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## Article 2 (4)

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## Article 2 (4)

### Text of Article 2 (4)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

...

4. All Members shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

### Introductory note

1. As in the previous *Supplements*,<sup>229</sup> Article 2 (4) requires treatment in a separate study since there were a number of resolutions of the Security Council and of the General Assembly with a bearing on this provision, which were preceded or followed by extensive constitutional discussions.

2. The general survey briefly summarizes all those resolutions of the Security Council and of the General Assembly which referred explicitly or implicitly to the provisions of Article 2 (4).

3. The analytical summary of practice contains a detailed account of a number of resolutions of the Security Council and of the General Assembly, which have a direct bearing on the interpretation and application of Article 2 (4) and were preceded or followed by constitutional discussions. The material in this section is organized under the following four subheadings, including a subheading D which reflects significant new developments that occurred in the practice of the Security Council during the period under consideration:

- A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any State”;
- B. The question of the scope and limits of the phrase “in any other manner inconsistent with the Purposes of the United Nations”;
- C. The question of the bearing of the injunction in Article 2 (4) on the right to self-defence;
- D. The question of the bearing of the injunction in Article 2 (4) on the authorization by the Security Council to use force.

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<sup>229</sup> *Repertory, Supplement No. 2*, vol. I; *Supplement No. 3*, vol. I; *Supplement No. 4*, vol. I; *Supplement No. 5*, vol. I; *Supplement No. 6*, vol. I; and *Supplements Nos. 7, 8 and 9*. All these *Supplements* are available on the *Repertory* website, at [www.un.org/law/repertory/](http://www.un.org/law/repertory/).

## I. General survey

4. During the period under review, no explicit references were made to Article 2 (4) in the resolutions adopted by the Security Council. However, the Security Council did explicitly refer to the Principles of the Charter as set out in Article 2, paragraphs 1 to 7, twice.<sup>230</sup> There was one explicit reference made to Article 2 (4) in the resolutions adopted by the General Assembly.<sup>231</sup>

5. During the same period, a number of resolutions were adopted in which the General Assembly or the Security Council quoted the text of Article 2 (4) in the preambular paragraphs<sup>232</sup> or cited the basic principle enshrined in that provision without referring to it explicitly.<sup>233</sup>

6. During the period under review, both the Security Council and the General Assembly adopted numerous resolutions which contained what might be considered implicit references to Article 2 (4). The Security Council and the General Assembly employed various terms to condemn or express their concern over the “threat or use of force”<sup>234</sup> or, specifically, “aggression”<sup>235</sup> or

“military intervention”,<sup>236</sup> “occupation”<sup>237</sup> and “annexation”<sup>238</sup> of territories.

7. In a number of resolutions adopted by the Security Council and the General Assembly, annexation, occupation, the taking of territories by force and changing their legal status was declared “unlawful”,<sup>239</sup> “illegal”<sup>240</sup> “null and void”,<sup>241</sup> or “without international legal effect”.<sup>242</sup> In several resolutions, the Security Council and the General Assembly called for the cessation of “use or threat of use of force”,<sup>243</sup>

<sup>230</sup> SC resolutions 1353 (2001), preamble and 1296 (2000), preamble.

<sup>231</sup> GA resolution 58/188, para. 2.

<sup>232</sup> GA resolutions 63/39, preamble; 55/132, preamble; 56/4, preamble; and 55/209, preamble, and S C resolutions 1785 (2007), preamble and 1756 (2007).

<sup>233</sup> GA resolutions 63/128, preamble 64/68; 63/189; 63/164; 62/145; 62/19; 61/101; 61/160; 61/151; 60/288; 60/53; 60/94; 59/193; 59/178; 58/70; 58/317; 58/192; 58/35; 57/213; 57/99; 57/56; 56/232; 56/151; 56/18; 55/86 and 54/151.

<sup>234</sup> SC resolutions 1827 (2008); 1711 (2006); 1653 (2006); 1649 (2005), preamble; 1640 (2005); 1531 (2004) and 1291 (2000), preamble. G A resolutions 62/70, preamble; 62/166, para. 2; 60/1, para. 5; 59/314, para. 5; ES-10/15, preamble; 58/189, preamble; 58/192, preamble; 58/189, para. 6; 58/188, para. 2; 58/161, preamble; 56/154, para. 7; 55/85, preamble; and 55/38, para. 2.

<sup>235</sup> GA resolutions 63/163, preamble, 59/180, preamble and 60/145, para. 5; 63/44, preamble; 62/27, preamble; 62/126, para. 8; 58/316, para. 4; 58/161, preamble and para. 2; 58/162, para. 2; and 58/189, para. 6.

<sup>236</sup> GA resolutions 63/163, preamble; 62/144, preamble; 61/150, preamble; 60/145, preamble; 59/180, preamble; 58/161, preamble and para. 2; 57/197, preamble; 56/141, preamble and 55/85, preamble.

<sup>237</sup> GA resolutions 64/68, para. 2; 63/95, para. 5; 63/86, para. 2; 62/58, para. 2; 59/180, para. 3; 59/123, para. 3; 58/229, preamble; 58/161, preamble and paras. 2, 3 and 5; 58/96, preamble; 58/70, para. 2; 57/337, preamble; 57/128, preamble; 56/63, preamble; and 55/134, preamble; and S C resolutions 1637 (2005), preamble; and 1546 (2004), preamble.

<sup>238</sup> GA resolutions 63/97, preamble; 63/99, preamble; 63/31, para. 4; 63/29, para. 14; 62/83, para. 13; 62/108, preamble; 61/120, preamble; 61/27, para. 4; 61/25, para. 11; 61/118, preamble; 60/40, para. 4; 60/108, preamble; 60/106, preamble; 58/100, preamble; 58/98, preamble; 57/128, preamble; 56/63, preamble; and 55/134, preamble.

<sup>239</sup> GA resolutions 63/95, para. 4, 62/106, para. 4 and 61/116; 63/98, preamble; 62/109, preamble; and 59/290, preamble.

<sup>240</sup> GA resolutions 63/98, para. 1; 62/109, para. 1; 61/119, para. 1; 61/25, preamble; 60/107, para. 1; 60/39, preamble; 59/125, preamble; 59/33, preamble; 59/32, para. 1; 59/31, preamble; 58/98, preamble; 58/21, preamble; 56/63, preamble; and 56/36, preamble.

<sup>241</sup> GA resolutions 63/31, para. 2; 63/30, preamble; 63/99, para. 1; 62/84, preamble; 62/110, preamble; 62/85, para. 2; 61/120, para. 1; 61/26, preamble; 61/27, para. 2; 60/108, paras. 1 and 3; 60/41, preamble; 60/40, para. 2; 59/125, preamble; 59/32, para. 1; 58/100, para. 1; 57/128, preamble; 56/63, preamble; and 55/134, preamble.

<sup>242</sup> GA resolutions 63/99, para. 1; 62/110, para. 1; 61/120, para. 1; 60/108, para. 1; 58/100, para. 1; 57/128, preamble; 56/63, preamble; and 55/134, preamble.

<sup>243</sup> SC resolutions 1827 (2008), para. 2; 1798 (2008), para. 2; 1767 (2007), para. 3; 1741 (2007), para. 6; 1640 (2005), para. 2; 1721 (2006), para. 26; and 1653 (2006), para. 11.

“hostilities”,<sup>244</sup> “aggression”,<sup>245</sup> “military intervention”,<sup>246</sup> “occupation”<sup>247</sup> and “annexation”.<sup>248</sup>

8. The Security Council and the General Assembly called for a ceasefire<sup>249</sup> or withdrawal<sup>250</sup> of troops from foreign territories in a number of resolutions.

9. In a number of resolutions, the Security Council and General Assembly affirmed the principles of territorial integrity and political independence of States or deplored their violation and sought full respect for those principles.<sup>251</sup> Numerous resolutions adopted by the Council and the Assembly reaffirmed the inadmissibility of the acquisition of territory by force and the inviolability of international borders.<sup>252</sup>

10. The General Assembly recalled in numerous resolutions the obligation of all States to observe the provisions of the Charter of the United Nations regarding the use or threat of use of force in their international relations, including in their space activities. The General Assembly recognized the common interest of all mankind in the exploration and use of outer space for peaceful purposes but affirmed that no action should be taken that would lead to the weaponization of outer space.<sup>253</sup>

11. Most of the resolutions of the Security Council and of the General Assembly which contain explicit or implicit references to Article 2 (4), as listed above, did not give rise to a constitutional discussion regarding its interpretation and/or application. In contrast, those which were preceded or followed by constitutional discussions are covered in the analytical summary.

12. During the period under review, the International Court of Justice rendered an advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in which it referred to Article 2 (4). Also during the same period, the International Court of Justice delivered a judgment in the *Oil platforms* case between the Islamic Republic of Iran and the United States, in which issues relating to the use of force and the exercise of self-defence were addressed.<sup>254</sup> The International Court of Justice also delivered a judgment in the *Case Concerning Armed Activities on the Territory of the Congo* between the Democratic Republic of the Congo and Uganda, in which issues relating to the prohibition of the use of force, including the question of aggression, were

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<sup>244</sup> SC resolutions 1856 (2008), preamble; 1798 (2008), preamble; 1767 (2007), preamble; 1741 (2007), preamble; 1710 (2006); and 1640 (2005).

<sup>245</sup> GA resolutions 62/27, preamble; 61/62, preamble; and 62/184, para. 2.

<sup>246</sup> GA resolutions 63/163, preamble; 62/144, preamble; 61/150, preamble; 61/145, preamble; 59/180, para. 3; and 58/161, preamble and para. 3.

<sup>247</sup> GA resolutions 64/68, para. 2; 63/95, para. 5; 63/86, para. 2; 62/58, para. 2; 59/180, para. 3; 58/161, preamble and para. 3; 57/128, preamble; 56/63, preamble; and 55/134, preamble.

<sup>248</sup> GA resolutions 63/29, para. 12; 62/83, para. 13; and 61/25, para. 11.

<sup>249</sup> SC resolutions 1856 (2008), para. 17; 1706 (2006), para. 11; 1602 (2005), preamble; 1583 (2005), para. 8; 1345 (2001), para. 4; 1304 (2000), para. 1; 1298 (2000), para. 2; and 1297 (2000), para. 1.

<sup>250</sup> SC resolutions 1332 (2000), para. 10; 1304 (2000), para. 3; 1298 (2000), para. 3; and 1291 (2000), preamble.

<sup>251</sup> GA resolutions 63/86, para. 2; 63/39, preamble; 63/189, preamble; 63/164, para. 4; 62/166, para. 2; 62/163, preamble; 61/160, preamble; 59/193, preamble; 60/288, preamble; 59/204, para. 2; 59/178, para. 5; and 58/192, preamble; and S C resolutions 1856 (2008), preamble; 1756 (2007), preamble; 1711 (2006), preamble; 1653 (2006), preamble; 1649 (2005), preamble; 1592 (2005), preamble; 1565 (2004), preamble; 1493 (2003), preamble; 1376 (2001), preamble; 1332 (2000), preamble; 1655 (2006), para. 2; 1614 (2005), para. 3; and 1583 (2005), para. 3.

<sup>252</sup> GA resolutions 64/68, para. 2; 63/98, preamble; 63/97, preamble; 63/201, preamble; 63/31, preamble; 63/86, para. 2; 63/29, preamble; 62/83, preamble; 62/108, preamble; 62/58, para. 2; 62/110, preamble; 62/109, preamble; 62/85, preamble; 62/181, preamble; 61/120, preamble; 61/27, preamble; 61/25, preamble; 61/101, para. 2; 61/118, preamble; 61/184, preamble; 61/119, preamble; 60/40, preamble; 60/183, preamble; 60/106, preamble; 60/107, preamble; 60/39, preamble; 60/94,

para. 2; 60/108, preamble; 59/251, preamble; 59/125, preamble; 59/33, preamble; 59/31, preamble; 58/292, preamble; 58/229, preamble; 58/100, preamble; 58/99, preamble; 58/98, preamble; 58/70, para. 2; 58/23, preamble; 58/21, preamble; 57/337, para. 10; 57/128, preamble; 56/63, preamble; 56/36, preamble; 56/29, para. 2; 56/18, para. 2; 55/209, preamble; 55/134, preamble; 55/133, preamble; 55/132, preamble; and 55/38, para. 2.

<sup>253</sup> GA resolutions 63/90, preamble; 63/40, preamble; 62/217, preamble; 62/20, preamble; 61/58, preamble; 60/99, preamble; 60/54, preamble; 59/65, preamble; 58/89, preamble; 58/51, preamble; 58/36, preamble; 57/216, para. 7; 56/23, preamble; and 55/32, preamble.

<sup>254</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 161.

addressed.<sup>255</sup> These developments are briefly summarized in the following paragraphs.

13. During the period under review, the High-level Panel on Threats, Challenges and Change, established by the Secretary-General, prepared a report entitled “A more secure world: our shared responsibility”.<sup>256</sup> The report stated that there were only two exceptions to the prohibition under Article 2(4), i.e. self-defence under Article 51 and military measures authorized by the

Security Council under chapter VII. In particular, the report discussed the question of whether a Member State was entitled to exercise self-defence against a threat that was not imminent and argued that, if there was enough evidence to take pre-emptive action without an imminent threat, the Member State should request the authorization of the Security Council before taking any action.<sup>257</sup>

<sup>255</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168.

<sup>256</sup> A/59/565.

<sup>257</sup> Ibid., paras. 189-191.

## II. Analytical summary of practice

### A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any State”

14. Article 2 (4) was referred to in the Security Council in connection with questions that involved allegations of the threat or use of force against the territorial integrity or political independence of a State. It was also invoked in the General Assembly in connection with the legality of the threat or use of nuclear weapons. In the course of the discussion of those issues, questions arose concerning the interpretation and application of the principle enunciated in Article 2 (4). The following situations entailed such relevant constitutional discussion in the Security Council:

(a) In connection with several letters from the Permanent Representatives of Georgia<sup>258</sup> and the Russian Federation<sup>259</sup> addressed to the Secretary-General and the President of the Security Council, the Security Council discussed whether the military conflict between the Russian Federation and Georgia, in the Abkhazia and South Ossetia regions, constituted an act of aggression by the Russian Federation or a legitimate operation to protect the civilians in the area;

(b) In connection with the letters dated 24 March 2003 from the Permanent Representative of Iraq<sup>260</sup> and the letter dated 20 March 2003 from the Permanent Representative of the United States of America,<sup>261</sup> the question under discussion was whether the use of force against Iraq by American and other coalition forces was an act of aggression or was a lawful intervention authorized by the Security Council;

(c) In response to a report by the Secretary-General dated 17 January 2000,<sup>262</sup> a discussion took place as to whether the military incursions into the Democratic Republic of the Congo by the armies of Rwanda, Uganda and Burundi constituted an act of aggression in violation of Article 2 (4) or a legitimate response to the ongoing threat of terrorist activities originating from the territory of the Democratic Republic of the Congo.

#### 1. In the Security Council

(a) *Decisions of the Security Council regarding the situation in Georgia*

(i) *Précis of proceedings*

15. During the period under consideration, the Permanent Representative of Georgia, in several letters addressed to the President of the Security Council, complained that the Russian Federation had supported

<sup>258</sup> S/2008/544; S/2008/497; S/2008/464; S/2008/453; S/2008/257; S/2008/234; S/2008/197; and S/2007/535.

<sup>259</sup> S/2009/413; and S/2008/545.

<sup>260</sup> S/2003/362.

<sup>261</sup> S/2003/351.

<sup>262</sup> S/2000/30.

the separatist forces in the territory of Georgia<sup>263</sup> and that the armed forces of the Russian Federation had entered the territory of Georgia and bombed certain regions, thus acting against the territorial integrity of Georgia and committing an act of aggression, which had caused Georgia to take necessary and proportionate measures of self-defence to stop an armed attack in the respective regions.<sup>264</sup> The Permanent Representative of Georgia stated explicitly that the actions taken by the Russian Federation constituted a violation of Article 2(4),<sup>265</sup> and requested the withdrawal of the Russian troops from the territory of Georgia.<sup>266</sup> The Permanent Representative of the Russian Federation, addressing the President of the Security Council, stated that Georgian forces had launched a military operation in South Ossetia on 7 August 2008 and that the subsequent Russian attacks were legitimate acts of self-defence.<sup>267</sup> Later, the Chargé d'affaires a.i. of the Permanent Mission of the Russian Federation addressed the Security Council to state that the presence of Russian troops in the respective regions was legitimate and aimed at ensuring "reliable security" in those areas.<sup>268</sup>

16. In the period under consideration, the Security Council adopted several resolutions on the Georgia-Akhazian conflict in which the Council:

- Reaffirmed the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders.<sup>269</sup>
- Urged all parties to consider and seriously address each other's legitimate security concerns, to refrain from any acts of violence or provocation, including political action or rhetoric,

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<sup>263</sup> Letter dated 9 August 2008 (S/2008/544) and letter dated 7 September 2007 (S/2007/535).

<sup>264</sup> Letter dated 9 August 2008 (S/2008/544); letter dated 25 July 2008 (S/2008/497) and letter dated 10 July 2008 (S/2008/464).

<sup>265</sup> Letter dated 10 July 2008 (S/2008/464).

<sup>266</sup> Letter dated 20 August 2008 (S/2008/573).

<sup>267</sup> Letter dated 11 August 2008 (S/2008/545).

<sup>268</sup> Letter dated 7 August 2009 (S/2009/413).

<sup>269</sup> SC resolutions 1808 (2008), para. 1; 1781 (2007), para. 1; 1752 (2007), para. 1; 1716 (2006), para. 1; and 1666 (2006), para. 1.

to comply fully with previous agreements regarding ceasefire and non-use of violence.<sup>270</sup>

- Called on both sides to finalize without delay the document on the non-use of violence and the document on the return of refugees and internally displaced persons.<sup>271</sup>

17. In 2009, the Security Council adopted resolution 1866 (2009), in which it, inter alia:

- Underlined the need to refrain from the use of force or from any act of ethnic discrimination against persons, groups of persons or institutions, and to ensure, without distinction, the security of persons, the right of persons to freedom of movement and the protection of the property of refugees and displaced persons.
- Called for the provisions that were set out in paragraph 2 (a) of the Agreement on a Ceasefire and Separation of Forces signed in Moscow on 14 May 1994<sup>272</sup> to be respected, pending consultations and agreement on a revised security regime, taking note of the recommendations on the security regime contained in the report of the Secretary-General of 4 February 2009.

(ii) *Précis of relevant constitutional discussion*

18. During the discussions of this question in the Security Council, there were divergences of views concerning the conflict. However, the majority took the view that the territorial integrity and sovereignty of Georgia should be respected, that the troops of the Russian Federation should be pulled back and that the parties should negotiate a ceasefire.<sup>273</sup>

(b) *Decisions of the Security Council regarding the situation in Iraq*

(i) *Précis of proceedings*

19. The Permanent Representative of Iraq addressed the President of the Security Council and requested the convening of an urgent session of the Security Council

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<sup>270</sup> SC resolutions 1808 (2008), para. 6; and 1781 (2007), para. 6.

<sup>271</sup> SC resolutions 1808 (2008), para. 7; and 1781 (2007), para. 7.

<sup>272</sup> S/1994/583.

<sup>273</sup> S/PV.5951 (2008), p. 5; S/PV.5961 (2008), p. 7; S/PV.5952 (2008), pp. 5-9; and S/PV.5953 (2008), pp. 9-12.

regarding “halting the American-British aggression and the immediate withdrawal of the invading forces outside the international boundaries of the Republic of Iraq and reconfirming Iraq’s sovereignty, political independence and territorial integrity”.<sup>274</sup> In connection with this letter and the letter dated 24 March 2003 from the Permanent Representative of Malaysia to the President of the Security Council, requesting the convening of an urgent meeting to discuss the “situation between Iraq and Kuwait”,<sup>275</sup> the Security Council convened the 4726th meeting.

20. During the period under consideration, the Security Council adopted several resolutions on the situation in Iraq in which it, inter alia:

- Reaffirmed the commitment of all Member States to the sovereignty and territorial integrity of Iraq.<sup>276</sup>
- Reaffirmed the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq.<sup>277</sup>
- Determined that the situation in Iraq, although improved, continued to constitute a threat to international peace and security.<sup>278</sup>

21. In 2002, the Security Council adopted resolution 1441,<sup>279</sup> in which it, inter alia:

- Recalled that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area.<sup>280</sup>

<sup>274</sup> Letter dated 24 March 2003 (S/2003/362).

<sup>275</sup> S/2003/363.

<sup>276</sup> SC resolutions 1302 (2000), preamble; 1330 (2000), preamble; 1352 (2001), preamble; 1382 (2001), preamble; 1409 (2002), preamble; 1441 (2002), preamble; 1447 (2002), preamble; 1472 (2003), preamble; 1483 (2003), preamble; 1511 (2003), preamble; 1738 (2006), preamble; 1770 (2007), preamble; 1790 (2007), preamble; and 1883 (2009), preamble.

<sup>277</sup> SC resolution 1483 (2003), preamble.

<sup>278</sup> SC resolution 1511 (2003), preamble.

<sup>279</sup> SC resolution 1441 (2002).

<sup>280</sup> Ibid., preamble.

- Decided that Iraq had been and remained in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq’s failure to cooperate with United Nations inspectors and the International Atomic Energy Agency, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991).<sup>281</sup>
- Decided, while acknowledging that Iraq was in material breach of its obligations under relevant resolutions, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decided to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council.<sup>282</sup>
- Requested the Secretary-General immediately to notify Iraq of this resolution, which was binding on Iraq; demanded that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demanded further that Iraq cooperate immediately, unconditionally and actively with the United Nations Monitoring, Verification and Inspection Commission and the International Atomic Energy Agency.<sup>283</sup>
- Recalled, in that context, that the Council had repeatedly warned Iraq that it would face serious consequences as a result of its continued violations of its obligations.<sup>284</sup>

22. At its 4987th meeting, held on 8 June 2004, the Security Council, by resolution 1546 (2004), welcomed the fact that the occupation of Iraq would end on 30 June 2004. The Council further endorsed “the formation of a sovereign Interim Government of Iraq ... which will assume full responsibility and authority by 30 June 2004 for governing Iraq”.

(ii) *Précis of relevant constitutional discussion*

23. During the period under review, the discussions in the Security Council mainly focused on whether the

<sup>281</sup> Ibid., para. 1.

<sup>282</sup> Ibid., para. 2.

<sup>283</sup> Ibid., para. 9.

<sup>284</sup> Ibid., para. 13.

Council had authorized, by resolution 1441 (2002), the military operation of American and British forces against Iraq. One side argued that the military action against Iraq was not authorized by the Security Council and constituted a violation of international law,<sup>285</sup> while the other side was of the opinion that the military action had been authorized by that resolution.<sup>286</sup> The details of these discussions are discussed below in section D, paragraphs 52 to 54.

*(c) Decisions of the Security Council concerning the situation in the Democratic Republic of the Congo*

*(i) Précis of proceedings*

24. At the 4092nd meeting of the Security Council, on 24 January 2000, the Secretary-General, in his briefing, stressed as a top priority the need for an understanding of the limits of the use of force.<sup>287</sup> The President of the Democratic Republic of the Congo expressed his hope that the Council would be able to achieve agreement to “end the occupation” of a part of his country’s national territory by the “occupying armies of Rwanda, Uganda and Burundi,” in conformity with resolution 1234 (1999). He further recalled that Articles 2(3) and (4) of the Charter require Members to settle their international disputes by peaceful means and call on them to refrain from the threat or use of force against the territorial integrity or political independence of any State.<sup>288</sup>

25. The President of Uganda, for his part, argued that his country and the other neighbouring countries of the Democratic Republic of the Congo had legitimate security concerns. He requested that the Council be cognizant of the “terrorist role” played by the Sudan, sometimes using the territory of the Democratic Republic of the Congo to destabilize the neighbouring countries.<sup>289</sup>

26. The Security Council kept the situation in the Great Lakes region under constant review during the period under consideration and adopted several resolutions on the question. A number of the resolutions of the Security Council contained, inter

alia, elements with a bearing on Article 2 (4) along the following lines. The Council:

- Recalled its strong support for the Lusaka Ceasefire Agreement (S/1999/815), insisting that all parties honour their obligations under that Agreement.<sup>290</sup>
- Reaffirmed the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo and of all States in the region.<sup>291</sup>
- Reaffirmed the obligation of all States to refrain from the use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.<sup>292</sup>
- Reiterated its unreserved condemnation of the fighting between Ugandan and Rwandan forces in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo and demanded that these forces and those allied to them desist from further fighting.<sup>293</sup>
- Demanded that Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay.<sup>294</sup>
- Demanded that all Governments in the Great Lakes region immediately cease military and financial support to all the parties engaged in armed conflict in the region.<sup>295</sup>

*(ii) Précis of relevant constitutional discussion*

27. During the discussion of this question in the Security Council, one side viewed the armed hostilities in the region as a result of acts of aggression committed by Rwanda, Burundi and Uganda against the Democratic Republic of the Congo. The other side

<sup>285</sup> S/PV.4726, pp. 7, 9, 12, 15, 26 and 32; and S/PV.4726 (Resumption 1), pp. 26-28.

<sup>286</sup> S/PV.4726, pp. 13, 23-26, 35 and 38; and S/PV.4726 (Resumption 1), p. 29.

<sup>287</sup> S/PV.4092, p. 5.

<sup>288</sup> Ibid., p. 12.

<sup>289</sup> Ibid., pp. 19-22.

<sup>290</sup> SC resolutions 1291 (2000), preamble; and 1304 (2000), preamble.

<sup>291</sup> SC resolutions 1304 (2000), preamble; 1355 (2001), preamble; and 1457 (2003), preamble.

<sup>292</sup> SC resolution 1304 (2000), preamble.

<sup>293</sup> SC resolution 1304 (2000), para. 2.

<sup>294</sup> SC resolutions 1304 (2000), para. 4; and 1332 (2000), para. 10.

<sup>295</sup> SC resolution 1468 (2003), para. 11.



stated that the crisis was a consequence of the presence of sizeable armed elements in the Democratic Republic of the Congo, who launched attacks on Rwanda and Uganda from the territory of the Democratic Republic of the Congo. Uganda stated that it had acted in self-defence by recapturing its territory and following the armed elements into the territory of the Democratic Republic of the Congo. The issue, according to Uganda, was not the territorial integrity of the Democratic Republic of the Congo, but the territorial integrity of all the countries in Africa.<sup>296</sup>

## 2. In the General Assembly

### (a) Resolutions concerning the use or threat of use of nuclear weapons

28. In a follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat of Use of Nuclear Weapons*,<sup>297</sup> the General Assembly repeatedly underlined the unanimous conclusion of the Court that there existed an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective control. The General Assembly strongly urged States “to commence negotiations on an international convention or legally binding instrument prohibiting the use or threat of use of nuclear weapons under any circumstances”.<sup>298</sup>

29. The General Assembly adopted successive resolutions reaffirming that any use or threat of use of nuclear weapons would constitute a violation of the Charter of the United Nations.<sup>299</sup> At the same time, the General Assembly remained cognizant of the need to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.<sup>300</sup>

<sup>296</sup> S/PV.4092, pp. 19-22.

<sup>297</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 226.

<sup>298</sup> GA resolutions 59/102 and 58/64, preamble and para. 1; 59/64, preamble; 58/35, preamble; 56/22, preamble; 55/31, preamble; 56/24 R; and 55/33 N, preamble.

<sup>299</sup> GA resolutions 59/102, preamble; 58/64, preamble; 58/56, preamble; 58/47, preamble; 56/24, preamble; 55/33, preamble; and 55/34, preamble.

<sup>300</sup> GA resolutions 59/64, preamble; 58/35, preamble; 56/22, preamble; 55/31, preamble; and 55/33, preamble.

### (b) Resolution of the General Assembly concerning “the occupied territories of Azerbaijan”

#### (i) Précis of proceedings

30. On 25 April 2008, the General Assembly adopted, under agenda item 20, resolution 62/243, entitled “The occupied territories of Azerbaijan”, by which it, inter alia:

- Reaffirmed continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders.<sup>301</sup>
- Demanded the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan.<sup>302</sup>
- Reaffirmed that no State should recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.<sup>303</sup>

#### (ii) Précis of relevant constitutional discussion

31. During the period under consideration, the Permanent Representative of Azerbaijan, in several letters addressed to the Secretary-General, complained that Armenian forces had attacked and occupied Azerbaijani districts, stated that Azerbaijan was expecting that Member States would convince Armenia to cease its destructive policies and negotiate in good faith to solve the conflict and called on the Security Council “to recognize the aggression against the Republic of Azerbaijan” and to take the necessary steps under Chapter VII. In a letter dated 26 December 2008 addressed to the Secretary-General, the representative of Azerbaijan expressly referred to Article 2 (4) and to the principle of self-determination, and stated that “Azerbaijan ha[d] not consented to the removal of Nagorny-Karabakh from within its own internationally recognized territorial boundaries”, and that the actions of Armenia constituted a violation of the territorial integrity of States and of the rule prohibiting the use of force.<sup>304</sup>

<sup>301</sup> Para. 1.

<sup>302</sup> Para. 2.

<sup>303</sup> Para. 5.

<sup>304</sup> A/63/664-S/2008/82.

### 3. In the International Court of Justice

32. On 9 July 2004, the International Court of Justice delivered an advisory opinion regarding the legal consequences arising from the construction of a wall by Israel in the Occupied Palestinian Territory, in response to a request made in resolution ES-10/14, adopted by the General Assembly on 8 December 2003 at its tenth emergency special session. In its advisory opinion, the Court made an explicit reference to Article 2 (4) of the Charter and stated the illegality of any territorial acquisition by threat or use of force.<sup>305</sup> The Court noted that Article 51 of the Charter recognized the existence of an inherent right of self-defence in the case of an armed attack by one State against another State. In this regard, the Court observed that Israel had not claimed that the attacks against it were imputable to a foreign State, and that the “threat which Israel had regarded as justifying the construction of the wall originated within, and not outside [the Occupied Palestinian Territory]”. Thus, the Court held that Article 51 of the Charter had no relevance in this case,<sup>306</sup> and concluded that both the wall and the associated regime that had been imposed on the Palestinian inhabitants were contrary to international law.<sup>307</sup>

33. On 23 June 1999, the Democratic Republic of the Congo filed in the registry of the International Court of Justice an application for the initiation of proceedings against Uganda regarding the dispute concerning “acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity”.<sup>308</sup> The Democratic Republic of the Congo requested the Court to declare that Uganda, by engaging in military activities against the Democratic Republic of the Congo and occupying its territory, had violated the principle of non-use of force in international relations, including the prohibition of aggression.<sup>309</sup> Having

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<sup>305</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 87.

<sup>306</sup> *Ibid.*, para. 139.

<sup>307</sup> *Ibid.*, para. 142.

<sup>308</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 175, para. 1 (emphasis in original).

<sup>309</sup> *Ibid.*, para. 24.

considered the treaties between the two States, the Court concluded that those treaties did not constitute consent by the Democratic Republic of the Congo to the presence of Ugandan troops on its territory and held that Uganda had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo. The Court further considered that the unlawful military intervention by Uganda was a violation of the prohibition on the use of force enunciated in Article 2 (4) of the Charter.<sup>310</sup>

34. On 28 May 2002, the Government of the Democratic Republic of the Congo filed an application in the registry of the International Court of Justice for the initiation of proceedings against Rwanda in respect of a dispute concerning “massive, serious and flagrant violations of human rights and of international humanitarian law”, in which it stated that the flagrant and serious violations of human rights and of international humanitarian law of which it complained resulted from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity of the latter, as guaranteed by the Charters of the United Nations and the Organization of African Unity.<sup>311</sup> However, the Court held that it had no jurisdiction to entertain the application, on the admissibility of which it was therefore not required to rule.<sup>312</sup>

35. On 29 April 1999, the Government of the Federal Republic of Yugoslavia (with effect from 4 February 2003, “Serbia and Montenegro”) filed in the registry of the Court an application instituting proceedings against the United Kingdom, Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain and the United States in respect of a dispute concerning acts allegedly committed by the listed States,<sup>313</sup>

“by which [they had] violated [their] international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State,

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<sup>310</sup> *Ibid.*, para. 165.

<sup>311</sup> *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, para. 1.

<sup>312</sup> *Ibid.*, para. 128.

<sup>313</sup> *Legality of use of force (Serbia and Montenegro v. Belgium)*, application of the Federal Republic of Yugoslavia instituting proceedings, 29 April 1999, p. 2.

[and] the obligation not to violate the sovereignty of another State, ...”<sup>314</sup>

36. By 10 orders dated 2 June 1999 the Court, after hearing the parties, rejected the request for the indication of provisional measures in all of the cases and further decided to remove from the list the cases against Spain and the United States.<sup>315</sup> Within the time limit fixed for the filing of its counter-memorial, the remaining States submitted preliminary objections relating to the jurisdiction of the Court to entertain the case and to the admissibility of the application. Accordingly, the proceedings on the merits were suspended. On 15 December 2004, the Court decided unanimously that it had no jurisdiction to decide those cases.<sup>316</sup>

**\*\*B. The question of the scope and limits of the phrase “in any other manner inconsistent with the purpose of the United Nations”**

**C. The question of the bearing of the injunction in Article 2 (4) on the right to self-defence**

37. During the period under review, constitutional discussions concerning the right to self-defence and its relationship with the injunction in Article 2 (4) were held on a number of occasions.

38. On 5 October 2003, the Security Council convened the 4836th meeting in response to the request contained in a letter from the representative of the Syrian Arab Republic dated 5 October 2003.<sup>317</sup> The representative of the Syrian Arab Republic condemned the violations of Syrian and Lebanese airspace by the

Israeli air force as an act of unwarranted aggression.<sup>318</sup> He further argued that the Charter and norms of international law warned against any act of aggression by any Member State against another, irrespective of the reason, and held that a State should first resort to the Council to argue its case.<sup>319</sup> This position was echoed by the representatives of Pakistan and Jordan, who opined that the Charter envisaged the use of force by Member States in only two circumstances: the exercise of the right of self-defence against a direct act of aggression and the collective use of force under Article 42 of the Charter, with explicit authorization of the Council. The right to exercise the former, the representatives argued, was conditioned on a prior armed attack against that Member State.<sup>320</sup>

39. The representative of Israel, in a rebuttal, stated that the “measured defensive” response of Israel to the suicide bombings against a terrorist training facility in the Syrian Arab Republic was a clear act of self-defence in accordance with Article 51 of the Charter. He emphasized that Israel had exercised tremendous restraint despite countless acts of terrorism. He further argued that Israel needed to exercise its inherent right and its obligation to defend its citizens in the same way as any State faced with a critical and prolonged threat.<sup>321</sup>

40. At the 5096th meeting, on 8 December 2004, in discussing the report of the Security Council mission to Central Africa, undertaken from 21 to 25 November 2004,<sup>322</sup> several speakers addressed the issue of the former Rwandan Armed Forces (FAR)/Interahamwe in the territory of the Democratic Republic of the Congo.<sup>323</sup> The representative of the Democratic Republic of the Congo stated that Rwanda continued to make threats against the Democratic Republic of the Congo and had also issued a declaration of war. The representative added that all incursions by foreign forces would require the Government of the Democratic of the Congo to strictly implement Article 51

<sup>314</sup> *Ibid.*, p. 3.

<sup>315</sup> *Legality of use of force (Yugoslavia v. United States of America) (Yugoslavia v. Spain)*, provisional measures, order of 2 June 1999, *I.C.J. Reports 1999*, p. 916.

<sup>316</sup> *Legality of use of force (Serbia and Montenegro v. Belgium)*, preliminary objections, *Judgment, I.C.J. Reports 2004*, p. 328, para. 129. See also *Legality of use of force (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Serbia and Montenegro v. United Kingdom)*.

<sup>317</sup> [S/2003/939](#).

<sup>318</sup> [S/PV.4836](#), p. 3.

<sup>319</sup> *Ibid.*, pp. 15-16.

<sup>320</sup> *Ibid.*, pp. 8 and 18.

<sup>321</sup> *Ibid.*, p. 7.

<sup>322</sup> [S/2004/934](#).

<sup>323</sup> [S/PV/5096](#), p. 4 (Democratic Republic of the Congo); p. 8 (Netherlands, on behalf of the European Union); p. 10 (Rwanda); p. 12 (Germany); p. 14 (Brazil); p. 15 (United Kingdom); p. 17 (Pakistan); p. 18 (Benin); and p. 20 (Angola).

of the Charter, which stipulated the inherent right of individual or collective self-defence.<sup>324</sup>

41. On the other hand, the representative of Rwanda reiterated that the allegations regarding the presence of Rwandan troops in the Democratic Republic of the Congo were false and that the deployment of troops along the common border with the Democratic Republic of the Congo was aimed to counter incursions perpetrated by former FAR/Interahamwe from the territory of the Democratic Republic of the Congo.<sup>325</sup>

42. Several delegations expressed their concern at the multiple reports of military operations by the Rwandan army and condemned any violation of the territorial integrity of the Democratic Republic of the Congo. In addition, numerous delegations pointed out that the position of the Council on the border problem in the region was set out in the presidential statement of 7 December 2004,<sup>326</sup> which demanded that the Government of Rwanda withdraw without delay any forces from the Democratic Republic of the Congo.<sup>327</sup>

43. In a letter dated 20 March 2003, the Permanent Representative of the United States of America addressed the President of the Security Council and stated that the military actions taken by the coalition forces in Iraq were necessary “to defend the United States and the international community from the threat posed by Iraq and to restore international peace and security in the area.”<sup>328</sup> During the discussions of this issue in the Security Council, the representative of the Islamic Republic of Iran argued that the unilateral war against Iraq was not waged in self-defence against any prior armed attack, and that Iraq could not be considered “an imminent threat against the national security of the belligerent Powers.”<sup>329</sup>

44. In the case between the Islamic Republic of Iran and the United States of America concerning the oil platforms, the United States claimed that there had been “a series of unlawful armed attacks by Iranian forces against the United States” as the justification for the attacks of the United States against Iranian oil

installations.<sup>330</sup> The Court stated that in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of individual self-defence, the United States had to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature as to be qualified as “armed attacks” within the meaning of that expression in Article 51 of the Charter, and as understood in customary law on the use of force.<sup>331</sup> The Court further stated that the United States must also show that its actions were necessary and proportional to the armed attack made on it and that the platforms were a legitimate military target open to attack in the exercise of self-defence.<sup>332</sup> The Court found that the United States had failed to provide sufficient evidence showing that the Islamic Republic of Iran would have been responsible for the attacks made against the United States, and that those attacks could be regarded as “armed attacks” under Article 51 of the Charter and customary law on the use of force.<sup>333</sup> Thus, the conclusion reached by the Court was that the acts carried out by the United States could not be justified, under article XX, paragraph 1 (d), of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, as being measures necessary to protect the essential security interests of the United States, since those actions constituted recourse to armed force not qualifying, under international law on the question, as acts of self-defence and thus did not fall within the category of measures contemplated, upon its correct interpretation, by that provision of the Treaty.<sup>334</sup>

#### **D. The question of the bearing of the injunction in Article 2 (4) on the authorization by the Security Council to use force**

45. During the period under review, the Security Council adopted a number of resolutions in which it explicitly or, arguably,<sup>335</sup> implicitly authorized States

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<sup>324</sup> Ibid., p. 4.

<sup>325</sup> Ibid., p. 10.

<sup>326</sup> S/PRST/2004/45.

<sup>327</sup> Ibid., p. 16 (Philippines); and p. 17 (Pakistan).

<sup>328</sup> Letter dated 20 March 2003 (S/2003/351).

<sup>329</sup> S/PV.4726, p. 33.

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<sup>330</sup> *Oil platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J Reports 2003, p. 186, para. 50.

<sup>331</sup> Ibid., pp. 186-87, para. 51.

<sup>332</sup> Ibid., p. 187, para. 51.

<sup>333</sup> Ibid., pp. 186-99, paras. 50-77.

<sup>334</sup> Ibid., p. 199, para. 78.

<sup>335</sup> See, in this connection, the discussion covered in

to use force, including through regional agencies or arrangements, for various objectives.

46. On 5 December 2001, representatives of several different anti-Taliban factions and political groups met in Bonn, Germany, for the first of a series of agreements intended to recreate the State of Afghanistan following the invasion of Afghanistan by the United States in response to the terrorist attacks of 11 September 2001. The Afghan Interim Authority requested the Security Council to authorize the deployment to Afghanistan of a United Nations mandated force in order to assist in the maintenance of security for Kabul and its surrounding areas.<sup>336</sup> This appeal was reiterated in a letter dated 19 December 2001 from the Permanent Representative of Afghanistan to the United Nations addressed to the President of the Security Council, which stated that the Government of Afghanistan agreed to the deployment of multinational security forces in Afghanistan on the basis of Chapter VI of the Charter of the United Nations.<sup>337</sup>

47. Taking note of the request, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized, by its resolution 1386 (2001), the establishment of an international security assistance force to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas for six months. The Security Council also called upon Member States to contribute personnel, equipment and other resources to the international security assistance force. The Security Council authorized Member States to take all necessary measures to help fulfil the mandate of the international security assistance force. The relevant paragraph of the resolution reads as follows:

“3. Authorizes the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil its mandate ...”<sup>338</sup>

48. The Security Council, by its resolution 1413 (2002), extended the mandate of the International Security Assistance Force (ISAF) until 20 December 2002. The relevant paragraphs of the resolution read as follows:

“1. *Decides* to extend the authorization, for a period of six months beyond 20 June 2002, of the International Security Assistance Force, as defined in resolution 1386 (2001);

“2. *Authorizes* the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil the mandate of the International Security Assistance Force.”

49. The Security Council, in accordance with its resolution 1444 (2002), extended the mandate of ISAF for one year until 20 December 2003. The relevant paragraphs of the resolution read as follows:

“1. *Decides* to extend the authorization, for a period of one year beyond 20 December 2002, of the International Security Assistance Force, as defined in resolution 1386 (2001);

“2. *Authorizes* the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil the mandate of the International Security Assistance Force.”

50. In a letter dated 6 October 2003 to the Secretary-General, the Secretary-General of the North Atlantic Treaty Organization (NATO) discussed the possible expansion of the ISAF mandate.<sup>339</sup> In a letter dated 10 October 2003 from the Minister for Foreign Affairs, the Government of Afghanistan requested the assistance of ISAF outside Kabul.<sup>340</sup> Taking into account that the Bonn Agreement explicitly provided for the progressive expansion of ISAF to other urban centres and other areas beyond Kabul,<sup>341</sup> the Security Council authorized the expansion of the ISAF mandate to allow it to support the Afghan Transitional Authority and its successors in the maintenance of security in areas of Afghanistan outside Kabul and its environs.<sup>342</sup>

51. In resolution 1510 (2003), the Security Council also decided to extend the authorization of ISAF for a period of 12 months. The relevant paragraphs read as follows:

“3. *Decides also* to extend the authorization of the International Security Assistance Force, as

paras. 53-54 of this study.

<sup>336</sup> S/2001/1154, annex I, para. 3.

<sup>337</sup> S/2001/1223.

<sup>338</sup> Para. 3.

<sup>339</sup> S/2003/970.

<sup>340</sup> S/2003/986, annex.

<sup>341</sup> S/2001/1154, annex I, para. 3.

<sup>342</sup> SC resolution 1510 (2003), para. 1.

defined in resolution 1386 (2001) and this resolution, for a period of twelve months;

“4. *Authorizes* the Member States participating in the International Security Assistance Force to take all necessary measures to fulfill its mandate.”

52. The Security Council has subsequently extended the authorization of ISAF for periods of 12 months in each succeeding year, reauthorizing participating States to take all necessary measures.<sup>343</sup>

53. In a letter dated 20 March 2003 addressed to the President of the Security Council, the Permanent Representative of the United States informed the President that coalition forces had commenced military operations in Iraq. He stated that the Security Council had decided that Iraq had been in material breach of its obligations and argued that the military operation was authorized under Security Council resolutions 678 (1990), 687 (1991) and 1441 (2002).<sup>344</sup> On the same day, the Permanent Representative of the United Kingdom<sup>345</sup> and the Permanent Representative of Australia<sup>346</sup> also addressed the President of the Security Council in separate letters stating that the armed forces of the United States, the United Kingdom and Australia had engaged in military action in Iraq. They argued that Iraq was not in compliance with the disarmament obligations imposed under Security Council resolutions 678 (1990), 687 (1991) and 1441 (2002) and stated that military action had been undertaken only when it became apparent that there was no other way of achieving compliance by Iraq. The Permanent Representative of the Russian Federation

addressed the President of the Security Council and presented, on 23 March 2003, a statement by the President of the Russian Federation. The latter stated that resolution 1441 (2002) did not authorize the use of force in Iraq and insisted on the early termination of the military action.<sup>347</sup>

54. During the discussions of the issue in the Security Council, the representative of Iraq claimed that Iraq was subject to “American-British military aggression”, which was not authorized by resolution 1441 (2002). He further argued that the use of force was a violation of Article 2 (4) of the Charter.<sup>348</sup> In contrast, the representative of the United Kingdom argued that the action taken together with the coalition partners was legitimate and that the use of force was authorized under Security Council resolutions 678 (1990), 687 (1991) and 1441 (2002).<sup>349</sup> The representative of the United States also argued that the respective action was legitimate and not unilateral and that Security Council resolution 1441 (2002) had explicitly stated that Iraq was in material breach of its obligations. The representative further argued that in view of Iraq’s additional material breaches, the basis for the existing ceasefire had been removed and the use of force was therefore authorized under resolution 678 (1990).<sup>350</sup> Among the other participants in the relevant meetings of the Security Council, there was a divergence of views. The majority view was that the military action against Iraq had not been authorized by the Security Council and was a violation of international law.<sup>351</sup> The other side was of the opinion that the military action had been authorized by resolution 1441 (2002).<sup>352</sup>

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<sup>343</sup> SC resolutions 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.

<sup>344</sup> Letter dated 20 March 2003 ([S/2003/351](#)).

<sup>345</sup> Letter dated 20 March 2003 ([S/2003/350](#)).

<sup>346</sup> Letter dated 20 March 2003 ([S/2003/352](#)).

<sup>347</sup> Letter dated 20 March 2003 ([S/2003/348](#)).

<sup>348</sup> [S/PV.4726](#), pp. 4-5.

<sup>349</sup> [S/PV.4726](#) (Resumption 1), p. 23.

<sup>350</sup> [S/PV.4726](#) (Resumption 1), pp. 25-26.

<sup>351</sup> [S/PV.4726](#), pp. 7, 9, 12, 15, 26 and 32; and [S/PV.4726](#) (Resumption 1), pp. 26-28.

<sup>352</sup> [S/PV.4726](#), pp. 13, 23-26, 35 and 38; and [S/PV.4726](#) (Resumption 1), p. 29.