAH’s mandate was subsequently renewed seven times.⁸²

(xii) The Situation in the Middle East

33. By its resolution 1701 (2006) of 11 August 2006, the Security Council increased the number of personnel of the United Nations Interim Force in Lebanon (UNIFIL) and modified the Force’s mandate. The same resolution authorized UNIFIL to take “all necessary action” to

⁷⁸ See SC resolution 1529 (2004), para. 2

⁷⁹ *Ibid.*, paras. 2, 6.

⁸⁰ See SC resolution 1542 (2004), paras. 1 and 2.

⁸¹ *Ibid.*, para. 7.

⁸² See SC resolutions 1576 (2004), para 1; 1601 (2005), para. 1; 1608 (2005), para. 1; 1658 (2006), para. 1; 1702 (2006), para. 1; 1743 (2007), para. 1; and 1780 (2007), para 1.

ensure that its area of operation was not utilized for hostile activities of any kind, to resist attempts by forceful means to prevent it from discharging its duties, to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, and, without prejudice to the responsibility of the Government of Lebanon, protect civilians under imminent threat of physical violence.⁸³ This mandate was extended twice.⁸⁴

(xiii) The situation in the Sudan

34. By resolution 1590 (2005) of 24 March 2005, the Security Council established the United Nations Mission in Sudan (UNMIS), and authorized it to take the “necessary action” to protect United Nations personnel, facilities, installations, and equipment; to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of the Sudan, to protect civilians under imminent threat of physical violence.⁸⁵ The Mission’s mandate was extended twice.⁸⁶

35. By its resolution 1706 (2006) of 31 August 2006, the Security Council expanded the mandate of UNMIS to support the implementation of the Darfur Peace Agreement of 5 May 2006 and the N’djameña Agreement on Humanitarian Ceasefire on the Conflict in Darfur.⁸⁷ This mandate was extended several times.⁸⁸

36. By its resolution 1769 (2007) of 31 July 2007, the Security Council established the joint African Union/UN Hybrid operation in Darfur (UNAMID) and authorized it to take “necessary action” in support of the early and effective implementation of the Darfur Peace Agreement and

⁸³ See SC resolution 1701 (2006), para. 12.

⁸⁴ See SC resolutions 1773, para. 1 and 1884 (2009), para. 1.

⁸⁵ See SC resolution 1590 (2005), paras. 1 and 16.

⁸⁶ See SC resolutions 1627 (2005), para. 1 and 1663 (2006), para. 1.

⁸⁷ See SC resolution 1706 (2006), paras. 1, 8, 9 and 12.

⁸⁸ See SC resolutions 1709 (2006), para. 1; 1714 (2006), para. 1; 1755 (2007), para. 1; 1784 (2007), para. 1; 1812 (2008), para. 1 and 1870 (2009), para. 1.

any outcome of the negotiations between the parties to the conflict in Darfur.⁸⁹ UNAMID's mandate was renewed twice.⁹⁰

(xiv) The Situation in Somalia

37. By its resolution 1744 (2007) of 20 February 2007, the Security Council authorized Member States of the African Union to establish a mission in Somalia – the African Union Mission in Somalia or “AMISOM”, and empowered it to take “all necessary measures” to carry out its mandate to: (i) support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the political peace process; (ii) provide protection to the transitional federal institutions to help them carry out their functions of government, and security for key infrastructure; (iii) assist with the implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive Somali security forces; (iv) contribute to the creation of the necessary security conditions for the provision of humanitarian assistance; and (v) protect its personnel, facilities, installations, equipment and mission, and ensure the security and freedom of movement of its personnel.⁹¹ The Mission's mandate was renewed five times.⁹²

(xv) Piracy and Armed Robbery at Sea

38. Considerations of piracy and armed robbery at sea were also dealt with in the context of the situation in Somalia. By its resolution 1816 (2008) of 2 June 2008, the Security Council authorized States cooperating with the Transitional Federal Government in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the Transitional Federal Government to the Secretary-General, to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, and to use “all necessary means” to do so in a manner consistent with relevant international

⁸⁹ See SC resolution 1769 (2007), paras. 1, 15.

⁹⁰ See SC resolutions 1828 (2008), para. 1 and 1881 (2009), para. 1.

⁹¹ See SC resolution 1744 (2007), para. 4.

⁹² See SC resolutions 1772 (2007), para.9; 1801 (2008), para. 1; 1831 (2008), para. 1; 1863 (2009), para. 2; and 1872 (2009), para. 16.

law.⁹³ Similar authorizations were reiterated in two subsequent resolutions.⁹⁴ Resolution 1851 (2008) extended the authorization to use “all necessary measures” to suppress piracy in Somalia, including on land, and was extended once.⁹⁵

39. At the 5902nd meeting of the Security Council, on 2 June 2008, the representative of Vietnam reaffirmed that resolution 1816 (2008) should not be interpreted as allowing any action that was contrary to international law, the Charter of the United Nations, or the United Nations Convention on the Law of the Sea.⁹⁶ At its 6046th meeting, on 16 December 2008, following the adoption of resolution 1851 (2008), the representative of Belgium emphasized the exceptional nature of this authorization, stating that the concern to suppress piracy must not undermine certain principles of international law, such as the law of the sea, freedom of navigation, and the sovereignty of States over their territories.⁹⁷ At the 6095th meeting, on 20 March 2009, the representative of Mexico recognized the importance of resolutions 1816 (2008) and 1846 (2008) and emphasized that the powers granted to the Security Council under Chapter VII of the Charter were the legal basis that permitted States to employ, in Somalia’s territorial waters, all necessary measures to counter acts of piracy and armed robbery, in a manner consistent with international law. He considered that the authorizations were not considered precedents in customary international law, in recognition of the exceptional nature of the authorized actions and of the Security Council acting in accordance with Chapter VII of the Charter.⁹⁸

(xvi) Protection of Civilians in Armed Conflict

40. At its 5100th meeting, on 14 December 2004, the representative of Canada recommended that, as specified in the Report of the High-Level Panel on Threats, Challenges and Change,⁹⁹ the Council should adopt basic criteria for the authorization of the use of force in connection with the collective international responsibility to protect.¹⁰⁰ This comment was echoed in later

⁹³ See SC resolution 1816 (2008), para. 7.

⁹⁴ See SC resolutions 1838 (2008), para. 3 and 1846 (2008), para. 10.

⁹⁵ See SC resolution 1851 (2008), para. 6; Extended in SC Resolution 1897 (2009), para. 7.

⁹⁶ See S/PV.5902, p. 4.

⁹⁷ See S/PV.6046, p. 13.

⁹⁸ See S/PV.6095, p. 11.

⁹⁹ See A/59/565.

¹⁰⁰ See S/PV.5100 (Resumption 1), p. 5.

discussions.¹⁰¹ Similarly, at its 6151st meeting, on 26 June 2009, the representative of Mexico suggested that resolutions on the protection of civilians in armed conflict be grounded in the norms and principles of international humanitarian law, which would strengthen and further develop that body of norms and confer greater legitimacy on the decisions and actions of the Security Council.¹⁰² At the 6216th meeting, on 11 November 2009, the representative of Croatia noted that the Security Council had taken an important decision in 1999 to add to the mandate of the peacekeeping operation in Sierra Leone a direct reference to the protection of civilians, including through the use of force. He observed that the introduction of the protection of civilian provisions had become increasingly important in later peacekeeping mandates.¹⁰³

(xvii) Other Discussions of the Security Council

41. At the 4950th meeting of the Security Council, on 22 April 2004, Article 42 was mentioned during an open debate on the non-proliferation of weapons of mass destruction. The representative of Pakistan deemed that the language used in the draft resolution under discussion gave rise to a legitimate fear that the text authorized the “coercive actions” envisaged by Articles 41 and 42 of the Charter.¹⁰⁴ Policy considerations surrounding Security Council authorizations to use force were discussed during the 4970th meeting, on 17 May 2004, during a discussion on United Nations peacekeeping operations.¹⁰⁵ Further, during two debates on the maintenance of international peace and security, some Members of the Security Council voiced their opinions on when force should be authorized. The representative of Switzerland noted that the Council had the responsibility to promote international law, and suggested that the Security Council could adopt a set of principles to guide them in authorizing the use of force, as suggested by the Secretary-General in his report “In Larger Freedom.”¹⁰⁶

¹⁰¹ See S/PV.5209, p. 23 (Canada); S/PV.5209, p. 31 (Norway); S/PV.5476, p. 28 (Canada) and S/PV.5703, p. 29 (Mexico).

¹⁰² See S/PV.6151, p. 10.

¹⁰³ See S/PV.6216, p. 10.

¹⁰⁴ See S/PV.4950, p. 15. The draft resolution was not issued as an official document of the Security Council.

¹⁰⁵ See S/PV.4970, p. 12 (Algeria); p. 16 (Russian Federation); p. 18 (Brazil) and S/PV.4970 (Resumption 1), p. 7 (Bangladesh); p. 17 (Canada) and p. 20 (Argentina).

¹⁰⁶ See S/PV.5474 (Resumption 1), p. 10 and A/59/2005 (2005).

B. In the General Assembly

42. During the period under review, the General Assembly approved the 2005 *World Summit Outcome Document*,¹⁰⁷ which provided for “collective action” to be taken through the Security Council, in accordance with the Charter, including Chapter VII, in the context of protecting populations from genocide, war crimes, ethnic cleansing or crimes against humanity. Paragraph 139 of the resolution reads as follows:

139. “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

C. IN THE SECRETARIAT

43. The Report of the High Level Panel on Threats, Challenges and Change (2004) lists five criteria that the Security Council should consider when deciding to authorize the use of force: the seriousness of the threat; the presence of a proper purpose; whether force is being used as a last resort; whether force is proportional; and the balance of consequences.¹⁰⁸ The Report endorses “the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide

¹⁰⁷ See GA resolution 60/1, para. 139. See also A/63/958, p. 4.

¹⁰⁸ Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (2004), see A/59/565 (2004), para. 207.

and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”¹⁰⁹

44. The Report of the Secretary General *In Larger Freedom: Towards Development, Security and Human Rights for All* also suggests that the Security Council should “come to a common view” on how to consider the five factors from the High Level Panel report when authorizing the use of force.¹¹⁰ It states generally that, while imminent threats are fully covered by Article 51 of the Charter, the Charter gives full authority to the Security Council to authorize military force in relation to latent threats, including preventively, to preserve international peace and security, and considers “genocide, ethnic cleansing and other such crimes against humanity as threats to international peace and security”.¹¹¹

45. The Secretary-General’s 2009 report *Implementing the Responsibility to Protect* outlines potential ways to implement the Responsibility to Protect doctrine as enunciated in paragraphs 138 and 139 of the 2005 World Summit Outcome document. It reiterates that “collective measures could be authorized by the Security Council under Articles 41 or 42 of the Charter” as part of the Responsibility to Protect.¹¹² The report also suggests that Member States may want to “consider the principles, rules and doctrine that should guide the application of coercive force in extreme situations relating to the responsibility to protect.”¹¹³

¹⁰⁹ *Ibid*, para. 203.

¹¹⁰ See A/59/2005 (2005), para. 126.

¹¹¹ *Ibid*, para. 125.

¹¹² See A/63/677 (2009), para. 56.

¹¹³ *Ibid*, para. 62.