

would take a decision on a relevant resolution shortly. He noted, however, that given the overall situation in Haiti, MIPONUH should consider completing its operation so that the relevant agencies could play a bigger role in the peacebuilding field.⁹⁹

The representative of Canada stated that the achievements of MIPONUH had enabled the Council to move to a more flexible mechanism adapted to Haiti's priority needs. The future Mission would

⁹⁹ Ibid., p. 6.

complete the ongoing transition from a military peacekeeping presence to a civilian police presence evolving towards a long-term programme of cooperation. The transition period then adopted by the Council to continue MIPONUH until 15 March 2000 was essential if MICAH was to be organized, deployed and utilized to its full potential. He added that MICAH would be a new kind of mission, fundamentally different from a peacekeeping mission.¹⁰⁰

¹⁰⁰ Ibid., pp. 6-7.

19. Shooting down of two civil aircraft on 24 February 1996

Initial proceedings

Decision of 27 February 1996 (3635th meeting): statement by the President

By a letter dated 26 February 1996 addressed to the President of the Security Council,¹ the representative of the United States requested an urgent meeting of the Council in view of "the seriousness of the situation created by the shooting down of two civil aircraft by Cuban Forces".

At its 3634th meeting, held on 27 February 1996 in accordance with the understanding reached in its prior consultations, the Council included the letter in its agenda. Following the adoption of the agenda, the President (United States), with the consent of the Council, invited the representative of Cuba, at his request, to participate in the discussion without the right to vote. The President then drew the attention of the Council to a letter dated 26 February 1996 from the representative of Cuba, transmitting a note dated 25 February 1996 from the Ministry of Foreign Affairs of Cuba, in connection with the shooting down of two United States "civilian" aircraft by Cuban planes and the readiness of the Government of Cuba to discuss the matters with the United States Government, in the Security Council or elsewhere; and a note dated 26 February 1996 from the Ministry of Foreign Affairs of Cuba, stating that two Cessna private aircraft, which had taken off from Florida, while in the act of violating the airspace over Cuban territorial waters were brought

down by aircraft of the Cuban Air Force. The letter also included a chronology of violations of Cuban airspace from 1994 to 1996.²

At the same meeting, the representative of Cuba stated that during the previous 20 months, 25 aircraft originating in United States territory had violated Cuban airspace and that in every case it had been officially communicated to the United States interests section in Havana. He further stated that Cuba had "irrefutable proof" that the two aircraft in the present case were in violation of Cuban airspace when they were shot down. He noted that before being shot down one of the pilots of the aircraft heading for Cuba was warned that defences had been activated and of the risk they would run by entering those areas. The pilot had replied that he would fly despite the prohibition. The representative further maintained that Cuba had repeatedly communicated, both publicly and officially to the Government of the United States — including to the Federal Aviation Administration — the dangers to aircraft that unauthorized flights in their airspace entailed. He maintained that despite those warnings, which it publicly acknowledged on several occasions, the Government of the United States had taken no effective measures to prevent such flights from taking place in Cuban airspace. He stressed that on many occasions, Cuban territorial waters and airspace had been violated by organizations based in the United

¹ S/1996/130.

² S/1996/137.

States that, in civilian guise, had committed terrorist acts, while no effective measures had been taken by the Government of that country to stop such actions originating in its territory. The representative observed further that in the past Presidents of the Security Council had invoked rule 20 of the Council's provisional rules of procedure to demonstrate clearly to the international community that, in line with basic ethical behaviour, they would not attempt to benefit from the prerogatives of their office. He noted that it was abundantly clear that the fact that the United States was presiding over the Council at that time had engendered a very particular dynamic and very particular features in the Council's work.³ In conclusion, he wished to make very clear to the Security Council that neither the presidential statement before it, if issued, nor any other action would be acceptable to Cuba if it did not include clear, unequivocal condemnation of the acts of aggression against his country carried out from the territory of the United States.⁴

At the same meeting, the representative of the United States stated that his country reserved the right to respond to the unfounded comments in the statement of the Cuban representative.⁵

At its 3635th meeting, held on 27 February 1996, the Council resumed its consideration of the item. After the adoption of the agenda, the President (United States) made the following statement on behalf of the Council:⁶

The Security Council strongly deplores the shooting down by the Cuban Air Force of two civil aircraft on 24 February 1996, which apparently has resulted in the death of four persons.

The Council recalls that according to international law, as reflected in article 3 bis of the Convention on International Civil Aviation of 7 December 1944, added by the Montreal Protocol of 10 May 1984, States must refrain from the use of weapons against civil aircraft in flight and must not endanger the lives of persons on board and the safety of aircraft. States are obliged to respect international law and human rights norms in all circumstances.

The Council requests that the International Civil Aviation Organization investigate this incident in its entirety and calls

³ See also chap. I for remarks concerning rule 20.

⁴ S/PV.3634, pp. 2-5.

⁵ *Ibid.*, p. 5.

⁶ S/PRST/1996/9.

upon the Governments concerned to cooperate fully with this investigation. The Council requests that the International Civil Aviation Organization report its findings to it as soon as possible. The Council will consider that report and any further information presented to it without delay.

**Decision of 26 July 1996 (3683rd meeting):
resolution 1067 (1996)**

At its 3683rd meeting, held on 26 July 1996 in accordance with the understanding reached in its prior consultations, the Security Council included in its agenda a note by the Secretary-General dated 1 July 1996, transmitting a letter dated 28 June 1996 from the President of the Council of the International Civil Aviation Organization addressed to the Secretary-General⁷ containing the report of the investigation regarding the shooting down of two U.S.-registered private civil aircraft by Cuban military aircraft on 24 February 1996. Following the adoption of the agenda, the President (France), with the consent of the Council, invited the representatives of Colombia, Cuba, the Lao People's Democratic Republic and Viet Nam, at their request, to participate in the discussion without the right to vote.

The President then drew the attention of the Council to the text of a draft resolution submitted by the United States.⁸ The President further drew the attention of the Council to the following other documents: a letter dated 1 March 1996 from the representative of Cuba addressed to the President of the Security Council,⁹ and letters dated 1 March, 22 May, 18, 18, 21, 25, 28 and 28 June, and 2, 3, 4, 16 and 17 July 1996, respectively, from the representative of Cuba addressed to the Secretary-General,¹⁰ concerning aspects of the incident involving the shooting down of the two aircraft.

At the same meeting, the representative of the United States said that the draft resolution dealt with a fundamental question of international law and with the observance or non-observance of international

⁷ S/1996/509. See annex, enclosure 2.

⁸ S/1996/596.

⁹ S/1996/152.

¹⁰ S/1996/154, S/1996/370, S/1996/448, S/1996/449, S/1996/458, S/1996/470, S/1996/498, S/1996/499, S/1996/520, S/1996/525, S/1996/532, S/1996/570 and S/1996/577, concerning aspects of the incident involving the shooting down of the two aircraft.

standards. She stated that Cuba had violated the principle of customary international law that States must refrain from resorting to the use of weapons against civil aircraft in flight, a principle that applied whether the aircraft was in national or international airspace. She recalled that Cuba had violated the International Civil Aviation Organization (ICAO) principle that interception of civil aircraft be undertaken only as a last resort and had also failed to follow proper warning procedures. She noted that the Government of Cuba still refused to acknowledge the unlawful nature of its actions. She stressed that the primary mission of the Council was to maintain international peace and security and the draft resolution served that goal by calling upon all nations to refrain from shooting down civil aircraft in violation of international legal standards.¹¹

The representative of Cuba, referring to the ICAO report, maintained that the United States had concealed information, falsified data and impeded the analysis, and had tried to make consideration of the item before the Security Council as difficult as possible. The United States had presented the case as if it were a question of destruction over international waters and not, as was the case, well within the territory of the Republic of Cuba. He also noted that as stated in an ICAO Secretariat document, the use of the aircraft in question was the determining criterion for deciding if an aircraft had civil status or not. He stressed that in this case neither the use nor the mission related to the transport of passengers, mail or cargo. He underscored that there had been no other case before the international community of premeditated activities undertaken by an organization that was involved not in civil aviation but in illegitimate activities that not only violated international law, United States regulations and Cuban sovereignty, but were also related to very serious crimes against the Cuban people. Moreover, he stated that the policy of the United States had not been to prevent those incidents, but to promote and encourage them. He noted that there had never been an incident involving a United States civil aircraft, out of the hundreds that pass each day through these corridors linking Cuba with the United States.¹²

¹¹ S/PV.3683, pp. 2-3.

¹² *Ibid.*, pp. 4-13.

The representative of Colombia stated that the principle that States needed to refrain from the use of weapons against civil aircraft in flight was as relevant as that which established that each State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State for any purpose inconsistent with the aims of the Convention on International Civil Aviation. He expressed regret that the draft resolution did not contain some of the amendments proposed by the caucus of members of the Non-Aligned Movement, and also noted that Colombia found no justification for the Security Council remaining indefinitely seized of the matter before it.¹³

The representative of Lao People's Democratic Republic stated that his delegation was of the firm opinion that in all circumstances every country or sovereign State had the right and the sacred duty to defend its independence and territorial integrity if it considered that those were threatened or violated. However, given that a multitude of technical questions had not yet been clarified, his delegation did not believe that there were yet grounds to resolve the substance of the question. He appealed to both parties to endeavour to improve their bilateral relations and resolve their disputes peacefully.¹⁴

The representative of Viet Nam stated that his delegation fully supported the ongoing efforts made by the international community, including those of the non-aligned countries with a view to maintaining the principles of national independence, sovereignty, territorial integrity, non-intervention and non-interference in the internal affairs of other countries.¹⁵

Speaking before the vote, the representative of the United Kingdom stated that there could be no doubt that Cuba had contravened principles of international law in using force against civil aircraft and in not following established international procedures on interception of such aircraft. The Security Council was doing no more than upholding the principles of international law and fulfilling its responsibilities to safeguard international peace and security. He added that the Security Council was to vote on a draft resolution which made clear the Council's

¹³ *Ibid.*, pp. 13-14.

¹⁴ *Ibid.*, pp. 14-15.

¹⁵ *Ibid.*, p. 15.

condemnation of the use of weapons against civil aircraft in flight.¹⁶

The representative of China stated that the provisions of international law on the non-use of weapons against civil aircraft should be respected and at the same time those on the inviolability of territorial airspace and those against the abuse of civil aviation must also be observed. However, he stated that as key amendments proposed by the parties concerned had not been accepted, the current draft resolution had a “biased tilt,” as a result of which his delegation would abstain in the vote.¹⁷

The representative of the Russian Federation stated that the draft resolution reaffirmed the conclusion of the Council of the International Civil Aviation Organization that States must refrain from the use of weapons against civil aircraft in flight and that when civil aircraft were intercepted the lives of persons on board must not be endangered. However, the Security Council bore a great responsibility in terms of effective and timely measures to ensure compliance with international law, which included not allowing violations of the sovereignty of Member States or of the standards and rules of international civil aviation. He stated that the draft resolution had continued to deviate from the general direction consistent with the interests of all members of the international community. He said that the text remained unbalanced from the political and international legal standpoints, as it did not strike a balance between two fundamental principles: the non-use of weapons against civil aircraft and the non-use of such aircraft for illegal purposes, which established an unfortunate precedent for the future. He also expressed unhappiness that the resolution emphasized the report of the Secretary-General of ICAO, which had not been given an unequivocal assessment when it was considered, over the resolution of the International Civil Aviation Organization Council. He reiterated that his delegation could not support the draft resolution in its present form and would abstain in the voting.¹⁸

A number of other speakers endorsed the draft resolution. They supported the principle that States must refrain from the use of weapons against civil

aircraft in flight. Many representatives also highlighted that each contracting State needed to take appropriate measures to prohibit the deliberate use of any civil aircraft for any purposes inconsistent with the aims of article 3 bis (d) of the Chicago Convention.¹⁹

The draft resolution was thereupon put to the vote and adopted by 13 votes to none with 2 abstentions (China, Russian Federation), as resolution 1067 (1996), which reads:

The Security Council,

Recalling the statement made by its President on 27 February 1996 strongly deploring the shooting down by the Cuban Air Force of two civil aircraft on 24 February 1996, which resulted in the death of four persons, and requesting the International Civil Aviation Organization to investigate this incident in its entirety and to report its findings to the Security Council,

Taking note of the resolution adopted by the Council of the International Civil Aviation Organization on 6 March 1996 which strongly deplored the shooting down of the two civil aircraft and which directed the Secretary-General of the International Civil Aviation Organization to initiate an immediate investigation of the incident in its entirety in accordance with the Security Council presidential statement of 27 February 1996 and to report on that investigation,

Commending the International Civil Aviation Organization for its examination of this incident, and welcoming the resolution adopted by the Council of the International Civil Aviation Organization on 27 June 1996, transmitting the report of the Secretary-General of that organization to the Security Council,

Welcoming the report of the Secretary-General of the International Civil Aviation Organization regarding the shooting down of civil aircraft N2456S and N5485S by Cuban MiG-29 military aircraft, and noting in particular the conclusions of the report,

Recalling the principle that every State has complete and exclusive sovereignty over the airspace above its territory, and that the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto, and noting in this connection that States shall be guided by the principles, rules, standards and recommended practices laid down in the Convention on International Civil Aviation of 7 December 1944 and the annexes thereto (the Chicago Convention), including the rules relating to the interception of civil aircraft, and the principle, recognized under customary international law,

¹⁶ S/PV.3683, pp. 15-16.

¹⁷ *Ibid.*, pp. 17.

¹⁸ *Ibid.*, pp. 23-24.

¹⁹ *Ibid.*, pp. 16-17 (Germany); pp. 17 (Botswana); p. 18 (Guinea-Bissau); p. 18 (Honduras); pp. 18-19 (Poland); p. 19 (Republic of Korea); pp. 19-20 (Indonesia); p. 21 (Chile); p. 22 (Italy); and pp. 22-23 (Egypt).

concerning the non-use of weapons against such aircraft in flight,

1. *Endorses* the conclusions of the report of the International Civil Aviation Organization and the resolution adopted by the Council of the International Civil Aviation Organization on 27 June 1996;

2. *Notes* that the unlawful shooting down by the Cuban Air Force of two civil aircraft on 24 February 1996 violated the principle that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered;

3. *Expresses deep regret* over the loss of four lives, and offers its deep sympathy and condolences to the bereaved families of the victims of this tragic event;

4. *Calls upon* all parties to acknowledge and comply with international civil aviation law and related internationally agreed procedures, including the rules and standards and recommended practices set out in the Chicago Convention;

5. *Reaffirms* the principle that each State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of the Chicago Convention;

6. *Condemns* the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity, the rules of customary international law as codified in article 3 bis of the Chicago Convention, and the standards and recommended practices set out in the annexes of the Convention, and calls upon Cuba to join other States in complying with their obligations under these provisions;

7. *Urges* all States which have not yet done so to ratify as soon as possible the Montreal Protocol adding article 3 bis to the Chicago Convention, and to comply with all the provisions of the article pending the entry into force of the Protocol;

8. *Welcomes* the decision of the Council of the International Civil Aviation Organization to initiate a study of the safety-related aspects of the report of the investigation with regard to the adequacy of standards and recommended practices and other rules relating to the interception of civil aircraft with a view to preventing the recurrence of a similar tragic event;

9. *Decides* to remain seized of the matter.

Speaking after the vote, the representative of France noted that two points regarding the events had emerged. First, the events had occurred in a context of tension caused by repeated violations of Cuban airspace. The second was that weapons had been deliberately used against unarmed aircraft without prior recourse to procedures that would have made it possible to divert the planes. He concluded that the resolution adopted was completely consistent with the results of the International Civil Aviation Organization's work.²⁰

At the same meeting, both the United States and Cuba took second interventions to reiterate the points made in their respective statements.²¹

²⁰ Ibid., pp. 24-25.

²¹ Ibid., pp. 25-26.