operations'[142] and status of forces agreements signed by the UN with host countries usually contain a provision that humanitarian law applies.[143]

On 6 August 1999, the UN Secretary-General addressed the difficulty and issued a statement declaring that

> The fundamental principles and rules of international humanitarian law . . . are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permissible in self-defence.[144]

Conclusion

The functioning of the United Nations system for the preservation and restoration of world peace has not been a tremendous success in the broadest strategic sense. It constitutes merely one additional factor in international disputes management and one often particularly subject to political pressures. The United Nations has played a minimal part in some of the major conflicts and disputes since its inception, whether it be the Cuban missiles crisis of 1962 or the Vietnam war, the Soviet intervention

[142] These conventions would include the 1949 Geneva Conventions and the 1977 Protocols as well as the Convention on the Protection of Cultural Property, 1954: see Green, *Armed Conflict*, p. 344; C. Greenwood, 'International Humanitarian Law and United Nations Military Operations', 1 *Yearbook of International Humanitarian Law*, 1998, p. 3, and D. Shraga, 'UN Peacekeeping Operations: Applicability of International Humanitarian Responsibility for Operations-Related Damage', 94 AJIL, 2000, p. 406.

[143] See e.g. the agreement with Rwanda in 1993 on the status of the UN Mission in that country, Shraga, 'UN Peacekeeping Operation', p. 325, footnote 16, and S/26927, 1993, para. 7. Note also the resolutions adopted by the Institut de Droit International stating that the laws of armed conflict apply to the UN, 54 (II) *Annuaire de l'Institut de Droit International*, 1971, p. 465, and 56 *Annuaire de l'Institut de Droit International*, 1975, p. 540.

[144] ST/SGB/1999/13 (Bulletin on the Observance by UN Forces of International Humanitarian Law). According to the official *United Nations Peacekeeping Operations: Principles and Guidance*, pp. 15–16, this statement sets out the 'fundamental principles and rules of international law that may be applicable to United Nations peacekeepers'. See also P. Rowe, 'Maintaining Discipline in United Nations Peace Support Operations', 5 *Journal of Conflict and Security Law*, 2000, pp. 45, 52 ff.; A. J. T. Dörenberg, 'Legal Aspects of Peacekeeping Operations', 28 *The Military Law and Law of War Review*, 1989, p. 113; F. Hampson, 'States' Military Operations Authorised by the United Nations and International Humanitarian Law' in *The United Nations and International Humanitarian Law* (eds. L. Condorelli, A. M. LaRosa and S. Scherrer), Paris, 1996, p. 371; Y. Dinstein, *War, Aggression and Self-Defence*, 4th edn, Cambridge, 2005, pp. 162–3, and Will, 'Occupation Law', pp. 274 ff.

in Czechoslovakia and Afghanistan or the Nigerian and Angolan civil wars.

Nevertheless, the position of the United Nations improved with the ending of the Cold War and the substantial changes in the approach of the USSR, soon to be Russia, in particular.[145] More emphasis was laid upon the importance of the UN in the context of an increased co-operation with the US. This began to have a significant impact upon the work and achievements of the UN. The new co-operative approach led to the agreements leading to the independence of Namibia, while substantial progress was made by the five permanent members of the Security Council in working out a solution to the Cambodian problem. The long-running dispute with Iraq and how to deal with its failure to comply fully with Security Council resolution 687 (1991) appeared to mark a further moment of achievement with the adoption of resolution 1441 (2002). However, the unanimity of the Council fractured and, amid deep division, the US and the UK commenced a military action against Iraq in March 2003.[146]

The range and extent of activities engaged in by the UN is startling by past experience. UN missions may not only be used now to stabilise a tense situation in the traditional exposition of the peacekeeping approach, they may also be utilised in order to carry out key administrative functions; verify peace agreements both international and internal; monitor the implementation of human rights accords; supervise and monitor elections; train and oversee police forces; oversee withdrawal and demilitarisation arrangements, and assist in demining operations.

The Secretary-General has emphasised that there are three particularly important principles of peacekeeping.[147] These are the consent of the parties, impartiality and the non-use of force. While these three may characterise traditional peacekeeping and observer missions, even as these developed during the 1990s, they do not apply necessarily to a new form of peacekeeping that is mandated under Chapter VII of the Charter.[148] To seek to revitalise the structure, the Secretary-General mandated a Panel on UN Peace Operations to conduct a thorough review. In the Panel Report, a series of recommendations were made.[149] These included encouraging

[145] See e.g. A. Roberts and B. Kingsbury, 'The UN's Role in International Society since 1945' in Roberts and Kingsbury, *United Nations, Divided World*, p. 1.

[146] See further below, p. 1255.

[147] *Supplement to an Agenda for Peace*, A/50/60, 1995, para. 33. See also UN, *United Nations Peacekeeping Operations: Principles and Guidelines*, chapter 3.

[148] See below, p. 1257.

[149] See A/55/305–S/2000/809, 21 August 2000 and 39 ILM, 2000, p. 1432. The Report is also termed the Brahimi Report after its chair.

a more frequent use by the Secretary-General of fact-finding missions to areas of tension in support of short-term crisis-preventive action and a doctrinal shift in the use of civilian police and related rule of law elements in peace operations that emphasises an increased focus on, and team approach to, upholding the rule of law and human rights.[150] The Panel reaffirmed that consent of the local parties, impartiality and the use of forces only in self-defence constitute the 'bedrock principles of peacekeeping', but noted that consent could sometimes be manipulated and that impartiality must take into account adherence to UN principles. Equal treatment where one party is violating such principles could not be acceptable.[151] The Panel also called for improved standby arrangements to enable forces to 'meet the need for the robust peacekeeping forces that the Panel has advocated'[152] and 'robust rules of engagement against those who renege on their commitments to a peace accord or otherwise seek to undermine it by violence'.[153] A variety of other recommendations have also been made and the implementation process commenced.[154] In 2006 the Secretary-General outlined a 'Peace Operations 2010' reform strategy[155] and a major reform of the support aspects of peacekeeping operations was initiated.[156]

The collective security system[157]

The system established by the United Nations for the maintenance of international peace and security was intended to be comprehensive in its provisions and universal in its application. It has often been termed a

[150] *Ibid*., paras. 29 ff.
[151] *Ibid*., paras. 48 ff.
[152] *Ibid*., paras. 86 ff.
[153] *Ibid*., para. 55.
[154] See e.g. the Secretary-General's Report on Implementation of 20 October 2000, A/55/502 and the Implementation Reports of 1 June and 21 December 2001, A/55/977 and A/56/732.
[155] A/60/696, paras. 6 ff.
[156] See A/62/11, paras. 51 ff. and Press Release GA/SPD/382, 31 October 2007. As of January 2008, over 100,000 personnel were serving in peace operations, with contributions from 119 states with a budget of $7 billion. Pakistan (10,616), Bangladesh (9,717) and India (9,345) were the largest uniformed personnel contributors, with the US (26%), Japan (17%) and Germany (9%) being the largest providers to the budget: see UN Peacekeeping Factsheet, DPI/2429/rev.2, February 2008.
[157] See e.g. Chesterman *et al.*, *United Nations*, chapter 10; Cot *et al.*, *Charte*, pp. 1131 ff.; Denis, *Pouvoir Normatif*; A. Novosseloff, *Le Conseil de Sécurité des Nations Unies et la Maîtrise de la Force Armée*, Brussels, 2003; E. de Wet, *The Chapter VII Powers of the United Nations Security Council*, Oxford, 2004; Franck, *Fairness*, chapter 9; C. Gray, *International Law and the Use of Force*, 2nd edn, Oxford, 2004, chapter 7; D. Sarooshi, *The United Nations and the Development of Collective Security*, Oxford, 1999; R. Higgins, *Problems and Process*, Oxford, 1994, chapter 15; P. M. Dupuy, 'Sécurité Collective et Organisation de la Paix', 97 RGDIP, 1993, p. 617; G. Gaja, 'Réflexions sur le Rôle du Conseil de Sécurité

collective security system, since a wronged state was to be protected by all, and a wrongdoer punished by all. The history of collective security since 1945 demonstrates how flexibility and textual interpretation have prevented the system from failing completely.

The Security Council

The original scheme by which this was achieved laid great stress upon the role of the Security Council, although this has been modified to some extent in practice. By article 24 of the United Nations Charter, the Council was granted primary responsibility for the maintenance of international peace and security, and its decisions are under article 25 binding upon all member states. It was thus intended to fulfil a dynamic, executive function.

While actions adopted by the Security Council in pursuance of Chapter VI of the Charter, dealing with the pacific settlement of disputes, are purely recommendatory, matters concerning threats to, or breaches of, the peace or acts of aggression, under Chapter VII, give rise to decision-making powers on the part of the Council. This is an important distinction and emphasises the priority accorded within the system to the preservation of peace and the degree of authority awarded to the Security Council to achieve this. The system is completed by article 103 which declares that obligations under the Charter prevail over obligations contained in other international agreements.[158]

Determination of the situation

Before the Council can adopt measures relating to the enforcement of world peace, article 39 of the Charter requires that it must first 'determine the existence of any threat to the peace, breach of the peace or act of

dans le Nouvel Ordre Mondial', *ibid.*, p. 297; T. M. Franck and F. Patel, 'UN Police Action in Lieu of War: "The Older Order Changeth"' , 85 AJIL, 1991, p. 63; C. Gray, 'A Crisis of Legitimacy for the UN Collective Security System?', 56 ICLQ, 2007, p. 157; Nguyen Quoc Dinh, P. Daillier and A. Pellet, *Droit International Public*, 7th edn, Paris, 2002, p. 989, and Simma, *Charter*, pp. 701 ff.

[158] See the *Lockerbie* case, ICJ Reports, 1992, p. 3; 94 ILR, p. 478. But see the discussion of article 103 by Judge Lauterpacht in the second provisional measures order in the *Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro))* case, ICJ Reports, 1993, pp. 325, 440; 95 ILR, pp. 43, 158, and by Judge Bedjaoui in the *Lockerbie* case, ICJ Reports, 1992, pp. 3, 47; 94 ILR, pp. 478, 530. See also Cot *et al.*, *Charte*, pp. 2133 ff., and A. Toublanc, 'L'Article 103 et la Valeur Juridique de la Charte des Nations Unies', 108 RGDIP, 2004, p. 439.

aggression'. This is the key to the collective security system. Once such a determination has been made, which may be done implicitly by the use of the language contained in article 39 of the Charter,[159] the way is clear for the adoption of recommendations or decisions to deal with the situation. The adoption of Chapter VII enforcement action constitutes an exception to the principle stated in article 2(7) of the Charter, according to which the UN is not authorised 'to intervene in matters which are essentially within the domestic jurisdiction of any state'.

The question is thus raised at this juncture as to the definition of a threat to, or breach of, the peace or act of aggression. The answer that has emerged in practice is that it depends upon the circumstances of the case and it also depends upon the relationship of the five permanent members of the Council (United Kingdom, United States of America, Russia, China and France) to the issue under consideration, for a negative vote by any of the permanent members is sufficient to block all but procedural resolutions of the Council.[160]

Threat to the peace is the broadest category provided for in article 39 and the one least susceptible to precise definition. In a sense it constitutes a safety net for Security Council action where the conditions needed for a breach of the peace or act of aggression do not appear to be present. It is also the category which has marked a rapid evolution as the perception as to what amounts to a threat to international peace and security has broadened. In particular, the concept has been used to cover internal situations that would once have been shielded from UN action by article 2(7) of the Charter.

A threat to the peace was first determined in the 1948 Middle East War, when in resolution 54 (1948), the Security Council found that the situation created by the conflict in the former mandated territory of Palestine where neighbouring Arab countries had entered the territory in order to conduct hostilities against the new state of Israel constituted 'a threat to the peace within the meaning of article 39' and demanded a cease-fire. In resolution 221 (1966) the Council determined that the situation of the minority white regime in Rhodesia constituted a threat to the peace.[161]

With the cessation of the Cold War, the Security Council has been able to extend its activities under Chapter VII to a remarkable extent. In resolution 713 (1991) the Council determined that the situation in former

[159] Gray, *Use of Force*, p. 197. [160] Article 27 of the UN Charter.
[161] See also Security Council resolution 217 (1965).

Yugoslavia[162] constituted a threat to the peace and in resolution 733 (1992), it was held that the situation in Somalia amounted to a threat to peace. In resolution 794 (1992), the Council underlined that 'the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security'.[163] In resolution 788 (1992) the Council decided that the deteriorating civil war situation in Liberia constituted a threat to international peace, while in resolution 955 (1994), it was determined that the genocide in Rwanda constituted a threat to international peace and security. The latter three cases were clearly internal civil war situations and it could be said that the situation in Yugoslavia at the time of the adoption of the 1991 resolution was also a civil war situation, although this is more complex. Further resolutions with regard to former Yugoslavia determined that threats to the peace were involved.[164] In another move of considerable importance, the Council has also determined that 'widespread violations of international humanitarian law' constitute a threat to peace.[165] Resolutions concerning Sierra Leone[166] affirmed that the civil war in that country constituted a threat to international peace, while resolutions concerning the mixed civil war/foreign intervention conflicts in the Democratic Republic of the Congo affirmed that there existed a 'threat to international peace and security in the region'.[167]

A further expansion in the meaning in practice of a threat to international peace and security took place with regard to Libya. In resolution 748 (1992) the Council determined that 'the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992),[168] constitute a threat to international peace and security'. Again, in resolution 1070 (1996), the Council determined that the failure of Sudan to comply with earlier resolutions

[162] This situation was characterised by fighting 'causing a heavy loss of human life and material damage, and by the consequences for the countries in the region, in particular in the border areas of neighbouring countries', *ibid*.

[163] See also Security Council resolution 751 (1992).

[164] See e.g. Security Council resolutions 743 (992), 757 (1992), 787 (1992) and 827 (1993).

[165] See Security Council resolutions 808 (1993), with regard to former Yugoslavia, and 955 (1994), with regard to Rwanda.

[166] See further below, p. 1263. [167] See further below, p. 1264.

[168] Which called for the extradition of alleged bombers of an airplane over Lockerbie in 1988 to the US or UK.

demanding that it act to extradite to Ethiopia for prosecution suspects on its territory wanted in connection with an assassination attempt against the President of Egypt,[169] constituted a threat to international peace and security. In both cases references to 'international terrorism' were made in the context of a determination of a threat to the peace. This constitutes an important step in combating such a phenomenon for it paves the way for the adoption of binding sanctions in such circumstances. This has been reinforced by resolutions 1368 (2001) and 1373 (2001) adopted in the wake of the 11 September bombings of the World Trade Center in New York and of the Pentagon.[170]

The Haiti situation similarly marked a development in the understanding by the Council as to what may amount to a threat to international peace and security. UN observers monitored an election in that country in 1990, but on 30 September 1991 the elected President Aristide was ousted. In a process which demonstrates the growing interaction between UN organs in crisis situations, the Secretary-General appointed a Special Representative for Haiti on 11 December 1991, the General Assembly authorised a joint UN–Organisation of American States civilian mission on human rights (MICIVIH) on 20 April 1993,[171] and on 16 June 1993, the Security Council imposed an arms and oil embargo on Haiti with sanctions to enter into force on 23 June unless the Secretary-General and the OAS reported that such measures were no longer warranted.[172] The Security Council referred to the fact that 'the legitimate Government of President Jean-Bernard Aristide' had not been reinstated and noted 'the incidence of humanitarian crises, including mass displacements of population, becoming or aggravating threats to international peace and security'.[173] The Council determined therefore that 'in these unique and exceptional circumstances', the continuation of the situation constituted a threat to international peace and security. Thus although the Security Council did not go so far as to declare that the removal of a legitimate government constituted of itself a threat to peace, it was clearly the precipitating factor that taken together with other matters could enable a determination to be made under article 39 thus permitting the

[169] Security Council resolutions 1044 (1996) and 1054 (1996).

[170] See above, chapter 20, p. 1162.

[171] See General Assembly resolution 47/20 B.

[172] Security Council resolution 841 (1993).

[173] Note that in Security Council resolution 688 (1991), it had been determined that the consequences of the Iraqi repression of its civilian population in different parts of the country, including areas populated by Kurds, involving considerable refugee flows over the borders of Turkey and Iran threatened international peace and security.

adoption of binding sanctions. The sanctions were suspended following the Governors Island Agreement of 3 July 1993.[174] However, in resolution 873 (1993), the Council determined that the failure by the military authorities in Haiti to fulfil obligations under that agreement constituted a threat to international peace and security, and sanctions were reimposed.[175] As the Appeal Chamber declared in the *Tadić* case:

> Indeed, the practice of the Security Council is rich with cases of civil war or internal strife which is classified as a 'threat to the peace' and dealt with under Chapter VII . . . It can thus be said that there is a common understanding, manifested by the 'subsequent practice' of the membership of the United Nations at large, that the 'threat to the peace' of article 39 may include, as one of its species, internal armed conflicts.[176]

Further, in resolution 1540 (2004), the Council affirmed that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security and proceeded to establish a sanctions regime monitored by a committee of the Council.

After several decades of discussion and deliberation, a definition of aggression was finally agreed upon by the United Nations General Assembly in 1974.[177] Article 1 provides that aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the United Nations Charter. A number of examples of aggressive acts are given in article 3 and these include the use of weapons by a state against the territory of another state, the blockade of the ports or coasts of a state by the armed forces of another state,[178] and attack by the armed forces of a state on the land, sea or air forces of another state and the sending by, or on behalf of, a state of armed bands to carry out acts of armed force against another state.[179] This elucidation of some of the features of the concept of aggression might prove of some use to the Security Council, but the Council does retain the right to examine all the relevant circumstances,

[174] Security Council resolution 861 (1993).

[175] Security Council resolution 873 (1993). Further sanctions were imposed in resolution 917 (1994). Sanctions were finally lifted by resolution 944 (1994), upon the restoration of President Aristide following a US-led operation in Haiti.

[176] 105 ILR, pp. 419, 466.

[177] General Assembly resolution 3314 (XXIX).

[178] As, for example, the blockade of the Israeli port of Eilat in May 1967, above, chapter 20, p. 1138.

[179] See the *Nicaragua* case, ICJ Reports, 1986, pp. 14, 103–4; 76 ILR, pp. 349, 437.

including the gravity of any particular incident, before deciding on the determination to make pursuant to article 39.[180]

Findings as to actual breaches of the peace have occurred four times. In 1950, as a result of the invasion of South Korea by North Korea, the Security Council adopted resolutions determining that a breach of the peace had occurred and calling upon member states to assist South Korea,[181] while in resolution 502 (1982) the Council determined that a breach of the peace in the Falkland Islands region had taken place following the Argentine invasion. The third situation which prompted a finding by the Security Council of a breach of the peace was in resolution 598 (1987) dealing with the Iran–Iraq war, while the fourth occasion was in resolution 660 (1990) in which the Council determined that there existed 'a breach of international peace and security as regards the Iraqi invasion of Kuwait'.

Chapter VII measures[182]

Measures not involving the use of force[183] Once the Security Council has resolved that a particular dispute or situation involves a threat to the peace or act of aggression, the way is open to take further measures. Such further measures may, however, be preceded by provisional action taken to prevent the aggravation of the situation. This action, provided for by article 40 of the Charter,[184] is without prejudice to the rights or claims of the parties, and is intended as a provisional measure to stabilise a crisis situation. Usual examples of action taken by the Security Council under this provision include calls for ceasefires (as in the Middle East in 1967 and 1973)[185] and calls for the withdrawal of troops from foreign territory.[186] However, the adoption of provisional measures by the Council

[180] The first finding as to aggression by the Security Council was in 1976 with regard to South African action against Angola, Security Council resolution 387 (1976). See also Security Council resolutions 411 (1977) condemning Rhodesian action against Mozambique, 573 (1985) condemning Israel's action against PLO headquarters in Tunisia and 667 (1990) condemning aggressive acts by Iraq against diplomatic premises and personnel in Kuwait.

[181] Security Council resolution S/1501.

[182] See e.g. P. Conlon, 'Legal Problems at the Centre of United Nations Sanctions', 65 *Nordic Journal of International Law*, 1996, p. 73.

[183] See e.g. M. Doxey, *Economic Sanctions and International Enforcement*, London, 1980; J. Combacau, *Le Pouvoir de Sanction de l'ONU*, Paris, 1974; N. Schrijver, 'The Use of Economic Sanctions by the UN Security Council: An International Perspective' in *International Economic Law and Armed Conflict* (ed. H. Post), Dordrecht, 1994, and *Economic Sanctions: Panacea or Peace-Building in a Post-Cold War World* (eds. D. Cortright and G. Lopez), Boulder, 1995.

[184] See Simma, *Charter*, p. 729, and Cot *et al.*, *Charte*, p. 1171.

[185] See Security Council resolutions 234 (1967) and 338 (1973).

[186] See e.g. Security Council resolution 509 (1982), with regard to Israel's invasion of Lebanon.

often has an effect ranging far beyond the confines of a purely temporary action. They may induce a calmer atmosphere leading to negotiations to resolve the difficulties and they may set in train moves to settle the dispute upon the basis laid down in the Security Council resolution which called for the provisional measures.

The action adopted by the Council, once it has decided that there exists with regard to a situation a threat to the peace, breach of the peace or act of aggression, may fall into either of two categories. It may amount to the application of measures not involving the use of armed force under article 41, such as the disruption of economic relations or the severance of diplomatic relations, or may call for the use of such force as may be necessary to maintain or restore international peace and security under article 42.

The Council has not until recently utilised the powers it possesses under article 41 to any great extent. The first major instance of action not including the use of force occurred with respect to the Rhodesian situation following upon the Unilateral Declaration of Independence by the white minority government of that territory in 1965.[187] In two resolutions in 1965, the Council called upon member states not to recognise or assist the illegal regime and in particular to break all economic and arms relations with it.[188] The next year, the Council went further and imposed selective mandatory economic sanctions upon Rhodesia,[189] which were extended in 1968 and rendered comprehensive,[190] although several states did act in defiance of these resolutions.[191] Sanctions were

[187] See e.g. Simma, *Charter*, p. 735; Cot *et al.*, *Charte*, p. 1195; Nguyen Quoc Dinh *et al.*, *Droit International Public*, p. 997; R. Zacklin, *The United Nations and Rhodesia*, New York, 1974; J. E. S. Fawcett, 'Security Council Resolutions on Rhodesia', 41 BYIL, 1965–6, p. 103; M. S. McDougal and W. M. Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern', 62 AJIL, 1968, p. 1, and J. Nkala, *The United Nations, International Law and the Rhodesia Independence Crisis*, Oxford, 1985. See also V. Gowland-Debbas, *Collective Responses to Illegal Acts in International Law*, Dordrecht, 1990, and Gowland-Debbas, 'Security Council Enforcement Action and Issues of State Responsibility', 43 ICLQ, 1994, p. 55.

[188] Security Council resolutions 216 (1965) and 217 (1965).

[189] Security Council resolution 232 (1966). Note that under Security Council resolution 221 (1966) the Council *inter alia* called upon the UK 'to prevent by the use of force if necessary' the arrival in Mozambique of vessels believed to be carrying oil for Rhodesia.

[190] Security Council resolution 253 (1968). See also Security Council resolution 409 (1977).

[191] See N. Polakas, 'Economic Sanctions: An Effective Alternative to Military Coercion?', 6 *Brooklyn Journal of International Law*, 1980, p. 289. Note also the importation by the United States of Rhodesian chrome and other minerals under the Byrd Amendment between 1972 and 1977: see DUSPIL, 1977, Washington, pp. 830–4.

terminated in 1979 as a result of the agreement leading to the independence of Zimbabwe.[192]

However, the most comprehensive range of economic sanctions thus far imposed by the Security Council was adopted in the wake of the invasion of Kuwait by Iraq on 2 August 1990.[193] Security Council resolution 661 (1990), noting that Iraq had failed to withdraw immediately and unconditionally from Kuwait[194] and acting specifically under Chapter VII of the Charter, imposed a wide range of economic sanctions upon Iraq, including the prohibition by states of all imports from and exports to Iraq and occupied Kuwait,[195] and the transfer of funds to Iraq and Kuwait for such purposes. Additionally, the Security Council decided that states should not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait any funds or any other financial or economic resources and should prevent their nationals and persons within their territories from remitting any other funds to persons or bodies within Iraq or Kuwait,[196] notwithstanding any existing contract or licence.

The Security Council also established a Committee consisting of all members of the Council to oversee the implementation of these measures.[197] Under Security Council resolution 666 (1990), the Committee was instructed to keep the situation regarding foodstuffs in Iraq and Kuwait under constant review and to bear in mind that foodstuffs (as permitted under the terms of the previous resolutions) should be provided through the UN in co-operation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision. The Committee was additionally given the task of examining requests for assistance under

[192] Security Council resolution 460 (1979). See also 19 ILM, 1980, pp. 287 ff. Note in addition Security Council resolution 418 (1977), which imposed an arms embargo upon South Africa.

[193] See Lauterpacht *et al.*, *Kuwait Crisis: Basic Documents*; *The Kuwait Crisis: Sanctions and their Economic Consequences* (ed. D. Bethlehem), Cambridge, 1991.

[194] As required in Security Council resolution 660 (1990).

[195] Apart from supplies intended strictly for medical purposes and, 'in humanitarian circumstances', foodstuffs, paragraph 3(c).

[196] Except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs, paragraph 4.

[197] See e.g. M. Koskenniemi, 'Le Comité des Sanctions Créé par la Résolution 661 (1990) du Conseil de Sécurité', AFDI, 1991, p. 121, and P. Conlon, 'Lessons from Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice', 35 Va. JIL, 1995, p. 632.

article 50 of the Charter[198] and making recommendations to the President of the Security Council for appropriate action.[199] The binding economic sanctions imposed on Iraq because of its invasion and purported annexation of Kuwait were tightened in Security Council resolution 670 (1990), in which the Council decided that all states, irrespective of any international agreements or contracts, licences or permits in existence, were to deny permission to any aircraft to take off from their territory if the aircraft was carrying cargo to or from Iraq or Kuwait.[200] In addition, states were to deny permission to any aircraft destined to land in Iraq or Kuwait to overfly their territory.[201]

The economic sanctions were reinforced under Security Council resolution 665 (1990) which authorised those UN member states deploying maritime forces in the area in co-operation with the legitimate government of Kuwait 'to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council' in order to enforce the naval blockade on Iraq. The states concerned were requested to co-ordinate their actions 'using as appropriate mechanisms of the Military Staffs Committee'[202] and after consultation with the UN Secretary-General to submit reports to the Security Council and the Committee established under resolution 661 (1990). It is unclear whether given a substantial period of operation, this impressive range of sanctions would have sufficed to compel Iraq to withdraw from Kuwait, for on 16 January 1991 force was employed.

Having once established a comprehensive set of economic and financial sanctions together with mechanisms of supervision, it has become easier to put in place similar responses to other situations. On 31 March 1992, the Security Council imposed a relatively restricted range of sanctions upon Libya due to the latter's refusal to renounce terrorism and

[198] Article 50 provides that if preventive or enforcement measures against any state are taken by the Security Council, any other state which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution to those problems. Note also the reference to article 50 in Security Council resolution 748 (1992), imposing sanctions upon Libya, and resolution 669 (1990). See e.g. Dinstein, *War*, pp. 283–4; J. Carver and J. Hulsmann, 'The Role of Article 50 of the UN Charter in the Search for International Peace and Security', 49 ICLQ, 2000, p. 528, and Cot *et al.*, *Charte*, p. 1313.

[199] Security Council resolution 669 (1990).

[200] Other than food in humanitarian circumstances subject to authorisation by the Council or the Committee or supplies intended strictly for medical purposes.

[201] Unless the aircraft was landing for inspection or the flight had been approved by the Committee or the flight was certified by the UN as solely for the purposes of the UN Iran–Iraq Military Observer Group (UNIIMOG).

[202] See below, p. 1251.

respond fully and effectively to the call in Security Council resolution 731 (1992) to extradite suspected bombers to the UK or US.[203] These sanctions imposed a mandatory arms and air embargo upon Libya. It also called upon states to reduce significantly the number and the level of staff at Libyan diplomatic missions and diplomatic posts. A Committee was set up to monitor compliance with the sanctions. Resolution 1192 (1998) provided *inter alia* for the suspension of the sanctions upon the certification by the Secretary-General of the arrival of the accused bombers in the Netherlands for trial. This duly occurred[204] and the President of the Council issued a statement on 9 July 1999 noting therefore the suspension of the sanctions.[205]

On 30 May 1992, the Security Council in resolution 757 (1992) imposed a wide range of economic sanctions upon the Federal Republic of Yugoslavia (Serbia and Montenegro), having imposed an arms embargo upon all states within the territory of the former Yugoslavia in resolution 713 (1991).[206] The resolution, adopted under Chapter VII, prohibited the importation of goods from the Federal Republic of Yugoslavia (Serbia and Montenegro) and the export or trans-shipment of such goods by states or their nationals and the sale or supply of any commodities or products to any person or body in the Federal Republic of Yugoslavia or to any person or body for the purposes of any business carried on in or operated from it. In addition, paragraph 5 of this resolution prohibited states from making available to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) or to any commercial, industrial or public utility undertaking there, any funds or any other financial or economic resources. States were also to prevent their nationals and any persons within their territories from providing to anyone within the Federal Republic any funds or resources at all, except for payments exclusively for strictly medical or humanitarian purposes and foodstuffs.[207]

These sanctions were essentially extended by Security Council resolution 820 (1993) to areas of Croatia and Bosnia controlled by the Bosnian Serb forces. In addition, the Danube River was included within the sanctions control system and the transport of all goods (apart from medical

[203] Security Council resolution 748 (1992).
[204] See S/1999/726. [205] See S/PRST/1999/22.
[206] A Sanctions Committee was established under Security Council resolution 724 (1991).
[207] See also resolution 787 (1992), which decided that any vessel in which a majority or a controlling interest was held by a person or undertaking in or operating from the Federal Republic was to be considered for the purpose of the sanctions regime as a Yugoslav vessel, irrespective of the flag flown. Further maritime control measures were also adopted under this resolution.

supplies and foodstuffs) across the land borders to or from the ports of the Federal Republic was prohibited.[208] Resolution 942 (1994) extended sanctions to cover economic activities carried on within states by any entity owned or controlled, directly or indirectly, by any person or entity resident in areas of Bosnia under the control of the Bosnian Serb forces.

As negotiations progressed, the sanctions against the Federal Republic of Yugoslavia were progressively eased.[209] After the Dayton peace agreement was initialled, the arms embargo was lifted[210] and sanctions were suspended indefinitely by resolution 1022 (1995) on 22 November 1995, except with regard to Bosnian Serb forces.[211] Sanctions were fully lifted by resolution 1074 (1996) following the holding of elections in Bosnia as required under the peace agreement and the Sanctions Committee was dissolved. Arms sanctions were reimposed in 1998 due to the Kosovo situation, but lifted in 2001.[212]

Arms sanctions have also been imposed upon Somalia,[213] Rwanda,[214] Liberia[215] and Ethiopia and Eritrea.[216] An arms embargo on Sierra Leone[217]

[208] Resolution 820 also decided that states were to impound all vessels, freight vehicles, rolling stock and aircraft in their territories in which a majority or controlling interest was held by a person or undertaking in or operating from the Federal Republic. Paragraph 21 of the resolution called for states to freeze funds of the authorities in the Federal Republic or of commercial, industrial or public utility undertakings there, and of funds controlled directly or indirectly by such authorities or undertakings or by entities, wherever located or organised, owned or controlled by such authorities or undertakings.

[209] See e.g. Security Council resolutions 943 (1994), 988 (1995), 992 (1995), 1003 (1995) and 1015 (1995).

[210] Security Council resolution 1021 (1995).

[211] The resolution also provided for the release of frozen assets, 'provided that any such funds and assets that are subject to any claims, liens, judgments, or encumbrances, or which are the funds of any person, partnership, corporation, or other entity found or deemed insolvent under law or the accounting principles prevailing in such state, shall remain frozen or impounded until released in accordance with applicable law'.

[212] See resolutions 1160 (1998) and 1367 (2001).

[213] See Security Council resolutions 733 (1992), 751 (1992), 1356 (2001), 1407 (2002) ,1425 (2002), 1744 (2007) and 1772 (2007).

[214] See resolutions 918 (1994), 1005 (1995), 1011 (1995), 1013 (1995), 1053 (1996) and 1161 (1998).

[215] See resolutions 788 (1992) and 985 (1995). Sanctions were terminated by resolution 1343 (2001), but reintroduced in resolution 1521 (2003). See also resolutions 1532 (2004) and 1683 (2006). The regime was most recently extended by resolution 1713 (2006).

[216] See resolution 1298 (2000). Sanctions were terminated in pursuance of Presidential Statement S/PRST/2001/14 of 15 May 2001. Note that this was the first time that sanctions had been imposed on both sides in a conflict: see C. Gray, 'From Unity to Polarisation: International Law and the Use of Force against Iraq', 13 EJIL, 2002, pp. 1, 3.

[217] See resolutions 1132 (1997) and 1171 (1998).

was extended to cover the import of rough-cut diamonds other than those controlled by the government under the certificate of origin scheme.[218] An air embargo and a freezing of assets was imposed on the Taliban regime in Afghanistan in 1999.[219] An arms embargo was imposed on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri, and on groups not party to the Global and All-inclusive Agreement in the Democratic Republic of the Congo in resolution 1493 (2003),[220] while in resolution 1718 (2006) an arms embargo was placed on North Korea, which was called upon to suspend all activities related to its ballistic missile programme, and abandon all nuclear weapons and existing nuclear programmes, and all other existing weapons of mass destruction and ballistic missile programmes in a complete, verifiable and irreversible manner. An arms embargo on the Sudan was imposed in 2004 with regard to all non-governmental entities and individuals, including the Janjaweed Arab militia, operating in North, South and West Darfur,[221] while sanctions have also been imposed upon Iran in view of suspicions that it is moving towards the acquisition of nuclear weapons in violation of its obligations under the Nuclear Non-Proliferation Treaty.[222]

[218] See resolutions 1306 (2000), 1385 (2001) and 1446 (2002). The diamonds sanctions ended in June 2003: see SC/7778. Note also the sanctions imposed on the Ivory Coast, comprising an arms embargo, travel ban on particular individuals, assets freeze on individuals and designated entities and diamond sanctions: see e.g. resolutions 1572 (2004), 1584 (2005), 1643 (2005) and 172 (2007). Sanctions were also imposed on individuals to be determined with regard to Lebanon following the assassination of former prime minister Hariri and others: see resolution 1636 (2005).

[219] See resolution 1267 (1999). The sanctions regime was intensified in e.g. resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005) and 1735 (2006). Sanctions currently cover individuals and entities associated with Al-Qaida, Usama bin Laden and/or the Taliban wherever located.

[220] See also resolutions 1533 (2004), 1596 (2005), 1649 (2005) and 1698 (2006), expanding the scope of the arms embargo, imposing additional targeted sanctions measures (travel ban and assets freeze), and broadening the criteria under which individuals could be designated as subject to those measures. In resolution 1807 (2008), the arms embargo was limited to all non-governmental entities and individuals operating in the territory of the Congo, while the travel ban and assets freeze were extended to individuals operating in that country and committing serious violations of international law involving the targeting of women. See also resolution 1804 (2008) affirming the application of sanctions to various Rwandan armed groups operating in the Congo.

[221] See resolution 1556 (2004). The scope of the arms embargo was expanded and additional measures imposed, including a travel ban and an assets freeze on designated individuals, in resolution 1591 (2005).

[222] Sanctions include a proliferation-sensitive nuclear and ballistic missile programmes-related embargo; an export ban on arms and related matériel from Iran; and individual

While measures taken under article 41 have traditionally been economic sanctions, other possibilities exist. The Council may, for example, call for action to be taken to reduce the number and level of diplomatic staff of the target state within other states.[223] More dramatically, the Council has on two occasions established international tribunals to prosecute war criminals by the adoption of binding resolutions under Chapter VII.[224] Further, the Council may adopt a series of determinations concerning legal responsibilities of states that will have considerable consequences.

Security Council Resolution 687 (1991), adopted under Chapter VII of the Charter and agreed to by Iraq as part of the ceasefire arrangement,[225] constitutes the supreme illustration of such a situation. This laid down a series of conditions for the ending of the conflict in the Gulf. The resolution demanded that Iraq and Kuwait respect the inviolability of the international boundary as laid down in the Agreed Minutes signed by Iraq and Kuwait on 4 October 1963. The Council then proceeded to guarantee the inviolability of this international boundary, a development of great significance in the history of the UN. The resolution also provided for the immediate deployment of a UN observer unit to monitor a demilitarised zone to be established extending 10 kilometres into Iraq and 5 kilometres into Kuwait from the international boundary.[226] Iraq was called upon to accept the destruction or removal of all chemical and biological weapons and all ballistic missiles with a range greater than 150 kilometres. A special commission was provided for to ensure that this happened.[227] Iraq was to agree unconditionally not to acquire or develop nuclear weapons. The Security Council resolution reaffirmed that Iraq was liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments,

targeted sanctions (a travel ban, a travel notification requirement and an assets freeze on designated persons and entities): see resolutions 1737 (2006), 1747 (2007) and 1803 (2008).

[223] See e.g. Security Council resolution 748 (1992), with regard to Libya.

[224] See Security Council resolutions 808 (1992) and 827 (1992) with regard to former Yugoslavia, and 955 (1994) with regard to Rwanda. See also the *Milutinović* case before the International Criminal Tribunal for the Former Yugoslavia, IT–99–37–PT, 6 May 2003.

[225] See S/22456, 6 April 1991. [226] See further above, p. 1229.

[227] See also Security Council resolutions 707 (1991) and 715 (1991) and the Reports of the Special Commission, e.g. S/23165; S/23268; S/24108 and Corr.1; S/24984; S/25977; S/26910; S/1994/750; S/1994/1138; S/1994/1422 and S/1994/1422/Add.1.

nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait.[228]

The scope and extent of this binding resolution amounts to a considerable development of the Security Council's efforts to resolve disputes. The demands that Iraq give up certain types of weapons and the requirement that repudiation of foreign debt is invalidated would appear to mark a new departure for the Council. In this category would also fall the guarantee given to the inviolability of an international border which is still the subject of dispute between the two parties concerned. In addition to the provisions noted above, the Council established a fund to pay compensation for claims[229] and created a UN Compensation Commission.[230]

Sanctions continued after the ceasefire as the Security Council determined that Iraq had failed to comply fully with resolution 687 (1991). Concern centred upon the failure to destroy weapons of mass destruction as required in the resolution. Iraq was also required to place all of its nuclear-weapon-usable materials under the exclusive control of the International Atomic Energy Agency (IAEA) and unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable materials.[231] The United Nations Special Commission (UNSCOM) was created to implement the non-nuclear provisions of the resolution and to assist the IAEA in the nuclear areas.

Iraq ceased its partial co-operation with UNSCOM in October 1998. The Security Council adopted resolution 1205 (1998) condemning this as a 'flagrant violation' of resolution 687 (1991). The UNSCOM inspectors were withdrawn in December 1998 and the conclusion of its final report was that Iraq had not provided it with the necessary declarations and notifications as required under Security Council resolution.[232] In resolution 1284 (1999), noting that Iraq had not fully carried out Council resolutions so that sanctions could not be lifted, the Security Council

[228] In a further interesting but controversial provision, the resolution 'decides that all Iraqi statements made since 2 August 1990, repudiating its foreign debt, are null and void, and demands that Iraq scrupulously adhere to all of its obligations concerning servicing and repayment of its foreign debt'.

[229] See paragraph 18 of resolution 687 (1991).

[230] *Ibid.*, paragraph 16 and see Security Council resolution 692 (1991). See further above, chapter 18, p. 1045.

[231] Paragraph 12.

[232] See S/1999/1037. See also S/1999/94 detailing the problems faced by UNSCOM and Iraq's partial destruction of proscribed weapons coupled with 'a practice of concealment of proscribed items, including weapons, and a cover up of its activities in contravention of Council resolutions', *ibid.*, para. 5.

established the UN Monitoring, Verification and Inspection Commission (UNMOVIC) to replace UNSCOM.[233] In resolution 1441 (2002), adopted unanimously, the Security Council pointed to Iraq's failures to comply with resolution 687 (1991) and decided that Iraq remained in 'material breach' of its obligations under Council resolutions. The sanctions regime that continued in force was mitigated by the adoption of the 'oil-for-food' programme instituted under resolution 986 (1995) and administered by the UN.[234]

The issue generally of the efficacy of sanctions remains open, but the economic damage that sanctions can do to the general population of a state, particularly where the government concerned does not operate in good faith, may be immense, and this has opened a debate as to whether sanctions may be better focused and targeted or made 'smarter'.[235] One manifestation of this has been the increasing resort to sanctions against particular individuals or entities (as determined by the Security Council sanctions committee established to deal with the matter). This has raised the issue as to the ability of the named persons or entities to challenge their inclusion on the relevant list. Different de-listing (removal) procedures have been established by the various sanctions committees monitoring imposed sanctions, but these have not permitted direct approaches by individuals or entities concerned and this has prompted human rights concerns.[236] Accordingly, the Security Council adopted resolution 1730 (2006), which called for the Secretary-General to establish within the Secretariat (Security Council Subsidiary Organs Branch) a focal point to receive de-listing requests from the pertinent individuals or entities.

[233] See e.g. C. de Jonge Oudraat, 'UNSCOM: Between Iraq and a Hard Place', 13 EJIL, 2002, p. 139.

[234] See S/1996/356 and, most recently, S/2002/1239. Note that Security Council resolution 1472 (2003), adopted eight days after the military operation against Iraq began, provided for the temporary extension of the oil-for-food arrangements under the changed conditions. The arrangements were also modified in resolutions 1284 (1999) and 1409 (2002). Resolution 1483 (2003) supported the formation of an 'interim administration' for Iraq, following the occupation of that state by the UK and the USA, by the people of Iraq with the help of 'the Authority' (the UK and USA) and all economic sanctions (apart from arms) were lifted: see further below, p. 1256.

[235] See e.g. General Assembly resolution 51/242 and UKMIL, 70 BYIL, 1999, p. 549. See also Gray, *Use of Force*, p. 209, and Forum, 13 EJIL, 2002, p. 43.

[236] See e.g. E. Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al-Qaida/Taliban Sanctions', 98 AJIL, 2004, p. 745, and B. Fassbender, *Targeted Sanctions and Due Process*, 2006, a study commissioned by the UN Office of Legal Affairs, www.un.org/law/counsel/Fassbender_study.pdf. See also C. Tomuschat, *Human Rights*, Oxford, 2003, p. 90, and K. Wellens, *Remedies against International Organizations*, Cambridge, 2002, p. 89.

Such requests are to be sent to the designating governments concerned (and governments of citizenship and residence), who may approach the sanctions committee directly or through the focal point, proposing that the individuals or entitites be removed from the sanctions list. It will then be for the sanctions committee to take the decision.[237]

Measures involving the use of force Where the Council feels that the measures short of armed force as prescribed under article 41 have been or would 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'. Article 42 also provides that such action may extend to demonstrations, blockades and other armed operations by members of the United Nations. In order to be able to function effectively in this sphere, article 43 provides for member states to conclude agreements with the Security Council to make available armed forces, assistance and facilities, while article 45 provides that member states should hold immediately available national air-force contingents for combined international enforcement action in accordance with article 43 agreements. In this manner it was intended to create a United Nations corps to act as the arm of the Council to suppress threats to, or breaches of, the peace or acts of aggression.

Article 47 provides for the creation of a Military Staffs Committee, composed of the Chiefs of Staff of the five permanent members or their representatives, to advise and assist the Security Council on military requirements and to be responsible for the strategic direction of any armed force placed at the disposal of the Security Council. Indeed, article 46 provides that plans for the application of armed force 'shall be made by the Security Council with the assistance of the Military Staffs Committee'. However, during the Kuwait crisis of 1990–1, the Military Staffs Committee played an important co-ordinating role, while under Security Council resolution 665 (1990) it was given a more general co-ordination function.

[237] Where no comments are received within three months, the sanctions committee will be so informed and any member may request de-listing. The Secretary-General informed the Security Council on 30 March 2007 that the focal point had been established, S/2007/178. Note that in the *Yusuf* and *Kadi* cases it was argued that the persons concerned had been wrongly listed and that EU Regulation 881/2002, implementing the UN sanctions, should be annulled with regard to them: see the judgment of 21 September 2005 of the European Court of First Instance, T-306/01 and T/315/01 (which refused to review the Regulation) and the opinion of the advocate-general of the European Court of Justice, C-402/05 P of 16 January 2008, which proposed that the judgment of the Court of First Instance be set aside and the Regulation in so far as it related to the persons concerned annulled. The matter is currently before the European Court of Justice.

Because of great power disputes and other factors, none of the projected agreements has been signed and article 43 remains ineffective. This has weakened article 42 to the extent that the envisaged procedure for its implementation has had to be abandoned. This has meant that the UN through a process of interpretation by subsequent conduct has been obliged to reconfigure the collective security regime.

The first example of enforcement action in practice was the United Nations' reaction to the North Korean invasion of the South in 1950,[238] and this only occurred because of a fortuitous combination of circumstances. In June 1950 North Korean forces crossed the 28th Parallel dividing North from South Korea and thus precipitated armed conflict. Almost immediately the Security Council debated the issue and, after declaring that a breach of the peace had taken place, called upon member states to assist the United Nations in achieving a North Korean withdrawal. Two days later, another resolution was adopted which recommended that United Nations members should furnish all necessary assistance to the South Korean authorities, while the third in the trio of Security Council resolutions on this issue authorised the United States to designate the commander of the unified forces established for the purpose of aiding the South Koreans and permitted the use of the United Nations flag by such forces.[239]

The only reason that these resolutions were in fact passed by the Council was the absence of the USSR in protest at the seating of the Nationalist Chinese delegation.[240] This prevented the exercise of the veto by the Soviet Union and permitted the creation of an authoritative United Nations umbrella for the US-commanded forces combating the North Korean armies. The USSR returned to the Council at the start of August 1950 and effectively blocked further action by the Council on this issue, but they could not reverse what had been achieved, despite claims that the resolutions were not constitutionally valid in view of the Soviet boycott.[241]

However, although termed United Nations forces, the contingents from the sixteen states which sent troops were under effective United States control, pursuant to a series of agreements concluded by that country with each of the contributing states, and were not in any real sense directed by the United Nations other than operating under a general Security

[238] See e.g. Dinstein, *War*, pp. 292 ff.; Gray, *Use of Force*, pp. 199 ff., and Franck, *Fairness*, p. 223.

[239] Security Council resolutions 82 (1950), 83 (1950) and 84 (1950).

[240] See e.g. L. Sohn, *Cases on United Nations Law*, 2nd edn, Brooklyn, 1967, pp. 479 ff.

[241] *Ibid.*, pp. 481 ff. See also *ibid.*, pp. 509 ff. with regard to the situation following the Chinese involvement in the conflict.

Council authorisation. This improvised operation clearly revealed the deficiencies in the United Nations system of maintaining the peace since the Charter collective security system as originally envisaged could not operate, but it also demonstrated that the system could be reinterpreted so as to function.[242]

The second example occurred following the invasion of Kuwait by Iraq on 2 August 1990.[243] Resolution 660 (1990), adopted unanimously the same day by the Security Council, condemned the invasion and called for an immediate and unconditional withdrawal. Resolution 662 (1990) declared that the purported Iraqi annexation of Kuwait had no legal validity and was null and void. States and international organisations were called upon to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation. The Council, specifically acting under Chapter VII of the UN Charter, demanded in resolution 664 (1990) that Iraq permit the immediate departure of the nationals of third countries[244] and in resolution 667 (1990) condemned Iraqi aggressive acts against diplomatic premises and personnel in Kuwait, including the abduction of foreign nationals present in those premises, and demanded the protection of diplomatic premises and personnel.[245] Eventually, the Security Council, feeling that the response of Iraq to all the foregoing resolutions and measures adopted had been unsatisfactory, adopted resolution 678 (1990) on 29 November 1990. This allowed Iraq a further period of grace within which to comply with earlier resolutions and withdraw from Kuwait. This 'final opportunity' was to end on 15 January 1991. After this date, member states co-operating with the Government of Kuwait were authorised to use all necessary means to uphold and implement Security Council resolution 660 (1990) and to restore international peace and security in the area. All states were requested to provide appropriate support for the actions undertaken in pursuance of this resolution. The armed action commenced on 16 January 1991 by a coalition of states[246]

[242] Franck has written, referring to the 'adaptive capacity' of the UN, that the 'gradual emancipation of article 42 as a free-standing authority for deploying collective force, *ad hoc*, had prevented the collapse of the Charter system in the absence of the standby militia envisioned by article 43', *Recourse*, p. 23.

[243] See Lauterpacht *et al.*, *Kuwait Crisis: Basic Documents*. See also O. Schachter, 'United Nations Law in the Gulf Conflict', 85 AJIL, 1991, p. 452.

[244] See also Security Council resolution 674 (1990).

[245] See generally *Keesing's Record of World Events*, pp. 37631 ff. and pp. 37694 ff. (1990).

[246] The following states supplied armed forces and/or warships or aircraft for the enforcement of the UN resolutions: USA, UK, France, Egypt, Syria, Saudi Arabia, Morocco, the Netherlands, Australia, Italy, Spain, Argentina, Belgium, Canada, Pakistan, Norway,

under the leadership of the United States can thus be seen as a legitimate use of force authorised by the UN Security Council under its enforcement powers elaborated in Chapter VII of the UN Charter and binding upon all member states of the UN by virtue of article 25.[247] This is to be seen in the context of the purposes laid down by the Council in binding resolutions, that is the immediate and unconditional withdrawal of Iraq from Kuwait and the restoration of international peace and security in the area, and within the framework of the exercise of enforcement action in the light of the absence of article 43 arrangements.

However, the question has arisen whether the process of reinterpreting the Charter by subsequent conduct has moved beyond the authorisation by the Council to member states to take action in the absence of specifically designated UN forces operating under the aegis of the Military Staffs Committee. In particular, is it possible to argue that in certain situations such authorisation may be implied rather than expressly granted?[248] Following the Gulf War, revolts against the central government in Iraq led to widespread repression by Iraqi forces against the Shias in the south and the Kurds in the north of the country. Security Council resolution 688 (1991), which was not adopted under Chapter VII and did not authorise the use of force, condemned such repression 'the consequences of which threaten international peace and security' and insisted that Iraq allow immediate access by international humanitarian organisations to those in need in the country. In the light of the repression, the US, UK and France sent troops into northern Iraq to create a safe haven for humanitarian operations. They were speedily withdrawn and replaced by a small number of UN Guards operating with the consent of Iraq.[249] In addition, the Western states declared a 'no-fly' zone over southern Iraq in August 1992, having established one over northern Iraq in April 1991. The justification of these zones was argued to be that of supporting resolution 688.[250] Further, it was maintained that the right of self-defence

Denmark, USSR, Bangladesh, Senegal, Niger, Czechoslovakia and the Gulf Co-operation Council (Kuwait, Qatar, Bahrain, Oman and the United Arab Emirates): see *Sunday Times* 'War in the Gulf' Briefing, 27 January 1991, p. 9.

247 As well as a legitimate use of force in collective self-defence: see above, chapter 20, p. 1146.

248 See e.g. Gray, *Use of Force*, pp. 264 ff.

249 See e.g. White, *Keeping the Peace*, p. 192, and F. L. Kirgis, *International Organisations in their Legal Setting*, 2nd edn, St Paul, 1993, pp. 854 ff.

250 See e.g. the statement of the Minister of State at the Foreign Office on 27 January 1993, UKMIL, 64 BYIL, 1993, p. 739, and see also *ibid*., at p. 728 and UKMIL, 65 BYIL, 1994, p. 683. See also the statement of President Bush of the US cited in Kirgis, *International Organisations*, p. 856. Note that on 3 September 1996, in response to the entry of Iraqi

existed with regard to flights over the zones, thus permitting proportionate responses to Iraqi actions.[251] Whether resolution 688 can indeed be so interpreted is unclear. What is clear is that such actions were not explicitly mandated by the UN. It is also to be noted that the UK in particular has also founded such actions upon the need to prevent a humanitarian crisis as supported by resolution 688. In March 2001, for example, it was noted that the no-fly zones were established 'in support of resolution 688' and 'are justified under international law in response to a situation of overwhelming humanitarian necessity'.[252]

More dramatically, the use of force based impliedly on Security Council resolutions occurred in March 2003, when the UK and the US commenced military action against Iraq.[253] The legal basis for this action was deemed to rest upon the 'combined effect of resolutions 678, 687 and 1441'.[254] Resolution 1441 (2002)[255] *inter alia* recognised that Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction posed a threat to international peace and security and recalled that resolution 678 authorised member states to use all necessary means to restore international peace and security. Citing Chapter VII, the resolution decided that Iraq was and remained in material breach of resolutions

troops and tanks into the northern 'no-fly' Kurdish zone in order to aid one of the Kurdish groups against another, US aircraft launched a series of air strikes against Iraq and extended the southern 'no-fly' zone from the 32nd to the 33rd parallel. In so doing the US government cited Security Council resolution 688 (1991): see *The Economist*, 7 September 1996, pp. 55–6. See also Gray, 'Unity to Polarisation', p. 9.

[251] UKMIL, 64 BYIL, 1993, pp. 728 and 740 with regard to Western air raids against Iraqi targets on 13 January 1993. See also UKMIL, 69 BYIL, 1998, p. 592 and UKMIL, 70 BYIL, 1999, pp. 565, 568 and 590.

[252] See UKMIL, 72 BYIL, 2001, p. 694. See also above, chapter 20, p. 1156.

[253] Note that in December 1998, UK and US airplanes attacked targets in Iraq in response to the withdrawal by that state of co-operation with UN weapons inspectors and based this action on resolutions 1154 (1998) and 1205 (1998) adopted under Chapter VII. The resolutions did not authorise force, but the former noted that any violation by Iraq of its obligations to accord 'immediate, unconditional and unrestricted access' to UNSCOM and the IAEA would have 'severest consequences' and the latter declared that Iraq's decision to end co-operation with UNSCOM was 'a flagrant violation' of resolution 687 (1991): see UKMIL, 69 BYIL, 1998, pp. 589 ff., and Gray, 'Unity to Polarisation', pp. 11 ff.

[254] See the Attorney General, Hansard, House of Lords, vol. 646, Written Answer, 17 March 2003. This UK position was referred to without demur by the US Secretary of State, Briefing, 17 March, 2003: see www.state.gov/secretary/rm/2003/18771.htm. See also the letters dated 21 March 2003 sent to the President of the Security Council from the Permanent Representatives of the UK, US and Australia, S/2003/350-2. See also 52 ICLQ, 2003, pp. 812 ff.

[255] See, as to resolutions 678 (1990) and 687 (1991), above, pp. 1253 and 1248.

including 687, decided to afford that state a 'final opportunity to comply with its disarmament obligations under relevant resolutions of the Council' and established an enhanced inspection regime. The Council called for declarations from Iraq detailing all aspects of its programmes with regard to weapons of mass destruction and ballistic missiles, noting that false statements or omissions would constitute a further material breach. It decided that Iraq was to provide UNMOVIC and the IAEA with immediate, unimpeded, unconditional and unrestricted access to all relevant sites, records and officials. The Council decided to convene further to 'consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security' and recalled in that context that 'the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations'. This resolution was adopted unanimously.

Subsequent events, however, revealed Iraqi deficiencies in complying with the resolution.[256] The Security Council was divided on the need for a follow-up resolution to 1441 in order for force to be used and a draft resolution drawn up by the UK, US and Spain was withdrawn on 17 March once it became clear that one or more permanent members would exercise a veto.[257] On 20 March the military operations commenced. The Security Council can authorise member states to resort to force in order to maintain international peace and security, as in the Kuwait conflict of 1990–1, and the Council did affirm that Iraq's failure to comply with its obligations in resolution 687 to divest itself of weapons of mass destruction constituted a threat to international peace and security. Resolution 1441 was intended as a final opportunity and it was provided that serious consequences would ensue upon Iraq's failure to comply. However, whether this amounts to a justification in international law for the UK and the US to use force in the face of the opposition of other Security Council members remains controversial.[258]

[256] See e.g. UNMOVIC Report of 28 February 2003, S/2003/232, pp. 3, 12–13 and UNMOVIC Working Document on Unresolved Disarmament Issues: Iraq's Proscribed Weapons Programme ('Cluster Document'), 6 March 2003.

[257] See US Secretary of State, Briefing, 17 March 2003, www.state.gov/secretary/rm/2003/18771.htm.

[258] See e.g. 'Agora', 97 AJIL, 2003, p. 553; Gray, *Use of Force*, pp. 270 ff.; Dinstein, *War*, pp. 297 ff.; E. Papastavridis, 'Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraqi Crisis', 56 ICLQ, 2007, p. 83; J.-M. Sorel, 'L'ONU et l'Irak: Le Vil Plomb N'Est Pas Transformé en Or Pur', 108 RGDIP, 2004, p. 845; S. Wheatley, 'The Security Council, Democratic Legitimacy and Regime Change in Iraq', 17 EJIL, 2006, p. 531; and C. Greenwood, 'International Law and the Pre-emptive Use of Force:

The use of force in non-enforcement situations

In some recent peacekeeping situations, missions established without reference to Chapter VII of the Charter have later been expanded with mandates wholly or partly referring specifically to Chapter VII and in some cases this has led to the application of force by the UN. The results are variable. In both Bosnia and Somalia the temptation to resort to more robust tactics (often for the best of humanitarian reasons) involving the use of force, but without adequate political or military resources or support, led to severe difficulties.

Former Yugoslavia The outbreak of hostilities in Yugoslavia led the Security Council in resolution 713 (1991), adopted on 25 September 1991, to impose an arms embargo on that country. As the situation deteriorated, the decision was taken to establish a peacekeeping force (the UN Protection Force or UNPROFOR) in order to ensure the demilitarisation of three protected areas in Croatia (inhabited by Serbs).[259] This resolution did not refer to Chapter VII and did specifically note the request of the Government of Yugoslavia for a peacekeeping operation.[260] The full deployment of the force was authorised by resolution 749 (1992). During the following months the mandate of UNPROFOR was gradually extended. By resolution 762 (1992), for example, it was authorised to monitor the situation in areas of Croatia under Yugoslav army control,[261] while by resolution 779 (1992) UNPROFOR assumed responsibility for monitoring the demilitarisation of the Prevlaka peninsula near Dubrovnik.[262] At the same time, the situation in Bosnia and Herzegovina deteriorated. Both Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) were criticised for their actions in Bosnia in resolution 757 (1992)[263] and sanctions were imposed upon the latter. In resolution 758 (1992), the Council approved an enlargement of UNPROFOR's mandate and strength and

Afghanistan, Al-Qaida and Iraq', 4 *San Diego Journal of International Law*, 2003, p. 7. See also Sarooshi, *Collective Security*, chapter 4 and pp. 174 ff. with regard to delegation of Chapter VII powers to member states and the limitations thereupon.

259 Security Council resolution 743 (1992). See also the Report of the Secretary-General, S/23592 and Security Council resolutions 721 (1991) and 724 (1991).

260 The resolution, however, did mention article 25.

261 See also Security Council resolution 769 (1992).

262 Note also Security Council resolution 802 (1993) criticising Croatia for its attacks within or adjacent to the UN protected areas and upon UNPROFOR personnel.

263 The Security Council in this resolution was explicitly acting under Chapter VII. See also resolution 752 (1992) also criticising outside interference in Bosnia, which did not refer to Chapter VII.

authorised the deployment of military observers and related personnel and equipment to Sarajevo, the capital of Bosnia.[264]

In a further measure responding to the dire situation, the Security Council, acting under Chapter VII, adopted resolution 770 (1992) calling on all states to 'take nationally or through regional agencies or arrangements all measures necessary' to facilitate, in co-ordination with the UN, the delivery of humanitarian assistance to and within Bosnia. The phrase 'all necessary measures', it will be recalled, permits in UN terminology the resort to force.[265] The mandate of UNPROFOR was augmented by resolution 776 (1992) to incorporate support for the humanitarian relief activities of the UN High Commissioner for Refugees (UNHCR) and, in particular, to provide protection where requested. It was noted in the Secretary-General's Report, approved by this resolution, that the normal peacekeeping rules of engagement would be followed, so that force could be used in self-defence, particularly where attempts were made to prevent the carrying out of the mandate.[266] However, resolution 776 (1992) made no mention of either Chapter VII or 'all necessary measures'.

A further stage in the evolution of UNPROFOR's role occurred with the adoption of the 'no-fly' ban imposed on military flights over Bosnia by Security Council resolution 781 (1992). UNPROFOR was given the task of monitoring compliance with this ban.[267]

In order to protect certain Bosnian Moslem areas under siege from Bosnian Serb forces, the Security Council established a number of 'safe

[264] Additional elements were deployed to ensure the security of the airport by resolution 761 (1992). Note that neither of these resolutions referred to Chapter VII. See also S/1994/300, with regard to UNPROFOR's mandate relating to Sarajevo airport. The airlift of humanitarian supplies into this airport was the longest lasting such airlift in history and well over 150,000 tons were delivered: see S/1995/444, para. 23.

[265] The Secretary-General was, however, careful to state that this resolution created no additional mandate for UNPROFOR: see S/1995/444, para. 25.

[266] See S/24540. Note that a number of resolutions extended the application of Chapter VII to UNPROFOR's freedom of movement, e.g. resolutions 807 (1993) and 847 (1993), and force was used on a number of occasions in self-defence: see e.g. S/1995/444, para. 55.

[267] See also Security Council resolution 786 (1992). The ban on air activity was expanded in resolution 816 (1993) to cover flights by all fixed-wing and rotary-wing aircraft. At the request of the Secretary-General, the no-fly zone was enforced by aircraft from NATO: see S/1995/444, para. 30. A 'dual key' system was put into operation under which decisions on targeting and execution were to be taken jointly by UN and NATO commanders and the principle of proportionality of response to violations was affirmed: see e.g. Joint Press Statement of 29 October 1994, PKO/32.

areas'.[268] Although Chapter VII was referred to in these resolutions, it was cited only in the context of resolution 815 (1993), which dealt with the security of UNPROFOR personnel. The enforcement of the 'safe areas' was therefore to be attained by UNPROFOR personnel authorised to use force only to protect themselves.[269] Although the Secretary-General stated that approximately 34,000 extra troops would be necessary, only an additional 7,000 were authorised.[270] At the request of the Secretary-General, NATO established a 3-kilometre 'total exclusion zone' and a 20-kilometre 'military exclusion zone' around Gorazde and a 20-kilometre 'heavy weapons exclusion zone' around Sarajevo. These zones were to be enforced by air strikes if necessary, although no Security Council resolutions referred to such zones or created any special regime with regard to them.[271] Relations between UNPROFOR and the Bosnian Serbs led to a series of incidents in the spring of 1995. The latter breached the Sarajevo no-heavy-weapons arrangement. This precipitated NATO airstrikes which provoked the taking hostage of several hundred UNPROFOR soldiers. The 'safe area' of Srebrenica was then captured by Bosnian Serb forces in July 1995, involving major human rights abuses against the population. After incidents involving other 'safe areas' and Sarajevo, NATO with UN approval launched a series of airstrikes.[272] At the same time, Bosnian and Croat forces captured areas held by the Bosnian Serbs. A ceasefire agreement came into force on 12 October 1995.[273]

UN peacekeeping missions in former Yugoslavia were reorganised in March 1995, following the capture by Croatian forces of three of the four protected areas inhabited by Serbs in Croatia. The UN missions therefore comprised UNPROFOR in Bosnia,[274] the UN Confidence Restoration Operation in Croatia (UNCRO)[275] and the UN Preventive Deployment

[268] See resolutions 819 (1993) and 824 (1993). These were Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde and Bihac.

[269] See also Security Council resolution 836 (1993).

[270] Security Council resolution 844 (1993). See also S/25939. Note that the Secretary-General called for the demilitarisation of the 'safe areas', S/1994/1389. At the request of the Secretary, UNPROFOR was also given the task of monitoring the ceasefire agreement between the Bosnian and Croatian armies: see Security Council resolution 908 (1994), and given additional responsibilities with regard to Sarajevo: see Security Council resolution 900 (1994).

[271] S/1995/444, paras. 48–9.

[272] See also Security Council resolution 998 (1995) regarding the proposal to establish a rapid reaction force.

[273] See S/1995/987.

[274] See also Security Council resolution 1026 (1995).

[275] See also Security Council resolutions 990 (1995) and 994 (1995).

Force (UNPREDEP) in the former Yugoslav Republic of Macedonia.[276] As a consequence of the Dayton peace agreement initialled in November 1995, UNPROFOR was replaced by a multinational implementation force (IFOR)[277] composed primarily of troops from NATO countries. In addition, it was proposed to set up a UN International Police Task Force to carry out a variety of police-related training and assistance missions.[278]

The evolution of the UN role in the complex Yugoslav tragedy may be characterised as a series of impromptu actions taken in response to traumatic events. UNPROFOR was never authorised to use force beyond that required in self-defence while performing their rapidly expanding duties. The UN sought to fulfil its fundamental mandated responsibilities with respect to Sarajevo and the transportation of humanitarian aid in co-operation with the warring parties based on the peacekeeping principles of impartiality and consent. But the situation was far from a normal peacekeeping situation of separating hostile forces that consent to such separation. The use of air power was subsequently authorised both in order to defend UNPROFOR personnel and to deter attacks upon the 'safe areas', which had been proclaimed as such with little in the way of initial enforcement means. Eventually air strikes by NATO were resorted to in the face of fears of further Bosnian Serb capture of 'safe areas'. Whether a peacekeeping mission in the traditional sense can ever really be mounted in the conditions then faced in Bosnia must be seriously in doubt, although the humanitarian efforts undertaken were important. Only a meaningful enforcement mandate could have given the UN a chance to put an end to the fighting. But that required a major political commitment and substantial resources. These states are rarely willing to provide unless their own vital national interests are at stake.

Somalia[279] The Somali situation marked a similar effort by the UN to resolve a humanitarian crisis arising out of civil war conditions and one that saw a peacekeeping mission drifting into an enforcement one. Following

[276] Security Council resolutions 981 (1995), 982 (1995) and 983 (1995). The Security Council had authorised deployment of a preventive force in Macedonia in resolution 795 (1992). See also S/24923, annex.

[277] See Security Council resolution 1031 (1995).

[278] See e.g. S/1995/1031 and Security Council resolution 1026 (1995). The International Police Task Force was established under resolution 1035 (1995).

[279] See e.g. Franck, *Fairness*, pp. 301 ff., and I. Lewis and J. Mayall, 'Somalia' in *The New Interventionism 1991–1994* (ed. J. Mayall), Cambridge, 1996, p. 94. See also J. M. Sorel, 'La Somalie et les Nations Unies', AFDI, 1992, p. 61.

a prolonged period of civil war, the Security Council urged all parties to agree to a ceasefire and imposed an arms embargo. The Secretary-General was requested to organise humanitarian assistance.[280] A UN technical mission was then established to look at mechanisms to provide such aid and to examine peacekeeping options.[281] The UN Operation in Somalia (UNOSOM) was set up shortly thereafter,[282] but this modest operation (of fifty ceasefire observers and a security force) was deemed insufficient to ensure the delivery of humanitarian assistance, and the deployment of additional UN security units in order to protect the distribution centres and humanitarian convoys was authorised.[283] However, the situation continued to deteriorate and few humanitarian supplies arrived where needed due to constant attacks.[284] Accordingly, after the Secretary-General had concluded that Chapter VII action was required,[285] the Security Council determined that the 'magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security'. The use of 'all necessary means to establish as soon as possible a secure environment for humanitarian relief operations' was authorised and the Unified Task Force was created (UNITAF).[286] This comprised troops from over twenty states, including some 30,000 from the US.[287]

This operation was expanded the following spring and UNOSOM II was established with an enlarged mandate with enforcement powers under Chapter VII.[288] UNOSOM II was given the humanitarian mandate of UNITAF, together with 'responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia' and the provision of security to assist the repatriation of refugees and the assisted resettlement of displaced persons. The force was also to complete the disarmament of factions, enforce the Addis Ababa agreement of January 1993[289] and help rebuild the country. The authorisation to take all

[280] Security Council resolution 733 (1992). See also S/23829, 1992.
[281] Security Council resolution 746 (1992).
[282] Security Council resolution 751 (1992). This was not originally a Chapter VII operation.
[283] Security Council resolution 775 (1992). See also S/244480, 1992. Under resolution 767 (1992) Somalia was divided into four operational zones for the delivery of food aid and ceasefire purposes.
[284] See S/24859, 1992. [285] S/24868, 1992. [286] Security Council resolution 794 (1992).
[287] The operation was termed 'Operation Restore Hope' and it arrived in Somalia in December 1992: see S/24976, 1992 and S/25168, 1993.
[288] Security Council resolution 814 (1993). See also S/25354, 1993.
[289] See S/25168, annex III.

necessary measures was reiterated in resolution 837 (1993), following an attack upon UNOSOM II forces. This authorisation was stated to include taking action against those responsible for the attacks and to establish the effective authority of UNOSOM II throughout the country. A series of military incidents then took place involving UN forces.[290] Security Council resolution 897 (1994), while condemning continued violence in the country especially against UN personnel, authorised a reduction in UNOSOM II's force levels to 22,000.[291] And in resolution 954 (1994), the Council decided to terminate the mission at the end of March 1995 and authorised UNOSOM II to take actions necessary to protect the mission and the withdrawal of personnel and assets and to that end called upon member states to provide assistance to aid the withdrawal process. The Secretary-General concluded his report of 14 October 1994 noting that the vacuum of civil authority and of governmental authority severely hampered the work of the UN, while 'the presence of UNOSOM II troops has had limited impact on the peace process and limited impact on security in the face of continuing interclan fighting and banditry'.[292]

Rwanda[293] Following a civil war between government forces and RPF rebels, the Security Council authorised the deployment of the UN Observer Mission Uganda Rwanda (UNOMUR) on the Ugandan side of the border.[294] A peace agreement was signed between the parties at Arusha and the UN set up the UN Assistance Mission for Rwanda (UNAMIR) with a mandate to ensure the security of the capital, Kigali, monitor the ceasefire agreement and monitor the security situation generally up to the installation of the new government.[295] However, the projected transitional institutions were not set up and the security situation deteriorated. Following the deaths of the Presidents of Rwanda and Burundi in an airplane crash on 5 April 1994, full-scale civil war erupted which led to massacres of Hutu opposition leaders and genocidal actions against members of the Tutsi minority. Faced with this situation, the Security Council rejected the option of strengthening UNAMIR and empowering it

[290] See e.g. S/26022, 1993, and Security Council resolutions 865 (1993), 878 (1993), 885 (1993) and 886 (1993).
[291] See also Security Council resolutions 923 (1994) and 946 (1994).
[292] S/1994/1166, Part 2, para. 22.
[293] See e.g. Franck, *Fairness*, pp. 300 ff.
[294] See Security Council resolution 846 (1993). See also resolutions 812 (1993) and 891 (1993). This mission was terminated in resolution 928 (1994).
[295] Security Council resolution 872 (1993). See also resolutions 893 (1994) and 909 (1994).

under Chapter VII in favour of withdrawing most of the mission from the country.[296]

As the situation continued to deteriorate, the Council imposed an arms embargo on the country, authorised the increase of UNAMIR to 5,500 and its redeployment in Rwanda and expanded its mandate to include the establishment and maintenance of secure humanitarian areas.[297] However, delays in implementing this led to a proposal from France to establish a French-commanded force to act under Chapter VII of the Charter and subject to Security Council authorisation in order to protect displaced persons and civilians at risk. This was accepted in resolution 929 (1994) in which the Council, acting under Chapter VII, authorised a two-month operation (Operation Turquoise) until UNAMIR was up to strength. Member states were authorised to use all necessary measures to achieve their humanitarian objectives. The force, therefore acting as the 1990–1 Gulf War Coalition had on the basis of Security Council authorisation under Chapter VII, established a humanitarian protected zone in south-western Rwanda. Gradually UNAMIR built up to strength and it began deploying troops in the protected zone on 10 August 1994, taking over responsibility from the French-led force shortly thereafter and deploying in areas throughout the country. UNAMIR's mandate ended on 6 March 1996.[298]

Sierra Leone After prolonged fighting, a military junta took power and the Security Council imposed an oil and arms embargo which was terminated upon the return of the democratically elected President.[299] This was followed by the establishment of the UN Observer Mission in Sierra Leone with the function of monitoring the disarmament process and restructuring the security forces.[300] This mandate was increased following further violence.[301] In October 1998, the Security Council, noting the signing of the Lomé Agreement the previous July, set up the UN Mission in Sierra Leone (UNAMSIL) with an initial 6,000 military personnel to replace the previous mission with an enhanced mandate, including establishing a presence at key locations in the country, monitoring the ceasefire and facilitating humanitarian assistance. Specifically acting under

[296] Security Council resolution 912 (1994).
[297] Security Council resolution 918 (1994). See also resolutions 925 (1994) and 935 (1994).
[298] See Security Council resolution 1029 (1995).
[299] See resolutions 1132 (1997) and 1156 (1998).
[300] See resolution 1181 (1998).
[301] See resolutions 1220 (1999), 1231 (1999), 1245 (1999) and 1260 (1999).

Chapter VII, paragraph 14 of resolution 1270 (1999), the Council decided that 'in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and . . . to afford protection to civilians under imminent threat of physical violence'. The force was increased and the mandate revised in resolution 1289 (2000) to include in paragraph 10, specifically citing Chapter VII, the provision of security at key locations and at other sites and to assist the Sierra Leone law enforcement authorities in the discharge of their responsibilities. UNAMSIL was further authorised to 'take the necessary action' to fulfil the additional tasks.[302]

The Democratic Republic of the Congo The Security Council has also concerned itself with the civil war and foreign interventions in the Democratic Republic of the Congo (the former Zaire). Following fighting involving both internal and external forces, the Lusaka Ceasefire Agreement was signed in July 1999.[303] This was welcomed by the Security Council and the deployment of a small UN military liaison force was authorised.[304] This force was designated the UN Organisation Mission in the Democratic Republic of the Congo (MONUC).[305] The Mission was expanded and extended with a mandate *inter alia* to include monitoring the ceasefire and to supervise and verify the disengagement arrangements.[306] Paragraph 8 of the resolution, specifically citing Chapter VII, states that the Council has decided that MONUC 'may take the necessary action . . . to protect United Nations and co-located JMC [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'. During the summer of 2000, fighting broke out between Ugandan and Rwandan forces in the Congo and the Security Council in resolution 1304 (2000), acting under Chapter VII, demanded that Uganda and Rwanda withdraw all their forces from the Congo and that all other foreign military presence and activity, direct and indirect, be brought to an end. MONUC was asked to monitor the cessation of hostilities and

[302] The mission was further extended and expanded: see e.g. resolutions 1299 (2000), 1346 (2001), 1400 (2002) and 1436 (2002). It ended in 2005 to be succeeded by the UN Integrated Office in Sierra Leone: see resolutions 1562 (2004) and 1610 (2005). See also, as to the role of ECOWAS, below, p. 1278, note 365.

[303] See S/1999/815 and resolution 1234 (1999). See also P. Okawa, 'Congo's War: The Legal Dimensions of a Protracted Conflict', 77 BYIL, 2006, p. 203, and above, chapter 20, p. 1154.

[304] Resolution 1258 (1999). [305] Resolution 1279 (1999). [306] Resolution 1291 (2000).

the disengagement of forces and withdrawal of foreign forces.[307] This demand was repeated in resolutions 1341 (2001) and 1355 (2001), again acting under Chapter VII.[308] In resolution 1797 (2008), MONUC was authorised to assist the authorities in organising, preparing and conducting local elections, while in resolution 1804 (2008), the Security Council demanded that armed groups and militias in the eastern part of the country immediately lay down their arms and turn themselves in to Congolese and MONUC authorities for disarmament, demobilisation, repatriation, resettlement and reintegration. In virtually all of these resolutions, the situation was characterised as a 'threat to international peace and security in the region'.[309]

Sudan Following a long-running civil war in the south of the country, an agreement was signed on 20 July 2002 (the Machakos Protocol) between the parties and this led to subsequent agreements in 2004. In June that year, the UN established a special political mission (UNAMIS) to assist the parties. Faced with a deteriorating situation in Darfur in the western Sudan, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1556 (2004), calling for political talks between the parties, endorsing the dispatch of international monitors, including a protection force envisioned by the African Union, and assigning certain responsibilities to UNAMIS.[310] On 9 January 2005, a full peace agreement (the Comprehensive Peace Agreement) was signed, ending the civil war in the south of Sudan. In resolution 1590 (2005), the Council, acting under Chapter VII, established the UN Mission in Sudan (UNMIS) to support implementation of the Comprehensive Peace Agreement and to take over from UNAMIS, and authorised it to 'take the necessary action' to protect UN and humanitarian personnel. A peaceful solution to the Darfur crisis was also called for in this resolution.[311] African Union efforts to seek a solution to the crisis in Darfur culminated in the signing of the Darfur

[307] The mandate of MONUC was further extended in a series of resolutions: 1316 (2000); 1332 (2000); 1493 (2003); 1565 (2004); 1592 (2005); 1635 (2005); 1711 (2006); and 1794 (2007).

[308] See also resolutions 1376 (2001), 1399 (2002), 1417 (2002), 1457 (2003) and 1468 (2003).

[309] See as to the imposition of sanctions, above, p. 1247.

[310] See also resolution 1564 (2004) authorising a human rights presence and resolution 1574 (2004).

[311] Note that on 1 February 2005, a UN Commission of Inquiry into Darfur called for in resolution 1564 (2004) reported that while genocide had not been committed by the Sudan government, its forces and allied Janjaweed militias had carried out 'indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of

Peace Agreement on 5 May 2006. Following a recommendation from the UN Secretary-General,[312] the Security Council adopted resolution 1706 (2006) under Chapter VII, determining that the situation in Darfur constituted a threat to international peace and security and deciding that the UNMIS forces be increased and deployed in Darfur in order to support implementation of the Darfur Peace Agreement, without prejudice to their existing mandate in the south of Sudan. UNMIS was authorised to use all necessary measures to protect UN personnel, to support implementation of the peace agreement, to protect civilians under threat of physical violence and to collect arms.[313]

Following discussions with the African Union in view of the deteriorating situation in Darfur,[314] and in the light of the presence of forces from the African Mission in the Sudan (AMIS),[315] the Security Council, noting that the situation continued to constitute a threat to international peace and security, adopted resolution 1769 (2007) establishing the UN–African Union Hybrid Operation in Darfur (UNAMID) incorporating AMIS personnel to consist of a force of up to 19,555 military personnel. Unity of command and control was provided for, with command and control structures and backstopping provided by the United Nations. The Council, acting under Chapter VII, decided that UNAMID was authorised to take the necessary action to protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers, to support early and effective implementation of the Darfur Peace Agreement, to prevent the disruption of its implementation and armed attacks, and to protect civilians, without prejudice to the responsibility of the government of Sudan.

The range of UN actions from humanitarian assistance to enforcement – conclusions

The UN has not been able to operate Chapter VII as originally envisaged. It has, however, been able to develop a variety of mechanisms to fill the

villages, rape and other forms of sexual violence, pillaging and forced displacement', S/2005/60.

312 S/2006/591.

313 The mandate of UNMIS was extended in resolutions 1709 (2006), 1714 (2006) and 1755 (2007).

314 See S/2007/307/Rev.1. As to the imposition of sanctions, see above, p. 1247, and as to the reference of the Darfur situation to the International Criminal Court, see above, chapter 8, p. 412.

315 See below, p. 1280.

gap left by the non-implementation of article 43. First and foremost, the Council may delegate its enforcement powers to member states. This occurred in Korea, the Gulf War and to some extent in Rwanda. However, the events concerning Iraq have shown uncertainty as to the extent to which, if at all, such authorisation may be implied from resolutions adopted. The UN has also been able to create peacekeeping forces, whose mandate has traditionally been to separate hostile forces with their consent, such as in the Middle East and in Cyprus. The evolution of peacekeeping activities to include confused civil war situations where fighting has not ended and no lasting ceasefire has been put into operation, although prefigured in the Congo crisis of the 1960s, has really taken place in the last few years. It has brought attendant dangers for, as has been seen, the slippage from peacekeeping to self-defence activities more widely defined and thence to *de facto* enforcement action is sometimes hard to avoid and complicated to justify in legal terms. Consent is the basis of traditional peacekeeping and irrelevant in enforcement activities. In the mandate drift that has been evident in some situations, elements of both consent and imposition have been present in a way that has confused the role of the UN. Nevertheless, behind the difficulties of the UN have lain a dearth of both political will demonstrated by, and material resources provided by, member states for the completion of complex enforcement actions.

Developments that have been seen in recent years have demonstrated an acceptance of a far broader conception of what constitutes a threat to international peace and security, so that not only external aggression but certain purely internal convulsions may qualify, thus constraining further the scope of article 2(7) and the exclusive jurisdiction of states. Secondly, the range of actions taken by the Security Council under Chapter VII has increased to cover a wide variety of missions and the creation of international criminal tribunals to prosecute alleged war criminals for crimes occurring within particular states arising out of civil wars. Not only that, but with regard to Iraq, the Security Council took a range of binding measures of unprecedented scope, from the guaranteeing of a contested boundary to implementing strict controls on certain kinds of armaments and establishing a compensation commission to be funded by a levy on oil exports. Finally, increasing flexibility has been manifested in the creation and use of such forces. The establishment of the hybrid UN–African Union force for Darfur is an interesting development and one that may prefigure a number of similar operations as regions may increasingly wish to marry regional personnel with expertise, equipment and logistical support from outside the region.

The Security Council, international law and the International Court of Justice

The issue of the relationship between binding decisions of the Council and international law generally has arisen with particular force in recent years in view of the rapidly increased range and nature of activity by the Security Council. The issue has involved particular consideration of the role of the International Court.[316] The Security Council is, of course, constrained by the provisions of the Charter itself. It must follow the procedures laid down and act within the confines of its constitutional authority as detailed particularly in Chapters V to VII. Its composition and voting procedures are laid down, as are the conditions under which it may adopt binding enforcement measures. As the International Court has emphasised, '[t]he political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment'.[317] In particular, the Council must under article 24(2) act in accordance with the Purposes and Principles of the Charter, article 1(1) of which declares that one of the aims of the organisation is to bring about a resolution

[316] See, for example, G. R. Watson, 'Constitutionalism, Judicial Review, and the World Court', 34 *Harvard International Law Journal*, 1993, p. 1; Gowlland-Debbas, 'Security Council Enforcement', p. 55, and Gowlland-Debbas, 'The Relationship between the International Court of Justice and the Security Council in the Light of the *Lockerbie* Case', 88 AJIL, 1994, p. 643; R. St J. Macdonald, 'Changing Relations between the International Court of Justice and the Security Council of the United Nations', Canadian YIL, 1993, p. 3; R. F. Kennedy, '*Libya* v. *United States*: The International Court of Justice and the Power of Judicial Review', 33 Va. JIL, 1993, p. 899; T. M. Franck, 'The "Powers of Appreciation": Who is the Ultimate Guardian of UN Legality?', 86 AJIL, 1992, p. 519, and Franck, *Fairness*, pp. 242 ff.; W. M. Reisman, 'The Constitutional Crisis in the United Nations', 87 AJIL, 1993, p. 83; E. McWhinney, 'The International Court as Emerging Constitutional Court and the Co-ordinate UN Institutions (Especially the Security Council): Implications of the *Aerial Incident at Lockerbie*', Canadian YIL, 1992, p. 261; J. M. Sorel, 'Les Ordonnances de la Cour Internationale de Justice du 14 Avril 1992 dans l'Affaire Relative a des Questions d'Interpretation et d'Application de la Convention de Montreal de 1971 Resultant de l'Incident Aérien de Lockerbie', *Revue Générale de Droit International Public*, 1993, p. 689; M. N. Shaw, 'The Security Council and the International Court of Justice: Judicial Drift and Judicial Function' in *The International Court of Justice* (eds. A. S. Muller, D. Raič and J. M. Thuránszky), The Hague, 1997, p. 219; J. Alvarez, 'Judging the Security Council', 90 AJIL, 1996, p. 1, and D. Akande, 'The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?', 46 ICLQ, 1997, p. 309.

[317] *Conditions of Admission of a State to Membership in the United Nations*, ICJ Reports, 1948, p. 64; 15 AD, p. 333. See also Judge Bedjaoui, the *Lockerbie* case, ICJ Reports, 1992, pp. 3, 45; 94 ILR, pp. 478, 528.

of international disputes by peaceful means 'and in conformity with the principles of justice and international law'.[318]

The Council has recently not only made determinations as to the existence of a threat to or breach of international peace and security under article 39 in traditional inter-state conflict situations, but also under Chapter VII binding determinations as to the location of boundaries, supervision of destruction of weaponry, liability under international law for loss or damage, methods of compensation, asserted repudiation of foreign debt,[319] the establishment of tribunals to try individual war criminals,[320] and assertions as to the use of force against those responsible for, and those inciting, attacks against UN personnel, including their arrest, prosecution and punishment.[321] In addition, the Council has asserted that particular acts were null and void, demanding non-recognition.[322]

In view of this increased activity and the impact this has upon member states, the issue has arisen as to whether there is a body capable of ensuring that the Council does act in conformity with the Charter and international law. Since the International Court is the 'principal judicial organ' of the UN,[323] it would seem to be the natural candidate, and indeed the problem has been posed in two recent cases. In the *Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro))* case,[324] it was claimed by Bosnia that the Security Council-imposed arms embargo upon the former Yugoslavia had to be construed in a manner that did not deprive Bosnia of its inherent right of self-defence under article 51 of the Charter and under customary international law.[325] In the *Lockerbie* case,[326] Libya claimed that the UK and US were seeking to compel it to surrender alleged

[318] See Judge Weeramantry's Dissenting Opinion in the *Lockerbie* case, ICJ Reports, 1992, p. 65 and that of Judge Bedjaoui, *ibid.*, p. 46; 94 ILR, pp. 548 and 529. See also Judge Fitzmaurice in the *Namibia* case, ICJ Reports, 1971, pp. 17, 294; 49 ILR, pp. 2, 284–5.

[319] See Security Council resolution 687 (1991) with regard to Iraq after the Gulf War.

[320] Security Council resolutions 808 (1993) and 827 (1993) regarding former Yugoslavia and resolution 955 (1994) regarding Rwanda. See also the *Tadić* case decided by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, Case No. IT-94-1-AR72, pp. 13 ff.; 105 ILR, pp. 419, 428 ff.

[321] Security Council resolution 837 (1993) concerning Somalia.

[322] Security Council resolutions 662 (1990) regarding the purported annexation by Iraq of Kuwait and 541 (1983) terming the purported Turkish Cypriot state 'legally invalid'.

[323] Article 92 of the Charter. [324] ICJ Reports, 1992, pp. 3, 6; 95 ILR, pp. 1, 21.

[325] See also the second provisional measures order, ICJ Reports, 1993, pp. 325, 327–8; 95 ILR, pp. 43, 45–6. The Court confined itself to the Genocide Convention.

[326] ICJ Reports, 1992, pp. 3, 14; 94 ILR, pp. 478, 497.

bombers contrary to the Montreal Convention, 1971 (which required that a state either prosecute or extradite alleged offenders) and that the Council's actions in resolutions 731 (1992) and 748 (1992)[327] were contrary to international law.

While the question of the compatibility of Security Council resolutions with international law was not discussed by the Court in the *Bosnia* case, the issue assumed central position in the *Lockerbie* case. The Court here affirmed that all member states were obliged to accept and carry out the decisions of the Security Council in accordance with article 25 of the Charter and that *prima facie* this obligation extended to resolution 748 (1992), which imposed sanctions upon Libya for failing to extradite the suspects. Thus, in accordance with article 103 of the Charter, under which obligations under the Charter prevail over obligations contained in other international agreements, the resolution prevailed over the Montreal Convention.[328] Judge Shahabuddeen in his Separate Opinion underlined that the issue in the case was whether a decision of the Council could override the legal rights of states and, if so, whether there were any limitations upon its power to characterise a situation as one justifying the making of the decision importing such consequences.[329]

The issue was raised in the request for provisional measures phase of the *Congo* v. *Uganda* case. Uganda argued that the request by the Congo for interim measures would 'directly conflict with the Lusaka Agreement, and with the Security Council resolutions – including resolution 1304 . . . calling for implementation of the Agreement'.[330] The Court noted that resolution 1304 was adopted under Chapter VII, but concluded after quoting the text of the resolution that the Security Council had taken no decision which would *prima facie* preclude the rights claimed by the Congo from being regarded as appropriate for protection by the indication of provisional measures.[331] While there is no doubt that under the Charter system the Council's discretion to determine the existence of threats to or breaches of international peace and security is virtually absolute, limited only by inherent notions of good faith and non-abuse

[327] Calling upon Libya to surrender the suspects and imposing sanctions for failing so to do.

[328] ICJ Reports, 1992, p. 15; 94 ILR, p. 498.

[329] ICJ Reports, 1992, p. 32; 94 ILR, p. 515. Judge Lachs noted that the Court was bound 'to respect' the binding decisions of the Security Council as part of international law, ICJ Reports, 1992, p. 26; 94 ILR, p. 509. See Franck, *Fairness*, p. 243, who emphasised that the verb used, to 'respect', does not mean to 'defer to'. Note that Judge Lachs also pointed to the Court as the 'guardian of legality for the international community as a whole, both within and without the United Nations', *ibid*.

[330] ICJ Reports, Order of 1 July 2000, para. 30.

[331] *Ibid*., para. 36.

of rights,[332] and its discretion to impose measures consequent upon that determination in order to maintain or restore international peace and security is undoubtedly extensive,[333] the determination of the legality or illegality of particular situations is essentially the Council's view as to the matching of particular facts with existing rules of international law. That view, when adopted under Chapter VII, will bind member states, but where it is clearly wrong in law and remains unrectified by the Council subsequently, a challenge to the system is indubitably posed. While the Court can, and has, examined and analysed UN resolutions in the course of deciding a case or rendering an Advisory Opinion, for it to assert a right of judicial review in the fullest sense enabling it to declare invalid a binding Security Council resolution would equally challenge the system as it operates. Between the striking down of Chapter VII decisions and the acceptance of resolutions clearly embodying propositions contrary to international law, an ambiguous and indeterminate area lies.

The role of the General Assembly[334]

The focus of attention during the 1950s shifted from the Security Council to the General Assembly as the use of the veto by the permanent members led to a perception of the reduced effectiveness of the Council. Since it was never really envisaged that the General Assembly would play a large part in the preservation of international peace and security, its powers as defined in the Charter were vague and imprecise. Articles 10 to 14 provide that the Assembly may discuss any question within the scope of the Charter and may consider the general principles of co-operation in the maintenance of international peace and security. The Assembly may make recommendations with respect to questions relating to international peace to members of the United Nations or the Security Council or both, provided (except in the case of general principles of co-operation, including disarmament) the Council is not dealing with the particular matter. In addition, any

[332] See e.g. Gowlland-Debbas, 'Security Council Enforcement', pp. 93–4. See also the *Tadić* case decided by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, Case No. IT-94-1-AR72, pp. 13 ff.; 105 ILR, pp. 419, 428 ff.

[333] Note that under article 1(1) actions to bring about the adjustment or settlement of international disputes or situations which might lead to a breach of the peace must be in conformity with 'the principles of justice and international law', while there is no such qualification with regard to effective collective measures to prevent and remove threats to the peace and the suppression of breaches of the peace or acts of aggression.

[334] See e.g. Simma, *Charter*, pp. 247 ff., and White, *Keeping the Peace*, part II.

question respecting international peace and security on which action is necessary has to be referred to the Security Council.

The Uniting for Peace resolution was adopted by the Assembly in 1950 and was founded on the view that as the Security Council had the primary responsibility for the maintenance of peace under article 24, it could therefore be argued that the Assembly possessed a secondary responsibility in such matters, which could be activated in the event of obstruction in the Security Council. The resolution[335] declared that where the Council failed to exercise its responsibility upon the occurrence of a threat to the peace, breach of the peace or act of aggression because of the exercise of the veto by any of its permanent members, the General Assembly was to consider the matter at once with a view to making appropriate recommendations to members for collective measures. Such measures could include the use of force when necessary in the case of a breach of the peace or act of aggression, and, if not already in session, the Assembly would be able to meet within twenty-four hours in emergency special session.[336]

However problems soon arose in the context of the creation by the Assembly in 1956 of the United Nations Emergency Force which was to supervise the ceasefire in the Middle East, and by the United Nations Secretary-General in 1960 of the United Nations Force in the Congo. It was argued that since article 11 provides that any question dealing with international peace and security on which action was necessary had to be referred to the Security Council, the constitutionality of such forces was questionable. A number of states refused to pay their share of the expenses incurred, and the matter was referred to the International Court. In the *Certain Expenses* case,[337] the Court took the term 'action'[338] to refer to 'enforcement action', thus permitting action which did not amount to enforcement action to be called for by the General Assembly and the Secretary-General.[339] This opinion, although leading to some interpretive problems, did permit the creation of United

[335] General Assembly resolution 377(V). See e.g. J. Andrassy, 'Uniting for Peace', 50 AJIL, 1956, p. 563. See also M. J. Petersen, 'The Uses of the Uniting for Peace Resolution since 1950', 8 *International Organisation*, 1959, p. 219, and F. Woolsey, 'The Uniting for Peace Resolution of the United Nations', 45 AJIL, 1951, p. 129.

[336] The General Assembly under article 20 of the UN Charter meets only in regular annual sessions and in such special sessions as occasion may require.

[337] ICJ Reports, 1962, p. 151; 34 ILR, p. 281.

[338] Article 11(2) of the Charter provides that the General Assembly may discuss any questions relating to the maintenance of international peace and security, but any such question 'on which action is necessary' must be referred to the Security Council.

[339] Accordingly, the UN Emergency Force in the Middle East established in 1956 was not contrary to article 11(2) since it had not been intended to take enforcement action, ICJ

Nations peacekeeping forces in situations where because of superpower rivalry it was not possible for the Security Council to reach a decision, provided such forces were not concerned with enforcement action. The adoption of this kind of action remains firmly within the prerogative of the Security Council.

In practice the hopes raised by the adoption of the Uniting for Peace resolution have not really been fulfilled. The procedure prescribed within the resolution has been used, for example, with regard to the Suez and Hungarian crises of 1956, the Lebanese and Jordanian troubles of 1958, the Congo upheavals of 1960, the Middle East in 1967, the conflict leading to the creation of Bangladesh in 1971, Afghanistan in 1980, Namibia in 1981 and the Palestine question in 1980 and 1982. But it cannot be said that the Uniting for Peace system has in effect exercised any great influence regarding the maintenance of international peace and security. It has provided a method whereby disputes may be aired before the Assembly in a way that might not have otherwise been possible, but as a reserve mechanism for the preservation or restoration of international peace, it has not proved very successful.

The UN and regional arrangements and agencies[340]

The Security Council has increasingly made use of regional organisations in the context of peacekeeping and peace enforcement. Chapter VIII of the UN Charter concerns regional arrangements. Article 52 provides that nothing contained in the Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to international peace and security as are appropriate for such arrangements or agencies, providing that these are consistent with the Purposes and Principles of the UN itself.[341] Article 53 notes that the Security Council where appropriate shall utilise such arrangements or agencies for enforcement action under its authority. Without the authorisation of the Security

Reports, 1962, pp. 151, 165, 171–2. This precipitated a crisis over the arrears of the states refusing to pay their contributions.

[340] See e.g. Simma, *Charter*, pp. 807 ff., and Cot, *et al.*, *Charte*, pp. 1367 ff. See also Gray, *Use of Force*, chapter 9; A. Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, Oxford, 2004; Sarooshi, *Collective Security*, chapter 6, and O. Schachter, 'Authorised Uses of Force by the United Nations and Regional Organisations' in *The New International Order and the Use of Force* (eds. L. Damrosch and D. J. Scheffer), Boulder, 1991, p. 65.

[341] Note also the relevance of the right of collective self-defence under both customary international law and article 51 of the Charter: see above, chapter 20, p. 1146.

Council, regional enforcement action is not possible.[342] Article 54 provides that the Security Council is to be kept fully informed at all times of activities undertaken or in contemplation by regional organisations. The definition of 'regional arrangements or agencies' is left open, so that a useful measure of flexibility is provided, enabling the term to cover a wide range of regional organisations going beyond those strictly established for defence co-operation.[343]

Several issues arise. First, there is the issue of when regional action may be deemed to be appropriate, and here recent events have demonstrated a broader measure of flexibility akin to the widening definition of what constitutes a threat to international peace and security. Secondly, there is the extent to which regional action is consistent with UN purposes and principles, and here the provisions of article 103, assigning priority to Charter obligations over obligations contained in other international agreements, should be noted. Thirdly, there is the question as to whether a broad or a narrow definition of enforcement action is to be accepted.[344] Fourthly, the important issue is raised as to whether prior approval by the Security Council is required in order for a regional organisation to engage in an activity consistent with Chapter VIII. Practice here recently appears to suggest rather controversially that not only is prior approval not required, but that Security Council authorisation need not occur until substantially after the action has commenced.[345] However, it is clear that the UN is keen to co-ordinate activity with regional organisations.[346]

[342] See e.g. M. Akehurst, 'Enforcement Action by Regional Agencies', 42 BYIL, 1967, p. 175; *Les Forces Régionales du Maintien de la Paix* (ed. A. Pellet), Paris, 1982; C. Borgen, 'The Theory and Practice of Regional Organization Intervention in Civil Wars', 26 *New York University Journal of International Law and Politics*, 1994, p. 797, and I. Pogany, 'The Arab League and Regional Peacekeeping', 34 NILR, 1987, p. 54.

[343] A number of organisations specifically self-identify as regional agencies as understood by Chapter VIII, such as the Organisation of American States (see article 1 of the Charter of the OAS, 1948), the Organisation for Security and Co-operation in Europe (see para. 25 of the Helsinki Summit Declaration, 1992 and the Charter for European Security, 2000, 39 ILM, 2000, p. 255 and General Assembly resolution 47/10) and the Commonwealth of Independent States (see 35 ILM, 1996, p. 783). See as to the OSCE role in Bosnia under the Dayton peace arrangements, above, chapter 18, p. 1034.

[344] That is, whether all actions noted in articles 41 and 42 are covered or just those using military force.

[345] Note that the report of the High-Level Panel on Threats, Challenges and Change, A/59/565, 2 December 2004, stated that, 'Authorization from the Security Council should in all cases be sought for regional peace operations, recognizing that in some urgent situations that authorization may be sought after such operations have commenced', *ibid.* at para. 272(a).

[346] See, for example, the Secretary-General, *An Agenda for Peace*, A/47/277, 17 June 1992, p. 37 and Secretary-General, *In Larger Freedom*, A/59/2005, 21 March 2005, para.

Article 52(2) and (3) establishes that peaceful settlement of disputes through regional mechanisms before resort is had to the Security Council is the preferred route and this, on the whole, has been the practice of the UN.[347] Enforcement action is a different matter and here priority lies with the Council under the Charter. However, the reference to the inherent right of collective self-defence in article 51 does detract somewhat from the effect of Chapter VIII, and it also seems clear that regional peacekeeping operations, in the traditional sense of being based on consent of the parties and eschewing the use of force save in self-defence, do not need the authorisation of the Security Council.

Practice in the post-Cold War era has amply demonstrated the increasing awareness by the Security Council of the potentialities of regional organisations. References in resolutions of the Council have varied in this regard. Some have specifically mentioned, commended or supported the work of named regional organisations without mentioning Chapter VIII,[348] others have referred explicitly to Chapter VIII,[349] while others have stated that the Council is acting under Chapter VIII.[350]

A particularly interesting example of the interaction of regional organisations and the UN occurred with regard to Haiti. The OAS adopted sanctions against Haiti upon the overthrow of the elected President Jean-Bertrand Aristide in 1991.[351] Although the General Assembly welcomed

213, proposing that the UN should sign memoranda of understanding with regional organisations having a conflict prevention or peacekeeping capacity, linking such organisations with the UN Standby Arrangements System. See also the World Summit Outcome 2005, General Assembly resolution 60/1, and Security Council resolution 1631 (2005) and the subsequent report of the Secretary-General, A/61/204–S/2006/590, 28 July 2006, paras. 94 ff. See also S/25184 (1993).

347 Although article 52(4) provides that 'this article in no way impairs the application of articles 34 and 35'. See e.g. Simma, *Charter.*, p. 848.

348 See e.g. Security Council resolutions 743 (1992) commending the work of the European Community and the CSCE in former Yugoslavia and 855 (1993) endorsing the activities of the CSCE in former Yugoslavia; and resolution 865 (1993) noting the efforts of the Arab League, the OAU and the Organisation of the Islamic Conference with regard to Somalia.

349 E.g. Security Council resolutions 727 (1992) in regard to former Yugoslavia; 795 (1992) in regard to Macedonia; 757 (1992) in regard to former Yugoslavia; 816 (1993) extending the 'no-fly' zone over Bosnia; 820 (1993) in regard to former Yugoslavia; and resolution 751 (1992) with regard to Somalia, 'cognisant of the importance of co-operation between the United Nations and regional organisations in the context of Chapter VIII of the Charter of the United Nations'.

350 See e.g. Security Council resolution 787 (1992) with regard to the maritime blockade of former Yugoslavia; resolution 794 (1992) with regard to Somalia.

351 OAS resolutions MRE/RES.1/91, MRE/RES.2/91 and MRE/RES.3/92. See article 19 of the OAS Charter. See also S/23109, 1991.

the actions,[352] the Security Council did not react. Eventually in June 1993, the Council, acting under Chapter VII, imposed an arms and oil embargo on Haiti. Resolution 841 (1993) specifically referred to a series of OAS resolutions,[353] commended the work of the OAS Secretary-General and stressed the need 'for effective co-operation between regional organisations and the United Nations'.[354] In resolution 875 (1993), the Council, acting under Chapters VII and VIII, called upon member states 'acting nationally or through regional agencies or arrangements' in co-operation with the legitimate Government of Haiti to act to ensure the implementation of the arms and oil embargo.[355]

Liberia constitutes another instructive example.[356] A complicated civil war broke out during 1989–90 and, in the absence of any moves by the UN or the OAS, the Economic Community of West African States (ECOWAS) decided to act. This organisation, which consists of sixteen members including Liberia, is aimed at improving living standards in the region.[357] A Protocol on Non-Aggression was signed in 1978 and came into force three years later.[358] This prohibits aggression among member states and does not specifically mention peacekeeping nor provide for the right of unilateral intervention. In May 1990, ECOWAS established a Standing Mediation Committee and this called for an immediate ceasefire in Liberia and for its implementation to be monitored by an ECOWAS monitoring group (ECOMOG). This group, led by Nigeria, landed in Liberia in August 1990 and became involved in actual

[352] See General Assembly resolution 46/7, 1991.

[353] Including in addition to those already mentioned, resolutions MRE/RES.4/92, MRE/RES.5/93 and CP/RES.594 (923/92), and declarations CP/Dec. 8 (927/93), CP/Dec. 9 (931/93) and CP/Dec. 10 (934/93).

[354] See also Security Council resolutions 917 (1994) and 933 (1994).

[355] Note also the problematic US argument concerning its invasion of Grenada, claiming that the 1981 treaty establishing the Organisation of Eastern Caribbean States operated as the necessary 'existing' or 'special' treaty which would excuse intervention and a violation of territorial integrity under article 22 of the OAS Charter. However, the OECS Defence Committee could only act unanimously and in cases of external aggression and the landing of troops in order to overthrow the Marxist government on the island would not appear to satisfy the requirements: see e.g. J. N. Moore, *Law and the Grenada Mission*, Charlottesville, 1984, pp. 45–50, and W. C. Gilmore, *The Grenada Intervention*, London, 1984. See also American Bar Association Section of International Law and Practice, Report on Grenada, 1984.

[356] See e.g. G. Nolte, 'Restoring Peace by Regional Action: International Legal Aspects of the Liberian Conflict', 53 ZaöRV, 1993, p. 603.

[357] See article 2 of the ECOWAS Treaty, 1975. See also F. Olonisakin, *Reinventing Peacekeeping in Africa: Conceptual and Legal Issues in ECOMOG Operations*, The Hague, 2000.

[358] See also the Protocol Relating to Mutual Assistance on Defence, 1981.

fighting. It is somewhat unclear whether ECOWAS provides a sufficient legal basis of itself to justify the actions taken, and UN involvement did not occur until January 1991, when the President of the Security Council issued a statement commending the efforts of ECOWAS to promote peace in Liberia and calling upon the parties to the conflict to co-operate fully with ECOWAS.[359] In April 1992, ECOMOG proceeded to secure a buffer zone on the Liberia–Sierra Leone border envisaged by an October 1991 accord (the Yamoussoukro IV Accord) between the Liberian parties, to secure all entry and exit points in the country and to enforce the disarmament of combatants.[360]

The situation, however, continued to deteriorate and the Security Council adopted resolution 788 (1992) in November of that year. This determined that the deterioration of the situation constituted a threat to international peace and security 'particularly in West Africa as a whole' and recalled Chapter VIII of the Charter. The resolution commended ECOWAS for its 'efforts to restore peace, security and stability in Liberia' and, acting under Chapter VII, imposed an arms embargo upon that country. This support was reaffirmed in resolution 813 (1993), which also noted the endorsement of ECOWAS' efforts by the OAU.[361] With the assistance of the special representative of the UN Secretary-General, a new peace agreement was signed at Cotonou on 25 July 1993, which called upon ECOWAS and the UN to assist in its implementation.[362] The UN Observer Mission in Liberia was established to assist in this process.[363] Security Council resolution 866 (1993) in particular noted that 'this would be the first peacekeeping mission undertaken by the United Nations in co-operation with a peacekeeping mission already set up by another organisation, in this case ECOWAS'. Subsequent resolutions continued to commend ECOWAS for its actions and the UNOMIL mission was extended. Eventually elections were held.[364] When ECOWAS sought

[359] S/22110/Add.3, 1991.

[360] S/23863, 1992. This was also supported by a statement from the President of the Security Council, S/23886, 1992. See also S/24815, 1993.

[361] See also S/25402, 1993.

[362] The peace agreement provided that ECOMOG would have the primary responsibility of supervising the military provisions of the agreement, with the UN monitoring and verifying the process, S/26200, 1993, and Security Council resolution 866 (1993) preamble.

[363] See Security Council resolutions 856 (1993) and 866 (1993). See also S/26200 and S/26422 and Add. 1, 1993.

[364] See e.g. Security Council resolutions 911 (1994); 950 (1994), which also commended African states sending troops to ECOMOG; 1014 (1995), which also encouraged African

to intervene in Liberia in 2003, the Security Council adopted resolution 1497 (2003) under Chapter VII, authorising the establishment of a multinational force based upon ECOWAS to implement a June 2003 ceasefire. The role of ECOWAS within the context of Chapter VIII was specifically commended. Authority was transferred from the ECOWAS force to a new UN Mission in Liberia in October 2003 by resolution 1509.

The Liberian situation is therefore marked by the following features: first, intervention in a civil war in an attempt to secure a ceasefire by a regional organisation whose authority in this area was far from clear constitutionally; secondly, delayed support by the Security Council in the context of Chapter VIII until 1992; thirdly, the first establishment of a dual UN–regional organisation peacekeeping operation; fourthly, the acceptance by the UN of the responsibility of the regional organisation for military issues with the UN mission possessing a rather indeterminate monitoring and peace-encouraging role. It should also be noted that apart from the imposition of the arms embargo in resolution 788 (1992), Security Council resolutions refrained from referring to Chapter VII. The UN, therefore, adopted very much a secondary role. While it is clear that the Security Council ultimately supported the action taken by ECOWAS, it is questionable whether the spirit and terms of Chapter VIII were fully complied with.[365] Ultimately, the Security Council fully adopted the actions of ECOWAS, authorised further such actions and then subsumed the ECOWAS operation into a UN peacekeeping mission.

The failed UN experience of the early 1990s in Somalia was succeeded by a long period of neglect in practice, during which the UN maintained the arms embargo on that country and expressed support for regional action to seek to resolve the complicated civil war. In a number of

states to send troops to join ECOMOG; and resolutions 1020 (1995), 1071 (1996), 1100 (1997) and 1116 (1997) concerning elections. Note also the Security Council Presidential Statement of July 1997 after the elections *inter alia* commending ECOMOG, S/PRST/1997/41. See further as to ECOWAS, above, chapter 18, p. 1029.

[365] Note also ECOWAS involvement in Guinea Bissau under an agreement between the government and the opposing junta: see 38 ILM, 1999, p. 28. Security Council resolution 1233 (1999) welcomed the ECOMOG role. ECOMOG also played a part in the Sierra Leone crisis: see e.g. Security Council resolution 1162 (1998) commending ECOWAS and ECOMOG for playing an important role in restoring international peace and security, and resolutions 1270 (1999) and 1289 (2000).

Security Council resolutions, for example, the Council, acting under Chapter VII, called for continuation of the arms embargo and also commended the efforts of the African Union (AU) and the Intergovernmental Authority on Development in Eastern Africa (IGAD), the relevant subregional organisation, in support of the Transitional Federal Institutions, the claimant Somali government.[366] In resolution 1725 (2006), the Council, acting under Chapter VII, and following decisions taken by IGAD and the AU, authorised IGAD and the member states of the AU to establish 'a protection and training mission' in Somalia with the mandate *inter alia* to monitor progress in talks between the Transitional Federal Institutions and the rival Union of Islamic Courts and to maintain security in Baidoa (the headquarters of the Transitional Federal Institutions). In January 2007, the AU decided to deploy for six months a mission to Somalia (AMISOM) aimed at stabilising the situation and which would evolve into a UN operation for long-term stabilisation and post-conflict restoration of Somalia.[367]

As already noted, the UN in the situation in Bosnia turned to NATO[368] in particular in order to enforce the arms embargo against all the states of the former Yugoslavia and to implement sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro). NATO airplanes in particular enforced the 'no-fly' zone over Bosnia (Operation Deny Flight) as from April 1993 and on 28 February 1994, four warplanes were shot down by NATO aircraft for violating the zone. NATO airplanes also provided close air support for UNPROFOR activities as from June 1993, and as from April 1994, air support to protect UN personnel in the 'safe areas' was instituted. NATO airstrikes took place at UN request during 1994–5 in a variety of situations.[369] Following the Dayton Peace Agreement initialled in November 1995, a 60,000 troop NATO-led implementation force (IFOR) commenced operations in Bosnia. This was authorised by the Security Council, acting under Chapter VII, in resolution 1031 (1995), under which authority was transferred from UNPROFOR to IFOR. Within a short time, this organisation gave way to SFOR (stabilisation force), which was NATO-led but included non-NATO countries.[370] SFOR was

[366] See resolutions 1630 (2005), 1676 (2006) and 1724 (2006).
[367] This was authorised in Security Council resolution 1744 (2007).
[368] With the assistance of the WEU in the maritime activities in the Adriatic under Operation Sharp Guard: see above, p. 1258.
[369] See e.g. S/1995/444, 1995.
[370] See Security Council resolution 1088 (1996). See also www.nato.int/sfor/index.htm.

replaced by an EU force, EUFOR, in December 2004.[371] In Kosovo, an international security presence parallels the international civil presence[372] and this force, KFOR, like SFOR in Bosnia, is NATO-led.[373] Kosovo declared independence in February 2008.[374] In December 2001, the Security Council authorised the establishment of an International Security Assistance Force in Afghanistan (ISAF) pursuant to the Bonn Agreement.[375] In March 2003, the NATO peacekeeping mission in the Former Yugoslav Republic of Macedonia, which had commenced in August 2001, was handed over to the European Union, this being the first such mission for the EU.[376]

The most dramatic and far-reaching co-operation with a regional organisation in the context of peacekeeping and enforcement is the UN–African Union Hybrid Operation in Darfur. The African Mission in Sudan (AMIS) was created in July 2004, as part of a ceasefire monitoring arrangement together with the European Union. In August that year, AU troops were sent to protect the monitors and the force grew from there. Due to the deteriorating situation, including difficulties with the government of Sudan and resource problems, the AU force eventually merged with the UN force to form the hybrid mission (UNAMID) in 2007.[377]

[371] As authorised by Security Council resolution 1575 (2004). Note the creation of an Interim Emergency Multinational Force in Bunia (the Democratic Republic of the Congo) in Security Council resolution 1484 on 30 May 2003. By a decision of 5 June 2003, the Council of the European Union authorised the sending of a peacekeeping force pursuant to the Security Council resolution. See also EUFOR operations in the Democratic Republic of the Congo during 2006: see Council Joint Action 2006/319/CFSP (repealed by Council Joint Action 2007/147/CFSP) and Council Decision 2006/412/CFSP as authorised in Security Council resolution 1671 (2006); and in Chad and the Central African Republic since 2007: see Council Joint Action 2007/677/CFSP and Council Decision 2008/101/CFSP as authorised by the Security Council in resolution 1778 (2007).

[372] See Security Council resolution 1244 (1999). See also above, chapter 5, p. 1232.

[373] See e.g. www.nato.int/kfor/welcome.html.

[374] See further above, chapter 9, p. 452.

[375] See resolution 1386 (2001). Its mandate has been regularly extended under different leaders: see e.g. resolutions 1413 (2002), 1444 (2003), 1510 (2003) which extended its role throughout the country, 1563 (2004), 1623 (2005), 1707 (2006) and 1776 (2007). ISAF has been supported and led by NATO since 11 August 2003: see www.nato-otan.org/isaf/topics/history/index.html.

[376] See www.nato-otan.org/issues/nato_fyrom/evolution.html.

[377] See www.africa-union.org/DARFUR/homedar.htm; www.unmis.org/english/au.htm and www.accord.org.za/ct/2005-4/ct4_2005_pgs52_53.pdf. See further as to UNAMID, above, p. 1266.

Suggestions for further reading

Bowett's Law of International Institutions (eds. P. Sands and P. Klein), 5th edn, London, 2001

The Charter of the United Nations (ed. B. Simma), 2nd edn, Oxford, 2002

S. Chesterman, T. M. Franck and D. M. Malone, *Law and Practice of the United Nations*, Oxford, 2008

J. P. Cot, A. Pellet and M. Forteau, *La Charte des Nations Unies: Commentaire Article par Article*, 3rd edn, Paris, 2005

J. G. Merrills, *International Dispute Settlement*, 4th edn, Cambridge, 2005, chapter 10

23

International institutions[1]

Introduction

The evolution of the modern nation-state and the consequent development of an international order founded upon a growing number of independent and sovereign territorial units inevitably gave rise to questions of international co-operation.[2] The first major instance of organised international co-operation occurred with the Peace of Westphalia in 1648, which ended the thirty-year religious conflict of Central Europe and formally established the modern secular nation-state arrangement of European politics.[3] Over a century later the Napoleonic wars terminated with the Congress of Vienna in 1815, marking the first systematic attempt to regulate international affairs by means of regular international

[1] Often called 'international organisations'. The terms will be used interchangeably.

[2] See C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, 2nd edn, Cambridge, 2005; J. E. Alvarez, *International Organizations as Law-Makers*, Oxford, 2005; D. Sarooshi, *International Organizations and their Exercise of Sovereign Powers*, Oxford, 2005; H. G. Schermers and N. M. Blokker, *International Institutional Law*, 3rd edn, The Hague, 1995; J. Klabbers, *An Introduction to International Institutional Law*, Cambridge, 2002; *Bowett's Law of International Institutions* (eds. P. Sands and P. Klein) 5th edn, London, 2001; N. White, *The Law of International Organizations*, Manchester, 1996; P. Reuter, *International Institutions*, London, 1958; *Encyclopedia of Public International Law* (ed. R. Bernhardt), Amsterdam, 1983, vols. V and VI; G. Schwarzenberger, *International Law*, London, 1976, vol. III; E. Lauterpacht, 'The Development of the Law of International Organizations by the Decisions of International Tribunals', 152 HR, p. 377; F. Kirgis, *International Organizations in their Legal Settings*, 2nd edn, St Paul, 1993; A. El Erian, 'The Legal Organization of International Society' in *Manual of Public International Law* (ed. M. Sørensen), London, 1968, p. 55; M. Whiteman, *Digest of International Law*, Washington, 1968, vol. XIII; *A Handbook of International Organizations* (ed. R. J. Dupuy), Dordrecht, 1988; I. Seidl-Hohenveldern, *Corporations In and Under International Law*, Cambridge, 1987; F. Morgenstern, *Legal Problems of International Organizations*, Cambridge, 1986, and Nguyen Quoc Dinh, P. Daillier and A. Pellet, *Droit International Public*, 7th edn, Paris, 2002, p. 571. See also G. Schiavone, *International Organizations: A Dictionary and Directory*, London, 1992, and Union of International Associations, *Yearbook of International Organizations*, 39th edn, Brussels, 5 vols., 2002–3.

[3] See e.g. L. Gross, 'The Peace of Westphalia, 1648–1948', 42 AJIL, 1948, p. 20.