

general purpose to support the action of OAS. The Secretary-General of OAS had responded by letter dated 10 July 1992 to the Secretary-General's letter. He therefore enclosed copies of the relevant correspondence.

The Secretary-General also wished to inform the members of the Council that he had decided to accept the offer of the Secretary-General of OAS to include participation from the United Nations in his proposed mission to Haiti.

By a letter dated 29 July 1992,²¹ the President of the Council informed the Secretary-General:

I wish to acknowledge receipt of your letter dated 15 July 1992 regarding the situation in Haiti.

I have brought the letter to the attention of the members of the Council, who took note of it at the informal consultations held on 20 July 1992.

²¹ S/24361.

13. Items relating to the situation in Panama

Initial proceedings

A. Letter dated 25 April 1989 from the Permanent Representative of Panama to the United Nations addressed to the President of the Security Council

By a letter dated 25 April 1989 addressed to the President of the Security Council,¹ the representative of Panama requested the convening of a meeting of the Council as a matter of urgency to consider the grave situation faced by his country as a result of the flagrant intervention in its internal affairs by the United States; the policy of destabilization and coercion pursued by the United States against Panama; and the permanent threat of the use of force against his country. He stated that there had been a serious worsening of the situation created by United States activities against Panama's sovereignty, political independence, economic security and territorial integrity, in violation of the Charter of the United Nations and of the principles of international law, as a result of a further escalation of acts of aggression and subversion, constituting a threat to international peace and security.

At its 2861st meeting, on 28 April 1989, the Council included the letter from the representative of Panama in its agenda. Following the adoption of the agenda, the Council invited the representative of Panama, at his request, to participate in the discussion without the right to vote. The President (Union of Soviet Socialist Republics) then drew the attention of the Council members to a letter dated 26 April 1989 from the representative of Panama addressed to the

Secretary-General,² transmitting the text of a statement made on 24 April 1989 by the President of Panama concerning United States "meddling" in the electoral process in Panama.

At the same meeting, the representative of Panama thanked the Council for its promptness in convening the meeting, on the basis of Articles 34 and 35 of the Charter, to consider the grave situation brought about by the chain of actions in violation of international law committed by the United States against his country, which endangered international peace and security. He said that Panama had sought to resolve, through negotiation, the causes of conflict in United States-Panamanian relations stemming from the existence of the Panama Canal. However, when his Government had denounced the unilateral interpretation by the United States of the Panama Canal Treaties of 1977, aimed at extending its military presence in the country beyond the year 2000, Panama had been subjected to a series of acts of economic, political and financial aggression and an escalation of threats of military force. Moreover, the United States had abused the diplomatic privileges of its embassy in Panama to plan, organize, finance and carry out acts of interference in Panama's internal affairs and to participate in seditious activities. According to reports in the United States press, the United States had approved a covert plan which included the possibility of assassinating the Commander-in-Chief of the Panamanian defence forces and was providing financial assistance to an opposition candidate. The

¹ S/20606.

² S/20607.

speaker said his country had also had to contend with, inter alia, the movement of armed units of the United States army outside their defence sites, violation of its airspace, infiltration by United States intelligence units, overflights of Panamanian military installations and acts endangering civilian aviation in Panama. In addition, the United States had brought to Panama an offensive military team that had never before been part of the forces used to defend the Panama Canal. Troop and weapons movements had been continuous, as had military manoeuvres displaying a force in constant readiness to attack. The speaker added that, in spite of the foregoing, the Government of Panama intended to proceed with the forthcoming elections on 7 May. However, the electoral process had itself become a new area for United States intervention, which had entered upon a phase of direct participation in an effort to disrupt public order, sow chaos, promote widespread destabilization and thus create a pretext for direct military intervention. Such behaviour was not only unacceptable, but also extremely dangerous; it jeopardized the normal evolution of the election process as well as international peace and security in an area that was vital to world navigation and trade.³

The representative of the United States stated that his country had grave doubts about the fairness and freedom of the coming elections in Panama, which were shared by the Inter-American Commission on Human Rights of the Organization of American States (OAS). Evidence continued to mount that the military regime was continuing to subvert any expression of popular will through fraud, coercion and intimidation. However, the place where a free and open debate about Panama should be taking place was in the country itself, among the Panamanian people; the solution to Panama's lack of democracy did not lie in the Council, but in Panama. Panama's crisis was not the result of interference by his country in its internal affairs, but of the policies of General Noriega, who had arrogated to himself complete power over civic life and sponsored and countenanced widespread corruption, including drug trafficking and gun-running. He insisted that the international community should not become part of an effort by the Noriega regime to deflect attention from itself by bringing what was in essence a problem with its unfair and fraudulent elections to the Council. Instead, the regime should immediately restore the minimum conditions for free elections and permit full

³ S/PV.2861, pp. 6-18.

international and press monitoring of them. He stated that the United States, for its part, remained firmly committed to supporting the efforts of the Panamanian people to restore genuine civilian democracy and fully committed to the Panama Canal Treaties.⁴

In two further interventions, the representative of Panama said that the Council was not meeting to discuss the elections in his country, which were an internal matter, but rather the growing threat of the use of military force in Panama and the possibility that the deployment of such force could lead to violent actions there. The representative of the United States had not, he stated, addressed that issue. He accordingly invited him to state categorically that there would be no recourse to the use of force in Panama in connection with the forthcoming elections.⁵

Before closing the meeting, the President said that the time of the next meeting to continue consideration of the item would be fixed in consultation with the members of the Council.

By a letter dated 7 August 1989 addressed to the President of the Security Council,⁶ the representative of Panama requested that the Council meet as soon as possible, in public, to renew consideration of the situation in his country in view of the fact that the United States troops in Panamanian territory had continued the dangerous escalation of their acts of intimidation, provocation and aggression against Panama, in violation of its sovereignty and territorial integrity and of the Panama Canal Treaties.

At its 2874th meeting, on 11 August 1989, the Council resumed its consideration of the item. Following the adoption of the agenda, the President of the Council (Algeria) invited the representative of Panama to participate in the discussion without the right to vote, in accordance with the decision taken at its 2861st meeting on 28 April 1989. The President informed the members of the Council that the representative of Panama intended, during the course of his statement, to show video material relating to the item under consideration and that, in keeping with past practice and as agreed in the Council's prior consultations, he had requested the Secretariat to make the necessary technical arrangements.

⁴ Ibid., pp. 19-27.

⁵ Ibid., pp. 28-30.

⁶ S/20773.

The representative of Panama stated that the increased activities of the United States armed forces on Panamanian territory — in violation of the sovereignty and territorial integrity of Panama, the Panama Canal Treaties and the Charter of the United Nations — had forced his country to draw the Council's attention to the need to take specific measures to avert an armed conflict. He observed that the situation had worsened with the adoption by the United States of measures violating the Canal Treaties and other agreements. Among the more noteworthy violations, the armed forces of the United States had suddenly, without any explanation, decided to ignore the requirements regulating the United States military presence in Panama pursuant to which manoeuvres outside the authorized defence zones were planned and executed jointly by the two countries and flights by the United States Air Force were carried out in compliance with the rules of the Panamanian aviation authority. Hostile mobilizations had begun in April 1988 and had been brought to the attention of the Secretaries-General of the United Nations and OAS. Since then, such hostile acts had increased beyond all reasonable limits. He cited several incidents involving unilateral troop movements in Panamanian military and civilian areas, as well as overflight of cities, including the capital, by combat helicopters and Air Force planes. He added that he could document several hundred cases of Panamanian citizens having been detained, assaulted or humiliated by American troops. He asked the members of the Council to judge whether such acts amounted to acts of aggression, as defined in the annex to General Assembly resolution 3314 (XXIX), and suggested that their purpose was to fabricate an incident by taking provocation to the extreme, causing Panamanians to react in self-defence, or in such a way as to justify the launching of an operation to take Panama by force.

Continuing, the representative of Panama stressed that the case of Panama differed from any that the Council had so far considered in its role of preserving and restoring peace. The United States Army did not need to invade Panama because it was already deployed there. The same applied to its air and naval forces. There was another unusual aspect of the Panamanian situation. If it became a precedent, it would trample underfoot all the guarantees in the Charter for countries lacking military power, because the interpretation and application of the principles and provisions of the Charter would be subject to the unilateral whim of a nation having the force to impose

its will. He warned that, in the light of the new situation, Panama's armed forces were on permanent alert, which meant that "any mad adventure" mounted against his country would not be bloodless. There existed a state of imminent war which called for the Council's immediate attention. The military threat posed a serious threat to the very functioning of the Canal and to peace in this very sensitive part of Central America, the stability of which was vital to the users of the Canal. Panama had therefore decided to submit custody of the Canal Treaties to the Council, so that that body might see to their strict implementation and guarantee the normal and efficient functioning of the Panama Canal, which was now endangered by constant violations of the Treaties governing its administration. Panama also called for military observers to be sent to the area immediately. In addition, it requested a good offices mission of the Secretary-General to avoid an imminent breach of the peace in the region, observe the situation on the ground and advance urgent measures aimed at contributing to a decrease of tension between the two countries.⁷

The representative of the United States said he considered it unfortunate that the Council had to spend its valuable time and resources to listen to the groundless complaints of the representative of General Noriega's regime. The truth, in his view, was simple and had been laid out by OAS in three extraordinary meetings of Ministers for Foreign Affairs in May, June and July 1989. He recalled that, on 7 May 1989, the Panamanian people had gone to the polls and, despite intimidation, repression and massive efforts at fraud, the opposition candidates had won by a margin of over three to one, a fact that had been documented by a host of international observers and by the Catholic Church. Having failed to control the outcome of the elections, General Noriega had annulled them and violently suppressed the protests of the democratic opposition, actions that had been condemned by Governments throughout the western hemisphere and the rest of the world. OAS had recognized that the crisis in Panama centred on the person and the conduct of General Noriega in its resolution of 17 May calling for a democratic transfer of power in the country. An OAS mission,⁸ charged with promoting conciliation

⁷ S/PV.2874, pp. 3-26.

⁸ The mission comprised the Foreign Ministers of Ecuador, Guatemala and Trinidad and Tobago and the Secretary-General of OAS.

formulas for arriving at a national accord that could bring about a democratic transfer of power in the shortest possible time, had reaffirmed that fact in its 19 July report. The United States supported those regional efforts to find a peaceful solution to the crisis through multilateral diplomacy.

Continuing, the representative of the United States maintained that United States military activities in Panama there were conducted in complete accord with the Panama Canal Treaties. Panama's appeal to the principle of non-intervention was intended to divert the Council's attention from General Noriega's violent denial of his people's right to self-determination, through fair and free elections and peaceful protest. He accused the Noriega regime of having itself violated various provisions of the Panama Canal Treaties on numerous occasions since February 1988. Many of those violations had involved threats to, and the physical abuse of, members of the United States armed forces stationed in Panama; others had involved attempts to interfere with the operations of the Canal. The United States had augmented its military forces in Panama and increased their readiness in direct response to the hostile actions of the Noriega regime. In calling the present meeting, that regime had sought, among other things, to enhance its own legitimacy and to distract international attention from the OAS efforts to promote General Noriega's surrender of power and a transition to a legitimate, representative, democratic government. The only solution to Panama's current problems was that called for by OAS. False charges made in the Council could not hide this and the Council should waste no more of its time on them. In concluding, he confirmed his country's commitment under the Panama Canal Treaties to ensuring the efficient and safe operation of the Canal until it was turned over to the Panamanian people in the year 2000.⁹

In a further intervention, the representative of Panama showed an amateur videotape which, he stated, had been taken in Panama City, far away from the defence zones, and showed the occupation of a civilian area, the unauthorized search of civilians and the presence of United States tanks and military personnel aimed at intimidating the Panamanian civilian population. With regard to the OAS mission, he stressed that his Government had always facilitated its

⁹ Ibid., pp. 27-34.

work, especially when it had gone to Panama to assist the Panamanian political forces in reaching a national accord. He urged the United States not to prevent the dispatch of a United Nations mission to Panama to verify, on the ground, the alleged violations of the Treaties and the imminent danger of confrontation.¹⁰

In a further intervention, the representative of the United States reiterated that the Council was faced with an attempt to divert attention from the root cause of the problem — General Noriega's illegal persistence in hanging on to power against the wishes of his people. That was the issue that must be addressed.¹¹

In a final statement, the representative of Panama deplored the lack of any mention of a United Nations mission which could verify the situation.¹²

The President of the Council announced that the next meeting to continue consideration of the item would be fixed in consultation with the members of the Council.

B. The situation in Panama

Decision of 23 December 1989 (2902nd meeting): rejection of a draft resolution

By a letter dated 20 December 1989 addressed to the President of the Security Council,¹³ the representative of Nicaragua requested an urgent and immediate meeting of the Council to consider the situation following the invasion of Panama by the United States.

By a letter dated 20 December 1989 addressed to the President of the Security Council,¹⁴ the representative of the United States reported, in accordance with Article 51 of the Charter of the United Nations,¹⁵ that United States forces had "exercised their inherent right of self-defence under international law by taking action in Panama in response to armed attacks by forces under the direction of Manuel Noriega". He stated that the action was designed to protect American lives and the United States

¹⁰ Ibid., pp. 41-42.

¹¹ Ibid., p. 43.

¹² Ibid., p. 44.

¹³ S/21034.

¹⁴ S/21035.

¹⁵ For consideration of the provisions of Article 51, see chapter XI.

obligations to defend the integrity of the Panama Canal Treaties. It had been taken after consultations with the democratically elected leaders of Panama and with their support, and after the United States had exhausted every available diplomatic means to resolve peacefully the disputes with Mr. Noriega. It followed a declaration made on 15 December by Mr. Noriega, after assuming the role of Head of Government of Panama, that a state of war existed with the United States, and brutal attacks by his forces on American personnel lawfully present in Panama. The representative further stated that United States forces would use only the force necessary to assure the safety of Americans and the integrity of the Panama Canal Treaties, and that all feasible measures had been taken to minimize the risk of civilian damage or casualties.

At its 2899th meeting, on 20 December 1989, the Council included the letter from the representative of Nicaragua in its agenda. It considered the item at its 2899th to 2902nd meetings, from 20 to 23 December 1989. The Council invited, at their request, the following to participate in the discussion without the right to vote: the representative of Nicaragua (2899th meeting); the representatives of Cuba, El Salvador, the Libyan Arab Jamahiriya and Peru (2900th meeting); and the representative of Panama (2901st meeting).¹⁶

At the 2899th meeting, the President (Colombia) drew the attention of the members of the Council to the letter dated 20 December 1989 from the representative of the United States.

The representative of Nicaragua stated that the invasion of Panama earlier that day by American troops was in clear violation of the purposes and principles of the Charter of the United Nations and of international law. That flagrant violation of Panama's sovereignty and territorial integrity — which came six years after the invasion by the United States of another country in the region — was a threat not only to Central America but also to international peace and security. He invoked Articles 1 (2) and 2 (4) of the Charter, as well as the principle of non-intervention, noting that the latter had been reaffirmed in various United Nations instruments and by the International Court of Justice. He also recalled that, in the context of the inter-American system, the Charter of OAS, various regional treaties

¹⁶ Two contending requests were made to represent Panama, both of which were eventually withdrawn: see S/PV.2902, pp. 3-5. See also below.

and other instruments prohibited resort to the use of force and intervention in the affairs of other States and provided for the settlement of disputes by peaceful means. He contended that the United States action was in violation of its obligations under all those instruments. He maintained that international law could provide no justification for the invasion; no argument could possibly justify intervention against a sovereign State. He rejected the United States argument that its action had been taken for the protection of American citizens, claiming that that was simply a pretext which had been asserted time and again over the years by Governments of the United States in an attempt to justify aggression and to legitimize invasions. He stated that the crisis in relations between Panama and the United States had worsened as a result of the latter's adoption of various measures in violation of international law and the principles of peaceful coexistence. He recalled that, in recent months, Panama had twice called for a meeting of the Security Council to consider serious threats of the use of force against it by the United States and intervention by the latter in its internal affairs; and to request that action be taken to ensure that there would not be an armed conflict.¹⁷ He added that he had submitted to the Council the custodianship of the Panama Canal Treaties, so that the United Nations could ensure strict compliance. In conclusion, he appealed to the world community, and specifically the Council, to condemn the United States action and demand the immediate withdrawal of the invading troops from Panamanian soil. He urged the United States not to use its veto.¹⁸

The representative of the Union of Soviet Socialist Republics expressed his country's concern at the invasion of Panama by the United States. He contended that it was a flagrant violation of the norms of international law and the Charter of the United Nations, which must be condemned by the international community. He rejected the United States attempts to justify its action by invoking Article 51 of the Charter and its claims that Panama was threatening the national interests of the United States. Recalling that the course of events resulting from United States policy towards Panama had been drawn to the

¹⁷ See the preceding item in the present chapter entitled "Letter dated 25 April 1989 from the Permanent Representative of Panama to the United Nations addressed to the President of the Security Council".

¹⁸ S/PV.2899, pp. 3-17.

Council's attention on several occasions, he regretted that the Council had not taken the necessary steps to prevent the situation before it. The Soviet Union believed that the principles of non-intervention and non-use of force should have no exceptions and should be respected by all and for all. It considered that, whatever one's views of General Noriega's Government, the introduction of foreign troops into the territory of a sovereign State was intolerable. The choice could and must be made only by the Panamanian people, without outside interference. The Soviet Union believed that the United States should immediately halt its armed intervention in Panama and withdraw its troops. Any problems in United States-Panamanian relations should be resolved by peaceful means through negotiations.¹⁹

The representative of China also condemned the aggressive action of the United States in using force against Panama, a sovereign State. He observed that the invasion of Panama not only violated the purposes and principles of the Charter, which required States to resolve their disputes through peaceful means without resort to force; it also ran counter to the improving international situation. The United States action could only aggravate tension in the region and would have a serious negative impact on peace and stability in the world. The speaker reiterated China's opposition to interference in the internal affairs of other countries under whatever pretext — particularly by military means. He called on the United States to cease its aggressive action, withdraw its invading troops from Panama, hold talks with that country and seek to resolve its disputes through peaceful means.²⁰

The representative of France underlined the extreme seriousness of the situation in that country. Following the interruption in the democratic process in Panama, the tragic events of the past few days and the death of an American officer had led the United States to intervene directly in the crisis. The situation warranted a Security Council debate as outside intervention had occurred and was still occurring. For France, recourse to force was always deplorable and could not be approved per se, whatever the causes. The situation was largely the result of a sequence of regrettable events that had taken place since the annulment of the elections of 7 May, contrary to the

will of the people. France had supported the decisions of OAS and its mediation efforts aimed at securing a resumption of dialogue between Panamanians and regretted that those efforts had not been successful. He called upon the Council to take initiatives that could lead to the restoration of a normal situation. He suggested a declaration or statement by the President of the Council, expressing the Council's concern over events in Panama and their origins, affirming the right of the people of that country to express themselves in a sovereign manner as to whom they wished to be their leaders and appealing for a return to peace and democracy in Panama.²¹

The representative of the United Kingdom welcomed the establishment of a democratic government in Panama. He recalled that earlier in the year the international community had almost unanimously condemned the decision of the Panamanian authorities under General Noriega to declare null and void the elections of 7 May, which had resulted in an overwhelming victory for the opposition alliance. The United Kingdom had repeatedly called on General Noriega to respect the democratic will of the people of Panama and to step down, and had endorsed the efforts made in that regard by OAS. Regrettably, every attempt to give peaceful effect to the outcome of the elections had failed. The United Kingdom believed that force had been used only as a last resort and against a regime which had itself turned to force to subvert the democratic process. He reiterated that his Government fully supported the action taken by the United States, which had been undertaken with the agreement and support of the Panamanian leaders elected in May. The establishment of a legal and democratically elected Government in Panama could only be beneficial for Panama itself and for peace and security in the region. In the United Kingdom's view, the Council should do its utmost to encourage progress in that direction. While he regretted the loss of life incurred as a result of the United States operation, he noted that United States personnel in Panama had been subjected to attacks and threats. He welcomed the United States assurance, contained in the letter from its representative to the President of the Security Council,²² that its forces would only use the minimum force necessary and that all feasible measures had been

¹⁹ Ibid., pp. 17-21.

²⁰ Ibid., pp. 21-22.

²¹ Ibid., pp. 22-25.

²² S/21035.

taken to minimize the risk of civilian damage or casualties.²³

The representative of Canada stated that intervention by force by a Member of the United Nations in the internal affairs of any State was against both the letter and the spirit of the Charter. His Government therefore regretted the use of force by the United States in Panama. However, he observed that Article 51 of the Charter recognized a basic exception to the prohibition of the use of force and affirmed the inherent right of self-defence which was vested in Member States. While intervention by force was a dangerous precedent, Canada was firmly of the view that, before condemning the United States in the present case, the Council should examine all the circumstances to determine whether or not compelling reasons justified the use of force. In the opinion of the Government of Canada, such compelling reasons did exist: the United States had relied on force as a last resort and only after the failure of numerous attempts to resolve the situation in Panama peacefully. The speaker recalled that for a period of almost two years, there had been a progressive and systematic betrayal in Panama of democratic values. Events, such as the statement by General Noriega that Panama was in a “state of war” with the United States and the harassment of American citizens, had clearly left the United States with few options. The efforts of OAS and of individual neighbouring States had regrettably been unsuccessful. Moreover, the representative of the United States, in his letter to the President of the Council,²⁴ had affirmed that his country had acted after consultation with the democratically elected leaders of Panama, who had supported its actions. In conclusion, he affirmed that his Government was of the opinion that the United States was justified in acting as it had. It looked forward to the consolidation of democracy and to a peaceful and stable future for the people of Panama.²⁵

The representative of the United States stated that, acting in accordance with Article 51 of the Charter, United States forces had exercised their inherent right of self-defence under international law by taking action in Panama in response to armed attacks by forces under the direction of General Noriega. The action was designed to protect American

lives as well as to defend the integrity of the Panama Canal Treaties. For nearly two years the United States and the countries of Latin America and the Caribbean had worked together to try to resolve the crisis in Panama through diplomatic means, but to no avail. The root cause of the crisis in Panama had been the struggle between General Noriega and his ruthless cabal and the people of Panama. The will of the Panamanian people, which had been expressed in free elections, had been repeatedly obstructed. As a result of the United States actions, that situation had been reversed: the freely elected leaders of Panama had assumed the rightful leadership of their country. They had been consulted beforehand and had approved of the American steps. Referring to the words of the President of the United States that morning, the speaker explained that his Government’s military action had been precipitated by General Noriega’s recent declaration of a state of war with the United States and his threats, and actual attacks, on the lives of Americans in Panama, which had created an imminent danger to the 35,000 United States citizens in that country. The armed forces had been directed to protect their lives and to bring General Noriega to justice in the United States. He recalled that the whole world, including OAS, had denounced the violation of human rights that had followed the annulment of the Panamanian elections and the brutality used against the opposition to the Noriega regime. The commitment of the United States to Panamanian sovereignty had never been at issue. He added that another issue in the debate over Panama was drug trafficking. Such activities threatened the survival of democratic countries: countries which provided a safe haven and support for the international drug trafficking cartels menaced peace and security just as surely as if they were using their own conventional military forces to attack democratic societies. General Noriega could not invoke Panamanian sovereignty while the drug cartels with which he was allied intervened throughout the hemisphere. That was aggression against all, and it was now being brought to an end. He also maintained that the United States had the right — and duty — to protect and defend the Panama Canal under article 4 of the Panama Canal Treaty. Harassment and intimidation of American and Panamanian employees of the Panama Canal Commission and the United States forces by the Noriega regime had threatened American and Panamanian lives as well as Canal operations.

²³ S/PV.2899, pp. 26-27.

²⁴ S/21035.

²⁵ S/PV.2899, pp. 27-30.

Continuing, the representative of the United States noted that Chapter VIII of the Charter called upon Member States to make every effort to use regional arrangements to solve regional problems. The language of Article 52 was striking in its use of the word “shall” in that context. It left little room for doubt that members of a regional arrangement were obliged to refer regional disputes to regional organizations and that the Council was obligated to encourage that recourse to regional arrangements. In the situation under consideration, OAS was currently engaged in that effort. Apart from the legal consequences that flowed from the use of “shall” in Chapter VIII, common sense dictated that where there was a regional organization and a regional problem, recourse should be to the regional organization. Although that need not and did not preclude United Nations involvement, the risk of wasteful duplication was obvious. Far more serious, however, was the possibility of reaching inconsistent conclusions. It was important that international organizations contribute to resolving problems, not further complicate them. In conclusion, he reiterated that his country had resorted to military action under Article 51 as a last resort, in consultation with, and with the approval of, the democratically elected leaders of Panama, and in a manner designed to minimize casualties and damage. He affirmed his Government’s intention to withdraw its troops from Panama as quickly as possible.²⁶

At its 2900th meeting, on 21 December 1989, the Council continued its consideration of the item. The representative of Yugoslavia, speaking also in his capacity as Chairman of the Coordinating Bureau of the Movement of the Non-Aligned Countries in the United Nations, stated that the non-aligned countries had always considered as unacceptable any foreign intervention — especially military intervention — under any pretext since it represented a gross violation of sovereignty. They therefore firmly objected to the action of United States forces in non-aligned Panama, which constituted a violation of the independence, sovereignty and territorial integrity of that country. Moreover, the intervention had been carried out at a time when the countries of the region were striving to find peaceful solutions to existing problems in Central America. The United States action would no doubt not only damage the stability of the region but also seriously affect the prevailing positive atmosphere in

²⁶ *Ibid.*, pp. 31-37.

international relations. He noted that the non-aligned countries had recently reaffirmed, at their ninth summit conference, in Belgrade, the inalienable right of the Panamanian people freely to decide on their own political, economic and social system without any form of external pressure, interference or intervention. That position had been reaffirmed in a communiqué adopted by the Coordinating Bureau the day before. He could not therefore but re-emphasize the non-aligned countries’ strong objection to military intervention and interference in the internal affairs of Panama. The use of force and the violation of the independence and territorial integrity of Panama could not resolve the dispute between the United States and that country. Moreover, the non-aligned countries seriously doubted that democracy could be promoted by foreign military means. Whatever one might think about General Noriega’s regime, it was up to the Panamanian people to decide what kind of government or internal development was most suitable for their country. The non-aligned countries therefore strongly believed that the only way to resolve the situation was through dialogue and negotiations in a broader regional context. The Coordinating Bureau had called on the United States to cease immediately all military operations and withdraw its troops. In its view, the continuation of the hostilities could only further aggravate tensions in the region, with dangerous consequences for regional stability and the ongoing efforts to restore peace and security in Central America.²⁷

The representatives of Nepal, Ethiopia, Algeria and Malaysia spoke along similar lines. They stressed that the United States military intervention created a disturbing precedent, fraught with a potential threat to the security of small States through what was considered to be an erroneous interpretation of the provisions of the Charter. Their concern was all the greater in the circumstances because the action involved a major Power and a permanent member of the Council, which bore special responsibility as regards international peace and security.²⁸

The representative of Finland recognized the right of self-defence under international law. In his view, however, the military intervention undertaken by the United States in Panama, with considerable loss of

²⁷ S/PV.2900, pp. 5-7.

²⁸ *Ibid.*, pp. 8-10 (Nepal); pp. 11-13 (Ethiopia); pp. 17-20 (Algeria); and pp. 22-23 (Malaysia).

life, was a disproportionate response to the recent incidents in that country, reprehensible as they were. He hoped that the Council could express its grave concern about the events in Panama and immediately call for a ceasefire and the withdrawal of those United States forces that were not legitimately in the country under existing arrangements. He also hoped that it could affirm the right of the Panamanian people freely to elect their legitimate authorities.²⁹

The representative of Brazil quoted from a declaration that had been issued by his Government on the United States military intervention in Panama. He noted that an OAS Meeting of Consultation on the subject remained open, and appealed for a prompt and peaceful solution to the crisis, based on respect for the principles of self-determination and non-intervention.³⁰

The representative of Cuba condemned the United States action as an act of armed aggression against the people of Panama contrary to international principles and norms, which had no justification. He quoted from a letter dated 22 December 1989 from the President of Cuba addressed to the Secretary-General, in which the President had denounced the attempt by the United States to pose as the country that had been attacked and to justify its action by invoking Article 51 of the Charter. What was really at stake in Panama, he maintained, was an attempt by the United States to avoid its obligations under the Panama Canal Treaties and not to yield authority over the Canal to the legitimate Government of Panama. He called on the international community to support the people of Panama in upholding its sovereign right to decide its own destiny and to defend itself by all means against the aggression. He urged the Council to condemn the invasion; demand the withdrawal of the United States forces that had invaded Panama; and denounce the establishment by force by the United States of a puppet government.³¹

The representative of Peru condemned the invasion of Panama by United States military forces as a flagrant violation of Panama's sovereignty and of the principle of non-intervention enshrined in the Charter of the United Nations and the Charter of OAS. He stressed, however, that his Government's condemnation of the invasion should not be construed

as support for General Noriega's dictatorial regime, which it had repeatedly denounced. He recalled, in this regard, that Peru had initiated, in OAS and other multilateral forums, actions aimed at ensuring the sovereign will of the people of Panama. He concluded by drawing attention to a communiqué issued the day before by his Government on its response to the invasion, which had been circulated to members of the Council.³²

The representative of the Libyan Arab Jamahiriya said that the Council was once again faced with the problem of an act of aggression and intervention by one of its permanent members against a small Member State. He rejected the United States attempt to justify the intervention by invoking Article 51 of the Charter as a fallacious legal pretext: there could be no justification for such acts of aggression and intervention. He stated that small countries without the means to defend themselves, which had believed that the Charter protected them, were losing faith in the system of international security and in the Council, where law was interpreted so as to support the strong and allow the small and weak to be violated. He urged the Council to adopt an unequivocal resolution denouncing aggression and calling for the withdrawal of the forces of aggression. He asked this not because the Libyan Arab Jamahiriya supported General Noriega or his regime, but to defend the principles involved, including the right of peoples to self-determination.³³

The representative of El Salvador affirmed his Government's support for the sovereign right of the people of Panama freely and democratically to choose their leaders — a right of which they had been deprived by General Noriega, who had forcibly prevented the newly elected Government from exercising its mandate. El Salvador also advocated complete respect for the principles of self-determination and of non-intervention in the internal affairs of other States. He concluded by stating his country's firm support for the legitimate Government of Panama presided over by Mr. Guillermo Endara, who had been elected as the constitutional President of Panama during the elections of 7 May 1989.³⁴

At the 2901st meeting, on 21 December 1989, following the adoption of the agenda, the President

²⁹ Ibid., pp. 14-16.

³⁰ Ibid., p. 21, citing S/21036, annex.

³¹ Ibid., pp. 23-33, citing S/21038, annex.

³² Ibid., pp. 34-37, citing S/21044, annex.

³³ Ibid., pp. 38-46.

³⁴ Ibid., pp. 46-47.

(Colombia) stated that, on the basis of prior consultations among members of the Council, it was his understanding that they wished to invite the representative of Panama to participate in the discussion without the right to vote. At the request of the representative of the United States, the proposal was put to the vote and was adopted by 14 votes to none, with 1 abstention.³⁵ At the same meeting, following the announcement by the President that he had received two requests to participate on behalf of Panama, the Council decided, without a vote, to ask the Secretary-General to prepare a report on credentials under rules 14 and 15 of its provisional rules of procedure.³⁶ At its 2902nd meeting, on 23 December 1989, the Council, on the basis of its prior consultations, took note of the Secretary-General's report on credentials.³⁷ The President then informed the Council that the two contending requests to participate had been withdrawn.

At the 2902nd meeting, the President drew the attention of the members of the Council to a draft resolution submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia,³⁸ as well as to several other documents.³⁹

By the preambular part of the draft resolution, the Council, *inter alia*, would have reaffirmed the sovereign and inalienable right of Panama to determine freely its social, economic and political system and to develop its international relations without any foreign intervention; and would have recalled the obligation of all Member States, under Article 2, paragraph 4, of the Charter, to refrain from the threat or use of force against any State. In the operative part of the draft resolution, the Council would have: (1) strongly deplored the military intervention in Panama as a flagrant violation of international law; (2) demanded the immediate cessation of the intervention and the withdrawal of the United States armed forces from

Panama; (3) called upon all States to respect the sovereignty, independence and territorial integrity of Panama; and (4) requested the Secretary-General to monitor the developments in Panama and to report to the Council within 24 hours after the adoption of the resolution.

At the same meeting, the representative of the United States emphasized that he was not claiming a right on behalf of his country to intervene in favour of democracy where it was not welcomed. His country had acted in Panama for legitimate reasons of self-defence and to protect the integrity of the Panama Canal Treaties. Its actions were in conformity with Article 51 of the Charter of the United Nations, article 21 of the OAS Charter and the provisions of the Panama Canal Treaties. He asked members, before pronouncing on the United States action, to pause and reflect and to remember that that action had been welcomed by a democratically elected Government of Panama and, overwhelmingly, by the people of Panama themselves. He contended that, although General Noriega had formally declared war on the United States a few days earlier, he had in fact done so a long time before. Through their drug trafficking activities, General Noriega and his cohorts were guilty of intervention and aggression against the United States. He pointed out that during the previous eight months, his Government had expressed its willingness to work through the United Nations to reinvigorate OAS, and to work with the organizations in an attempt to deal collectively with the challenge to democracy represented by General Noriega. However, OAS had been unable to do anything about General Noriega's annulment of the Panamanian elections or to secure a peaceful transition to democracy in Panama. When General Noriega had declared a state of war against the United States and had begun to implement it, there had been no other recourse but to deal directly with him. He stressed that the use of force in self-defence under Article 51 of the Charter was a right granted to all States under the Charter and could not be read out of it. The use of force contrary to the Charter was impermissible and contrary to international law. But the Charter rightly provided, in those cases where all else failed, that States had the right to defend themselves where force was being used against them and their citizens, in particular. Noting that some had questioned the proportionality of the United States response to General Noriega's armed actions, he pointed out that the preservation of the Panama Canal

³⁵ For the vote and discussion on the proposal to invite Panama to participate in the debate, see S/PV.2901, pp. 2-6; see also chapter III, case 1.

³⁶ *Ibid.*, p. 7. On the issue of credentials, see also chapter I, case 8.

³⁷ *Ibid.*

³⁸ S/21048.

³⁹ Letters addressed to the President of the Security Council from the representatives of Cuba (S/21038); the Soviet Union (S/21041); Argentina (S/21042); Cuba (S/21043); Peru (S/21044); Mexico (S/21045); and the United Republic of Tanzania (S/21049).

and the Panama Canal Treaties, the presence of 35,000 Americans and the special responsibilities of the United States under the Canal Treaties made for a particular and difficult series of problems, which had to be taken into account in judging proportionality. He reiterated that the United States action in Panama had been approved — and applauded — by the democratically elected Government of Panama and by the overwhelming majority of the people of Panama. In his view, the Council should now welcome the restoration of democracy in Panama, as had the United States, which would do all it could to promote it, including through the withdrawal of its forces when their mission had been accomplished. He concluded that for all those reasons, the United States would vote against the draft resolution.⁴⁰

The President of the Council, speaking in his capacity as representative of Colombia, stressed that there could not be any motive — even a temporary motive — for a State to be subjected to military occupation or other forms of force by another State. Any solution of the Panamanian crisis required respect for the self-determination of the Panamanian people. Colombia would continue to promote initiatives leading to the restoration of democracy in their country. As one of the sponsors of the draft resolution, Colombia urged its adoption.⁴¹

The President then put the draft resolution to the vote. It received 10 votes in favour and 4 against (Canada, France, United Kingdom, United States), with 1 abstention (Finland), and was not adopted owing to the negative votes of three permanent members of the Council.

Speaking after the vote, the representative of Finland explained that he had abstained in the vote on the draft resolution because its wording did not come sufficiently close to his Government's own view. Although Finland agreed with a large part of the text, in particular the call for a withdrawal, it would have wished, in the preambular part, for a more specific reference to the right of the Panamanian people to establish a democratic and legitimate regime, respecting human rights, and, in the second operative paragraph, for a clear distinction to be drawn between the forces used for intervention and other forces.⁴²

The representative of France explained that his delegation had voted against the draft resolution because it was unbalanced and might be interpreted as implying support for a regime that France had declared illegitimate. The text categorically denounced the United States intervention in Panama without mentioning either the circumstances surrounding it or the grave events which had preceded it and which to a large extent explained the current situation. A balanced text would have included, in its operative part, an essential paragraph expressing regret at the interruption of the process which had allowed the Panamanian people to express themselves freely and to choose their leaders democratically and calling for the establishment of a legitimate, democratically elected regime.⁴³

The representative of the United Kingdom explained that his delegation, too, had cast a negative vote because of the unbalanced nature of the draft resolution. He observed that the draft failed to welcome the establishment of a legal and democratically elected Government in Panama; that it failed to address the illegal and arbitrary nature of General Noriega's regime, which for months had imposed itself on the Panamanian people, in disregard of their right to self-determination and of the legitimate electoral process in that country; that it made no mention of the long history of violence and intimidation conducted by the Noriega regime against United States personnel in Panama and against its own people; and that it failed to acknowledge the fact that the United States had used force only as a last resort after lengthy diplomatic efforts.⁴⁴

The representative of the Union of Soviet Socialist Republics, on the other hand, stated that his delegation had voted in favour of the draft resolution submitted by the non-aligned members of the Council for several reasons: it reaffirmed the right of Panama to determine freely its social, economic, and political system and to develop its international relations without foreign intervention; it denounced the United States action as a "flagrant violation of international law and of the independence, sovereignty and territorial integrity of States"; and it demanded the immediate cessation of the intervention and the withdrawal of the United States armed forces from

⁴⁰ S/PV.2902, pp. 7-16.

⁴¹ *Ibid.*, pp. 16-20.

⁴² *Ibid.*, p. 21.

⁴³ *Ibid.*, pp. 21-22.

⁴⁴ *Ibid.*, pp. 22-23.

Panama. He regretted the casting of the triple veto, which undermined the efforts of the Council to halt the interventionist acts of the United States. He hoped that the Council would, nevertheless, monitor events in Panama very closely so that a prompt halt to the intervention could be achieved and United States troops could be removed from Panama.⁴⁵

C. Letter dated 3 January 1990 from the Chargé d'affaires a.i. of the Permanent Mission of Nicaragua to the United Nations addressed to the President of the Security Council

Decision of 17 January 1990 (2905th meeting): rejection of a draft resolution

By a letter dated 3 January 1990 addressed to the President of the Security Council,⁴⁶ the representative of Nicaragua requested the convening of a meeting of the Council to consider “the temporary occupation by force of the residence of [its] Ambassador in Panama ... on 29 December 1989” and “the forced entry by troops of the occupying Power into the apartment of [two] Nicaraguan diplomats ... on 31 December 1989”, in the aftermath of the “invasion” of the Republic of Panama by United States forces. The letter stated that Nicaragua considered the “invasion and current occupation” of Panama by United States troops to constitute not only a violation of the purposes and objectives of the Charter of the United Nations, but also a serious threat to peace and security in the region.

At its 2905th meeting, on 17 January 1990, the Council included the letter from the representative of Nicaragua in its agenda and considered the question at the same meeting. Following the adoption of the agenda, the President (Côte d'Ivoire) invited the representative of Nicaragua, at his request, to participate in the discussion without the right to vote. The President drew the attention of the members of the Council to a draft resolution submitted by Colombia, Côte d'Ivoire, Cuba, Democratic Yemen, Ethiopia, Malaysia and Zaire.⁴⁷

In the preambular part of the draft resolution, the Council would have, *inter alia*, recalled that the 1928

Havana Convention regarding Diplomatic Officers provided that “diplomatic officers should be inviolate as to their persons, their residence, private or official and their property”; reaffirmed the need for States to comply with their obligations under the Vienna Conventions on diplomatic and consular relations, and other international legal instruments; and taken note of two letters, from the Permanent Mission of the United States to the President of the Council, regretting the incident and indicating that the United States had taken steps to prevent the recurrence of such actions. In the operative part of the draft resolution, the Council would have: (1) declared that the serious events that took place at the residence of the Ambassador of Nicaragua in Panama were a violation of the privileges and immunities recognized under international law; (2) expressed deep concern at any measure or action that restricted free communication and prevented the functioning of diplomatic missions in Panama, and called upon those concerned to take the appropriate steps to avoid the recurrence of such measures or actions; and (3) demanded full respect for the rules of international law that guaranteed the immunity of diplomatic officers and the inviolability of the premises of diplomatic missions.

At the same meeting, the representative of Nicaragua explained that his country had called for a meeting of the Council to denounce the United States for its forced entry into the residence of the Nicaraguan Ambassador to Panama and for a series of actions violating the Vienna Conventions on diplomatic and consular relations in particular, and international law in general. He then yielded the floor to the Ambassador of Nicaragua to Panama, who gave a detailed account of the incident, which had included the unauthorized entry, search and sacking of his diplomatic residence by United States troops. The Nicaraguan Ambassador to Panama also denounced a similar, subsequent, attack by United States troops on the apartment of two Nicaraguan diplomats in Panama. He alleged that the latter action demonstrated that the first, very serious, incident was not an accident but part of a specific plan of provocation against Nicaragua aimed at increasing the tension between the two countries “in order to justify a warlike escalation against the Nicaraguan people”.⁴⁸

⁴⁵ *Ibid.*, pp. 23-26.

⁴⁶ S/21066.

⁴⁷ S/21084.

⁴⁸ S/PV.2905, pp. 3-9.

Resuming his own statement, the representative of Nicaragua contended that the United States had violated numerous international agreements, including the Vienna Convention on Diplomatic Relations, the Havana Convention regarding Diplomatic Officers of 1928, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. He stated that the United States had also failed to respect the judgment of the International Court of Justice of 27 June 1986 in the case *Military and Paramilitary Activities in and against Nicaragua*, in which the Court had found that the United States had attacked Nicaragua in violation of customary international law and the principles of non-intervention, and had held that the United States was under a duty immediately to cease and to refrain from all such acts as might constitute breaches of its legal obligations. He acknowledged that some kind of explanation and assurances had been given by the United States in respect of the incident under consideration. However, he questioned their reliability in the light of subsequent events. Nicaragua therefore demanded that an investigation be carried out and that appropriate penalties be imposed on those responsible for the attacks.

Continuing, the representative of Nicaragua added that his country had also come before the Council because it was concerned that the United States action was a provocation designed to elicit an equivalent response, which would result in the unleashing of even broader actions against Nicaragua, threatening international peace and security. He contended that, so long as the occupation troops remained in Panama, the latent threat of further acts of aggression, such as the one currently under consideration by the Council, would persist, and demanded once again the immediate withdrawal of the invading forces. He stated that the international community had the right and duty to require of the United States conduct consistent with law and the system of international relations; and that the United States, in turn, was obliged to act in accordance with its serious responsibilities as a world Power and a permanent member of the Council. He concluded by recalling that, in 1979, when the United States suffered the invasion of its diplomatic mission in Tehran, its then Secretary of State had called on the Council to “move together, in a manner that is clear and convincing, to demonstrate that the rule of law has

meaning and that our machinery of peace has practical relevance”. Those words, he contended, were appropriate on the present occasion.⁴⁹

The representative of the United States stated that the issue at hand was an allegation of an action inconsistent with diplomatic privileges and immunities, which had been fully acknowledged and fully dealt with. There was no threat to international peace and security that required a formal Council meeting or even Council consideration of the issue. Nor was the incident a potential threat to peace and security. Clear remedies for dealing with it already existed: in normal diplomatic practice, if such an issue could not be resolved bilaterally, then the dean of the local diplomatic corps mediated the incident. He recalled that he had told the members of the Council in informal session that the United States had no intention of deliberately entering a diplomatic residence, let alone one claimed to be occupied by the Ambassador of Nicaragua to Panama. His Government had expressed regret for the incident in a formal note to the Government of Nicaragua and had publicly affirmed its continuing commitment to abide by the Vienna Convention on Diplomatic Relations. The Council had been informed of that note and of the follow-up by the United States to the incident in documents⁵⁰ which had been circulated to the members of the Council. The United States regretted the incident, even though Nicaragua had violated Article 41 of the Vienna Convention by using the premises of its embassy as a large weapons cache. The actions that the United States had taken did not then or now pose any threat to international peace and security. There was no valid reason to insist that the Council debate the issue in the first place and, consequently, no reason for the Council to adopt a resolution in response to the Nicaraguan complaint.⁵¹

Speaking before the vote on the draft resolution, the representative of the United Kingdom said that his delegation would abstain in the voting because the draft resolution related to an incident that was not appropriate for action by the Council. His country viewed with concern any breach of the inviolability of

⁴⁹ *Ibid.*, pp. 9-20.

⁵⁰ Letters dated 4 and 5 January 1990 from the representative of the United States addressed to the President of the Security Council (not reproduced as a document of the Council).

⁵¹ S/PV.2905, pp. 21-33.

diplomatic premises; but, in this case, the United States Government had already formally and at the highest level expressed its regret to the Government of Nicaragua. He recalled, moreover, that under Article 52 (2) in Chapter VIII of the Charter, Member States were urged “to make every effort to achieve pacific settlement of local disputes through ... regional arrangements or by ... regional agencies before referring them to the Security Council”. He noted that that was precisely what had happened with the present incident: the question it raised had been dealt with in a resolution adopted by the appropriate regional agency — OAS — on 8 January 1990. The matter was therefore closed. The United Kingdom saw no reason to re-open it in the Council. The incident did not pose any threat to international peace and security; nor did it provide any basis for a Council resolution under Chapter VI of the Charter.⁵²

The President then put the draft resolution to the vote. It received 13 votes in favour, 1 against (United States) and 1 abstention (United Kingdom), and was

⁵² Ibid., pp. 34-35.

not adopted owing to the negative vote of a permanent member of the Council.

Speaking after the vote, the representative of Canada stated that he had voted for the draft resolution because it reaffirmed certain basic and important principles guiding the conduct of international relations. By adopting the draft resolution, the Council would have appropriately added its voice to the voices of other international bodies that had addressed the issue of inviolability of diplomatic missions.⁵³

The representative of Finland said that she had voted in favour of the draft resolution out of respect for the norms of international law. However, her Government wished to register its concern over the submission of the draft resolution to the Council. Finland had difficulty in accepting that the subject matter fell within the competence of the Council, as defined in the Charter of the United Nations since the events described were not of such a character as to present a threat to international peace and security.⁵⁴

⁵³ Ibid., pp. 36-37.

⁵⁴ Ibid., p. 38.

Asia

14. The situation relating to Afghanistan

Decision of 26 April 1989 (2860th meeting): adjournment

On 15 February 1989, pursuant to resolution 622 (1988) of 31 October 1988, the Secretary-General submitted to the Council a report on the activities of the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP).¹ Since 15 May 1988, UNGOMAP had been monitoring the implementation of the Agreements on the Settlement of the Situation Relating to Afghanistan, concluded under United Nations auspices, and signed at Geneva on 14 April 1988 by Afghanistan and Pakistan, and by the Union of Soviet Socialist Republics and the United States of America as guarantors (the “Geneva Agreements”).² The Secretary-General confirmed the

complete withdrawal of foreign troops from Afghanistan in compliance with the Geneva Agreements. He added that it was imperative to move forward to ensure the implementation of all the obligations under the Agreements, whose provisions were to be implemented in an integrated manner. He observed that the external aspects of the situation needed to be fully resolved, in conformity with the Agreements, to enable the Afghan people to decide their own future and to achieve peace and stability in their homeland. He stressed that it was for them to

Relations, in particular on Non-Interference and Non-Intervention; (ii) Declaration on International Guarantees, signed by the Union of Soviet Socialist Republics and the United States; (iii) Bilateral Agreement between Afghanistan and Pakistan on the Voluntary Return of Refugees; and (iv) Agreement between Afghanistan and Pakistan on the Interrelationships for the Settlement of the Situation relating to Afghanistan.

¹ S/20465.

² S/19835, annex I. The Agreements consisted of four instruments: (i) Bilateral Agreement between Afghanistan and Pakistan on the Principles of Mutual