
Article 2 (7)

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Article 2 (7)

Text of Article 2 (7)

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Introductory note

1. As in the previous *Supplements*, the present study covers only the cases in which objections, based on Article 2 (7) of the Charter, were made to the competence of the organs of the United Nations.

2. As in *Supplements Nos. 7, 8 and 9*, this study deals only with the cases that were the subject of active consideration by the principal organs of the United Nations during the period under review, and which are relevant to the interpretation of Article 2(7) of the Charter.

3. During the period under review, Article 2 (7) was referred to explicitly in one resolution adopted by the General Assembly⁴²³ and five resolutions adopted by the Security Council.⁴²⁴ In addition, although no other resolution of a principal organ of the United Nations explicitly referred to Article 2 (7), many of them incorporated, as grounds for action, some of the considerations advanced during the relevant discussions.

4. The study does not cover decisions in connection with which no objections based on Article 2 (7) were raised, although such decisions may be deemed to constitute, at least implicitly, an affirmation of the competence of the United Nations and may therefore have a bearing on the question of domestic jurisdiction.

5. Four cases dealt with in the previous studies pertaining to Article 2 (7) in the *Repertory* and its nine *Supplements* are also dealt with in this study, as indicated in the following table:

⁴²³ GA resolution 63/261 of 24 December 2008, para. 13.

⁴²⁴ SC resolutions 1296 (2000) of 19 April 2000, preamble; 1353 (2001) of 13 June 2001, preamble; 1674 (2006) of 28 April 2006, preamble; 1738 (2006) of 23 December 2006, preamble; and 1894 (2009) of 11 November 2009, preamble.

<i>Titles of cases</i>	<i>Relevant paragraphs of the study</i>	<i>Organ</i>
Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes	7	General Assembly
Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations	8-10	General Assembly
The situation between Iraq and Kuwait	34-36	Security Council
The situation in the Middle East	37-50	Security Council
Protection of civilians in armed conflict	51-56	Security Council

6. In addition, the present study deals with a number of new cases, as indicated in the following table:

<i>Titles of cases</i>	<i>Relevant paragraphs of the study</i>	<i>Organ</i>
Promotion and protection of human rights: moratorium on the use of the death penalty	11-17	General Assembly
The situation of human rights in Myanmar	18-21	General Assembly
Human rights and State sovereignty	22-27	General Assembly
	28-30	Economic and Social Council
The situation in Myanmar	31-33	Security Council
The maintenance of international peace and security	57-66	Security Council
Prevention of armed conflicts	67-70	Security Council

I. General survey

A. General Assembly

1. Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes

7. The General Assembly, at its fifty-sixth and fifty-eighth sessions, adopted two resolutions entitled “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”. Resolution 56/154 affirmed “that the principles enshrined in Article 2 of the Charter of the United Nations, in particular respect for national sovereignty and non-interference in the internal affairs of any State, should be respected in the holding of elections”. Resolution 58/189 reiterated this point without mentioning explicitly the principle of non-interference.

Each of these resolutions contained the following provisions:

“The General Assembly, ...

“*Reaffirming* the right to self-determination, by virtue of which all peoples can freely determine their political status and freely pursue their economic, social and cultural development,

“... ”

“1. *Reaffirms* that all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development, and that every State has the duty to respect that right, in accordance with the provisions of the Charter of the United Nations;

“2. *Reiterates* that periodic, fair and free elections are important elements for the promotion and protection of human rights;

“3. *Reaffirms* the right of peoples to determine methods and to establish institutions regarding electoral processes and that, consequently, States should ensure the necessary mechanisms and means to facilitate full and effective popular participation in those processes;

“4. *Also reaffirms* that free development of the national electoral process in each State should be fully honoured in a manner that fully respects the principles established in the Charter and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations;

“5. *Calls upon* all States to refrain from financing political parties or other organizations in any other State in a way that is contrary to the principles of the Charter and that undermines the legitimacy of its electoral processes.”

2. Consideration of the exceptional situation of the Republic of China on Taiwan in the international context⁴²⁵

8. The item “Need to examine the exceptional international situation pertaining to the Republic of China on Taiwan, to ensure that the fundamental right of its twenty-three million people to participate in the work and activities of the United Nations is fully respected” was proposed for inclusion in the agenda of the General Assembly during the period under review.⁴²⁶

9. During the discussions of the General Committee, at each session the inclusion of the item in the agenda of the General Assembly was opposed by some delegations, on the grounds that its inclusion would violate Article 2 (7) of the Charter. In particular, these delegations asserted that the inclusion of the proposed item would constitute interference in the domestic affairs of China, since Taiwan constituted part of China. Other delegations maintained that the item should be included in the agenda, inter alia, on the basis of the principle of universality and past practice

⁴²⁵ In continuation of *Supplement No. 9*, vol. I, for the purpose of the current study the proposed agenda item is here considered under the title “Consideration of the exceptional situation of the Republic of China in Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations”.

⁴²⁶ [A/55/227](#); [A/55/227/Add.1](#); [A/55/227/Add.2](#); [A/56/193/Add.1](#); [A/56/193/Add.2](#); [A/56/193/Add.3](#); and [A/56/193/Add.4](#).

with regard to divided States. The arguments presented in favour and against the inclusion of the item are included in the analytical summary of practice and relate to the question whether the inclusion of an item in the agenda constitutes interference in the internal affairs of a State in violation of Article 2 (7) of the Charter.⁴²⁷

10. At the fifty-fifth and fifty-sixth sessions, at the end of its discussions on the proposed item, the General Committee decided not to recommend the inclusion of the item in the agenda.⁴²⁸

3. Promotion and protection of human rights: moratorium on the use of the death penalty

11. On the basis of a draft resolution⁴²⁹ on a moratorium on the use of the death penalty, the Third Committee of the General Assembly considered the item entitled “Human rights questions”, at the sixty-second session of the General Assembly,⁴³⁰ on 14 November 2007. The Third Committee reviewed an amendment⁴³¹ to the draft resolution, introduced by Egypt, proposing to refer explicitly to Article 2 (7) in the first preambular paragraph.

12. At the 43rd meeting of the Third Committee, the representatives of Singapore and Barbados supported the amendment by stating that it would inject a balance into what was clearly a one-sided view.⁴³² The representative of Egypt considered that the amendment would improve the language of the draft resolution, allowing each Member State to decide on matters within its domestic jurisdiction.⁴³³

13. At the 44th meeting, the representatives of Portugal⁴³⁴ and Gabon⁴³⁵ explained their vote against the amendment by stating that a reference to the Charter of the United Nations was superfluous, giving the impression that penal issues fell within the exclusive jurisdiction of States and departing from the aim of the draft resolution, which was to declare a

moratorium on executions. The representative of the Philippines⁴³⁶ added that Article 2 (7) of the Charter could not be cited against draft resolution [A/C.3/62/L.29](#), because the latter involved an issue that was not essentially within the domestic jurisdiction of any State.

14. Owing to these objections, the proposed amendment was rejected by 82 votes to 73, with 15 abstentions.⁴³⁷ The draft resolution was adopted as resolution 62/149 on 18 December 2007.

15. At its 41st and 42nd meetings,⁴³⁸ on 18 and 20 November 2008, the Third Committee considered the item entitled “Promotion and protection of human rights”, and held a similar debate regarding the proposed insertion⁴³⁹ of a reference to Article 2 (7) in a draft resolution requesting, inter alia, the Secretary-General to provide a report on progress made in the implementation of resolution 62/149.⁴⁴⁰

16. Several representatives recalled Article 2 (7) and reaffirmed the right of States to choose, without interference, to apply the death penalty for serious crimes, which fell within domestic jurisdiction⁴⁴¹ and was a sovereign decision of each State.⁴⁴² The representative of China, explaining his vote against the draft resolution, stated that the consideration and adoption by the General Assembly of the draft resolution ran counter to Article 2 (7).⁴⁴³

17. Despite this support for the proposed amendment, the Third Committee rejected it by a recorded vote of 81 to 67, with 23 abstentions.⁴⁴⁴ Consequently, the draft resolution was adopted by the General Assembly, without the amendment, as resolution 63/168 on 18 December 2008.

⁴²⁷ See below, paras. 69 and 70.

⁴²⁸ [A/BUR/55/SR.2](#), para. 101; and [A/BUR/56/SR.2](#), para. 91.

⁴²⁹ [A/C.3/62/L.29](#).

⁴³⁰ [A/C.3/62/SR.43](#) and [A/C.3/62/SR.44](#).

⁴³¹ [A/C.3/62/L.68](#).

⁴³² [A/C.3/62/SR.43](#), paras. 16 and 64.

⁴³³ *Ibid.*, para. 68. This view was shared by several delegations ([A/62/658](#), para. (d)).

⁴³⁴ [A/C.3/62/SR.44](#), para. 5.

⁴³⁵ *Ibid.*, para. 8.

⁴³⁶ *Ibid.*, para. 9.

⁴³⁷ *Ibid.*, para. 12.

⁴³⁸ [A/C.3/63/SR.41](#) and [A/C.3/63/SR.42](#).

⁴³⁹ [A/C.3/63/L.62](#).

⁴⁴⁰ [A/C.3/63/L.19/Rev.1](#).

⁴⁴¹ [A/C.3/63/SR.41](#), para. 7 (Jamaica), para. 8 (Sudan), para. 9 (Egypt), para. 15 (Syrian Arab Republic), para. 18 (China) and para. 23 (Barbados).

⁴⁴² [A/C.3/63/SR.41](#), para. 3 (Uganda); and [A/C.3/63/SR.42](#), para. 63 (Thailand).

⁴⁴³ [A/C.3/63/SR.42](#), para. 85.

⁴⁴⁴ [A/63/430/Add.2](#), para. 30.

4. The situation of human rights in Myanmar

18. During the period under review, the General Assembly continued its consideration of the sub-item entitled “Human rights situations and reports of Special Rapporteurs and Representatives” and adopted, *inter alia*, one resolution on the situation of human rights in Myanmar.⁴⁴⁵

19. At the 45th meeting of the Third Committee, held on 21 November 2008 during the sixty-third session of the General Assembly, several representatives criticized the draft resolution⁴⁴⁶ for attempting to politicize human rights issues.⁴⁴⁷ The representative of the Syrian Arab Republic expressed the view that “no State should interfere in the internal affairs of any other State on the pretext of defending human rights. The principle of the sovereign equality of all States was enshrined in the Charter of the United Nations”.⁴⁴⁸

20. Despite these objections, the draft resolution was adopted by 89 votes to 29, with 63 abstentions.⁴⁴⁹

21. After the vote, the representative of Myanmar stated that the draft resolution had no moral authority and was contrary to Article 2, paragraph 7, and that the politicization of human rights would not be tolerated. Those issues should be addressed within their global context through a constructive dialogue based on the principles of objectivity, respect for national sovereignty and territorial integrity and non-interference in the internal affairs of States. Myanmar would continue to oppose the exploitation of human rights for political purposes and blatant attempts to interfere in its internal affairs.⁴⁵⁰

5. Human rights and State sovereignty

22. At the 4th plenary meeting of the fifty-seventh session of the General Assembly, on 13 September 2002, the President of Slovenia pointed out that the ethic of a democratic world “does not recognize absolute State sovereignty or absolute non-interference in internal affairs when systematic mass violations of human rights, through State terror, occur”.⁴⁵¹

⁴⁴⁵ Resolution 63/245 of 24 December 2008.

⁴⁴⁶ [A/C.3/63/L.33](#).

⁴⁴⁷ See, for instance, [A/C.3/63/SR.45](#), para. 2 (Egypt).

⁴⁴⁸ *Ibid.*, para. 14.

⁴⁴⁹ *Ibid.*, para. 16.

⁴⁵⁰ *Ibid.*, paras. 28 and 29.

⁴⁵¹ [A/57/PV.4](#).

23. During the period under review, some representatives in the General Assembly expressed their concerns regarding the concept of responsibility to protect and stated that it would erode the sovereignty of States and allow interference in the internal affairs of States.⁴⁵²

24. In contrast, the representatives of the United Kingdom⁴⁵³ and Chile⁴⁵⁴ did not share this view and stated that the principle of non-interference had to be qualified by a duty to protect, especially where Governments were failing in that duty.

25. Following up the adoption of the World Summit Outcome in 2005⁴⁵⁵ and pursuant to the report of the Secretary-General entitled “Implementing the responsibility to protect”,⁴⁵⁶ the General Assembly considered items entitled “Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields” and “Follow-up to the outcome of the Millennium Summit” respectively at its 98th and 100th plenary meetings⁴⁵⁷ on 24 and 28 July 2009.

26. Delegations shared opposing views regarding the application of the concept of the responsibility to protect and its articulation with Article 2 (7). The representatives of Pakistan,⁴⁵⁸ China,⁴⁵⁹ the Islamic Republic of Iran⁴⁶⁰ and Bangladesh⁴⁶¹ shared the view that the implementation of the responsibility to protect should not contravene the principle of State sovereignty and the principle of non-interference in the internal affairs of States.

27. The representative of Canada argued that there was a need

“...to put accountability squarely on national Governments to protect their populations. Governing comes with that obligation. All world leaders agreed on this principle in 2005 in the

⁴⁵² [A/63/PV.105](#), p. 4 (Cuba) and p. 6 (Islamic Republic of Iran); and [A/59/PV.70](#), p. 19 (Russian Federation).

⁴⁵³ [A/59/PV.8](#), p. 34.

⁴⁵⁴ [A/60/PV.18](#), p. 29.

⁴⁵⁵ GA resolution 60/1.

⁴⁵⁶ [A/63/677](#).

⁴⁵⁷ [A/63/PV.98](#); and [A/63/PV.100](#).

⁴⁵⁸ [A/63/PV.98](#), p. 3.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ [A/63/PV.100](#).

⁴⁶¹ *Ibid.*

World Summit Outcome document (resolution 60/1). It specified that when a State manifestly fails to protect its citizens from genocide, war crimes, crimes against humanity and ethnic cleansing, the international community has a subsidiary responsibility to protect them”.⁴⁶²

B. Economic and Social Council

Human rights and State sovereignty

28. At the 3rd meeting of the fifty-sixth session of the Commission on Human Rights, on 21 March 2000, the representative of Poland pointed out that examining the human rights situation in a country and making appeals to respect human rights did not constitute interference in the domestic affairs of the country in question.⁴⁶³

29. At the 5th meeting of the fifty-sixth session of the Commission on Human Rights, on 22 March 2000, the representative of Germany expressed the view that no State could any longer take advantage of the doctrine of non-interference or hide behind the principle of sovereignty in order to violate human rights.⁴⁶⁴

30. At its fifty-eighth session⁴⁶⁵ in 2006, the Sub-Commission on the Promotion and Protection of Human Rights elaborated a working paper entitled “Human rights and state sovereignty”. This document, inter alia, stated that when human rights violations constituted a threat to international peace and security, States could not invoke their domestic affairs, and sovereignty could be restricted.⁴⁶⁶

C. Security Council

1. The situation in Myanmar

31. At the 5526th meeting of the Security Council on 15 September 2006, before adopting its provisional agenda, the representative of the United States recalled that, due to the deteriorating situation in Myanmar, which threatened to have a destabilizing impact on the region and was likely to endanger the maintenance of international peace and security, his Government had

⁴⁶² A/63/PV.98, p. 25.

⁴⁶³ E/CN.4/2000/SR.3, para. 8.

⁴⁶⁴ Ibid., para. 2.

⁴⁶⁵ E/CN.4/Sub.2/2006/7.

⁴⁶⁶ Ibid., para. 13.

requested that the situation in Myanmar be placed on the agenda of the Security Council.⁴⁶⁷ However, the representative of China considered that events in Myanmar related to the internal affairs of that State, and that it should therefore be left to Myanmar and its people to find a solution to the problem.⁴⁶⁸

32. On the basis of a draft resolution,⁴⁶⁹ the Security Council considered the item entitled “The situation in Myanmar” at its 5619th meeting, on 12 January 2007. The draft resolution, inter alia, called “on the Government of Myanmar to cease military attacks against civilians in ethnic minority regions and to put an end to the associated human rights and humanitarian law violations against persons belonging to ethnic nationalities ...”.⁴⁷⁰

33. The representatives of China⁴⁷¹ and Qatar⁴⁷² maintained that the Myanmar issue was mainly the internal affair of a sovereign State and did not constitute a threat to international or regional peace and security, and asked the international community to refrain from arbitrary interference. China, the Russian Federation and South Africa voted against the adoption of the resolution. As a result, the draft resolution was not adopted.⁴⁷³

2. The situation between Iraq and Kuwait

34. During the period under review, the Security Council continued to consider the situation between Iraq and Kuwait at its 4625th and 4726th meetings, on 16 October 2002 and 26 March 2003.

35. At the 4625th meeting, the representative of Iraq voiced opposition to the embargo and the imposition of no-fly zones in Iraq and argued that the system of sanctions violated Article 2 (7).⁴⁷⁴ The representative of the United Arab Emirates called for respect for the sovereignty and territorial integrity of Iraq and non-interference in its internal affairs.⁴⁷⁵

⁴⁶⁷ S/PV.5526, p. 3.

⁴⁶⁸ S/PV.5526, pp. 2-3.

⁴⁶⁹ S/2007/14, submitted by the United Kingdom and the United States.

⁴⁷⁰ S/2007/14, p. 2.

⁴⁷¹ S/PV.5619, p. 3.

⁴⁷² Ibid., p. 5.

⁴⁷³ Ibid., p. 6.

⁴⁷⁴ S/PV.4625, p. 7.

⁴⁷⁵ Ibid., p. 20.

36. At the 4726th meeting, the Secretary-General and the representative of Pakistan⁴⁷⁶ emphasized the principle of respect for Iraq's sovereignty, territorial integrity and independence. The representative of Iraq stated that "[t]he full-scale Anglo-Saxon military invasion and the hostile, aggressive war against the Republic of Iraq constitute a blatant material breach of international law and of the United Nations Charter, particularly Article 2, paragraphs 4 and 7".⁴⁷⁷

3. The situation in the Middle East

37. With regard to Article 2 (7) of the Charter, during the period under review, the Security Council considered the situation in the Middle East at its 5028th meeting on 2 September 2004, its 5417th meeting on 21 April 2006, and its 5685th meeting on 30 May 2007.

38. In letters dated 30 August 2004⁴⁷⁸ and 1 September 2004,⁴⁷⁹ the representatives of Lebanon and the Syrian Arab Republic voiced opposition to the adoption of a draft resolution⁴⁸⁰ urging the Syrian Arab Republic to withdraw its troops from Lebanon, to refrain from interfering in the Lebanese presidential elections and to cease supporting terrorist groups in Lebanon, inter alia. They considered (i) that the discussion by the Security Council of the situation was in contradiction with Article 2 (7) of the Charter and that (ii) the issue raised was not linked to any dispute and did not constitute a threat to international peace and security.

39. At the 5028th meeting, the representative of Lebanon stated that the draft resolution constituted "interference in the internal affairs of a State Member of the Organization".⁴⁸¹ The representatives of Pakistan and the Philippines concurred while referring to Article 2 (7) of the Charter.

40. Despite these objections, the draft resolution was adopted as resolution 1559 (2004).⁴⁸²

41. Pursuant to Security Council resolution 1559 (2004), the Secretary-General submitted a report, dated 1 October 2004, in which he stated that the requirements set out in this resolution had not been met.⁴⁸³

42. In letters to the Secretary-General dated 6 October⁴⁸⁴ and 7 October⁴⁸⁵ 2004, the representatives of Lebanon and the Syrian Arab Republic reiterated their positions. At the 5058th meeting on 19 October 2004, a presidential statement⁴⁸⁶ was made on behalf of the Security Council, urging all relevant parties to implement fully all the provisions of resolution 1559 (2004).

43. At the 5417th meeting, in 2006, the representative of the Syrian Arab Republic expressed concern over the use of resolution 1559 (2004) and considered that, in accordance with Article 2 (7), the Security Council should not interfere in the matters of exchanging ambassadors and demarcating the border between the Syrian Arab Republic and Lebanon.⁴⁸⁷

44. The third semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004), inter alia, called on the Government of the Syrian Arab Republic to accept the offer proposed by the Government of Lebanon, which would have the two countries establish embassy-level diplomatic relations between them and delineate their mutual border.⁴⁸⁸ The representative of the Syrian Arab Republic replied⁴⁸⁹ that the report on the implementation of resolution 1559 (2004) had exceeded the mandate provided for in that resolution and had focused on issues that fell within the domestic jurisdiction of both countries.

45. At the 5440th meeting, a draft resolution,⁴⁹⁰ in line with the third semi-annual report of the Secretary-General, was put to the vote and received 13 votes to none, with 2 abstentions (China, Russian Federation).⁴⁹¹

⁴⁷⁶ S/PV.4726, p. 4 and S/PV.4726 (Resumption 1), p. 22.

⁴⁷⁷ Ibid., p. 5.

⁴⁷⁸ A/58/879-S/2004/699.

⁴⁷⁹ A/58/883-S/2004/706.

⁴⁸⁰ S/2004/707, submitted by France, Germany, the United Kingdom and the United States.

⁴⁸¹ S/PV.5058, p. 2.

⁴⁸² The result of the voting was as follows: 9 votes in favour, none against and 6 abstentions (S/PV.5028, p. 3).

⁴⁸³ S/2004/777.

⁴⁸⁴ S/2004/794.

⁴⁸⁵ S/2004/796.

⁴⁸⁶ S/PRST/2004/36.

⁴⁸⁷ S/PV.5417, p. 6.

⁴⁸⁸ S/2006/248.

⁴⁸⁹ S/2006/259.

⁴⁹⁰ S/2006/298, submitted by Denmark, France, Slovakia, the United Kingdom and the United States.

⁴⁹¹ S/PV.5440, p. 2.

It was therefore adopted as resolution 1680 (2006). After the vote, the representative of Argentina stated:

“My country does not believe that the Security Council should become involved in these matters, which are solely of a bilateral nature ... We shall continue to affirm that the establishment of diplomatic relations and the delimitation of borders are matters which should be decided by the States involved through dialogue and negotiation without external interference.”⁴⁹²

46. At its 5511th meeting, on 11 August 2006, as a result of the continuing escalation of hostilities in Lebanon and Israel in July 2006, the Security Council adopted resolution 1701 (2006), which, *inter alia*, stated:

“The Security Council ...

3. *Emphasizes* the importance of the extension of the control of the Government of Lebanon over all Lebanese territory in accordance with the provisions of resolution 1559 (2004) and resolution 1680 (2006), and of the relevant provisions of the Taif Accords, for it to exercise its full sovereignty...”

47. The Security Council then considered the agenda item “The situation in the Middle East” at its 5685th meeting on 30 May 2007, when examining the question of the establishment of the Special Tribunal for Lebanon.

48. At that meeting, the representative of Indonesia referred to Article 2 (7) and stated:

“If the draft resolution is adopted, it will bypass constitutional procedure and national processes. There are no legal grounds for the Security Council to take over an issue that is domestic in nature ... Although that provision does not prejudice the application of enforcement measures under Chapter VII, the Security Council should not be involved in an exercise of interpreting, let alone taking over, the constitutional requirements that a State should comply with in the conduct of its authorities.”⁴⁹³

The representatives of South Africa and China concurred and stated that the adoption of the resolution

would cause interference in the domestic affairs and legislative independence of a sovereign State.⁴⁹⁴

49. The representative of the Russian Federation observed that there was no basis for a reference to Chapter VII in the draft resolution because Chapter VII had been invoked only for the International Criminal Tribunal for the Former Yugoslavia and for the International Criminal Tribunal for Rwanda, which dealt with international crimes.⁴⁹⁵

50. Despite these objections, the draft resolution was adopted as resolution 1757 (2007).

4. Protection of civilians in armed conflict

51. Pursuant to the reports of the Secretary-General to the Security Council on the protection of civilians in armed conflict⁴⁹⁶ and to a draft resolution prepared in the course of the Council’s prior consultations,⁴⁹⁷ the Security Council considered the agenda item “Protection of civilians in armed conflict” at its 4130th meeting on 19 April 2000, its 4990th meeting on 14 June 2004, its 5430th meeting on 28 April 2006, its 5613th meeting on 23 December 2006, its 5703rd meeting on 22 June 2007, and its 5781st meeting on 20 November 2007.

52. At the 4130th meeting, a number of delegations expressed the view that actions taken by the United Nations, and the Security Council in particular, for the protection of civilians during an armed conflict could in some cases constitute interference with the internal affairs of a State, and should therefore be consistent with Article 2 (7) of the Charter.⁴⁹⁸ At the same meeting, the Council adopted resolution 1296 (2000), the preamble of which reaffirmed its commitment to the principles of the Charter as set out in Article 2, paragraphs 1 to 7, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States and respect for the sovereignty of all States.⁴⁹⁹

53. At the 4990th meeting, several speakers affirmed that responsibilities to protect civilians rested with the

⁴⁹⁴ *Ibid.*, p. 3-4.

⁴⁹⁵ *Ibid.*, p. 5.

⁴⁹⁶ S/1999/957; S/2004/431; and S/2007/643.

⁴⁹⁷ S/2000/335.

⁴⁹⁸ S/PV.4130, p. 14 (China), p. 17 (Tunisia), and p. 22 (Ukraine); and S/PV.4130 (Resumption 1), p. 12 (Egypt), and p. 14 (Bahrain).

⁴⁹⁹ Resolution 1296 (2000).

⁴⁹² *Ibid.*, p. 3.

⁴⁹³ S/PV.5685, p. 3.

States concerned.⁵⁰⁰ However, several representatives expressed the view that the right to protect should transcend the notion of sovereignty and supported the idea of an obligation on the part of the international community to intervene and protect people in failed States or States that were unwilling to protect their citizens.⁵⁰¹ Concerns were also expressed regarding the difficulties in ensuring access to humanitarian assistance, which might result in interference with the internal affairs of States.⁵⁰²

54. At its 5430th and 5613th meetings, on 28 April and 23 December 2006, pursuant to the report of the Secretary-General on the protection of civilians in armed conflict,⁵⁰³ the Security Council reviewed two draft resolutions⁵⁰⁴ referring to Article 2 (7). The draft resolutions acknowledged that the deliberate targeting of civilians and other protected persons and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security. They also specified that the Security Council would be ready to consider such situations and, where necessary, to take appropriate steps.⁵⁰⁵ Without further debate, the draft resolutions were adopted unanimously as resolutions 1674 (2006) and 1738 (2006).

55. At the 5703rd meeting, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator highlighted three major concerns: (i) the targeting of civilians, (ii) the displacement of civilians, and (iii) access and security for humanitarian workers themselves.⁵⁰⁶ The representatives of Panama and Ghana stated that when States proved unwilling or unable to act, the international community had a moral and legal duty to intervene to avert a humanitarian

catastrophe.⁵⁰⁷ At the 5781st meeting, the representative of Panama maintained this position.⁵⁰⁸

56. At its 6216th meeting, pursuant to a letter dated 2 November 2009 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General,⁵⁰⁹ the Security Council considered the agenda item “Protection of civilians in armed conflict” and reviewed a draft resolution,⁵¹⁰ referring to Article 2 (7) and reiterating the commitments undertaken in resolutions 1674 (2006) and 1738 (2006). The draft resolution was adopted unanimously as resolution 1894 (2009). After the vote, the representative of China stated: “When providing assistance, the international community and external organizations must comply with the provisions of the Charter of the United Nations, fully respect the will, sovereignty and territorial integrity of the country concerned, and refrain from forceful interference.”⁵¹¹ The representative of Saudi Arabia added that the principle of the sovereignty, territorial integrity and political independence of States and non-interference in their internal affairs constituted a strong guarantee for the protection of civilians.⁵¹²

5. The maintenance of international peace and security

57. At its 4109th meeting,⁵¹³ the Security Council held a thematic debate on the item entitled “Maintaining peace and security: humanitarian aspects of issues before the Security Council”. Representatives discussed the role and duties of the Security Council when dealing with humanitarian crises and providing humanitarian assistance.

58. The representative of France recalled the war in Kosovo and stated that large-scale violations of human rights and international humanitarian law threatened international peace and security and therefore fully justified the use of force, in accordance with the Charter.⁵¹⁴

⁵⁰⁰ S/PV.4990, p. 3 (Under-Secretary-General for Humanitarian Affairs), p. 7 (Romania), and p. 23 (China); and S/PV.4990 (Resumption 1), p. 16 (Canada, on behalf of Canada, Australia and New Zealand) and p. 21 (Nepal).

⁵⁰¹ See, for instance, S/PV.4990, p. 3 (Under-Secretary-General for Humanitarian Affairs), and p. 7 (Romania); S/PV.4990 (Resumption 1), p. 4 (Uganda) and p. 16 (Canada).

⁵⁰² S/PV.4990 (Resumption 1), p. 12 (Colombia) and p. 21 (Nepal).

⁵⁰³ S/2005/740.

⁵⁰⁴ S/2006/267; and S/2006/1023.

⁵⁰⁵ S/2006/267, para. 26; and S/2006/1023, para. 4.

⁵⁰⁶ S/PV.5703, pp. 3 and 5.

⁵⁰⁷ Ibid., pp. 8 and 21.

⁵⁰⁸ S/PV.5781, p. 10.

⁵⁰⁹ S/2009/567.

⁵¹⁰ S/2009/582.

⁵¹¹ S/PV.6216, p. 24.

⁵¹² S/PV.6216 (Resumption 1), p. 27.

⁵¹³ S/PV.4109.

⁵¹⁴ Ibid., p. 7.

59. The representative of Tunisia emphasized that “the conduct of humanitarian assistance activities must of necessity strictly comply with the principles of the sovereignty of States, their political independence, their territorial integrity and non-interference in their internal affairs”.⁵¹⁵ The representative of India added that coercion or the use of force would be wrong in law, violating Article 2 (7), and that, under international law, there is no provision regarding a right to take humanitarian action.⁵¹⁶

60. On the basis of a draft resolution dated 4 September 2000,⁵¹⁷ the Security Council considered the item entitled “Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa” at its 4194th meeting, on 7 September 2000.⁵¹⁸

61. The President of Argentina stated that, while the principle of non-intervention must be respected, at the same time a complementary value should be added: the principle of non-indifference, under which the perpetrators of crimes that offend the common conscience of humankind cannot be left unpunished.⁵¹⁹ The President of China replied that wilful use of force and interference in the internal affairs of other countries in the name of humanitarianism ran counter to the purposes and principles of the Charter of the United Nations.⁵²⁰

62. Pursuant to a letter dated 8 February 2007 from the representative of Slovakia,⁵²¹ the Security Council considered the item entitled “The maintenance of international peace and security: role of the Security Council in supporting security sector reform” at its 5632nd meeting, on 20 February 2007.⁵²²

63. The representative of China considered that the international community should act more as an adviser and assistance provider instead of going beyond given mandates or even acting arbitrarily.⁵²³

64. The representative of Egypt expressed his concerns regarding, inter alia, the concept of

responsibility to protect by stating that this concept sought to utilize humanitarian concepts to codify interference in the internal affairs of States.⁵²⁴

65. Pursuant to a letter on natural resources and conflict, dated 6 June 2007, from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General,⁵²⁵ the Security Council considered the item entitled “Maintenance of international peace and security” at its 5705th meeting, on 25 June 2007.

66. In discussing the issue of natural resources and conflict, some speakers noted that, in addressing the link between natural resources and conflict, it was necessary to respect the full and permanent sovereignty of countries over their natural resources.⁵²⁶ The representative of Argentina stated that preventive intervention by the Security Council would violate the principle of non-intervention in the internal affairs of States because the basis for intervention would then be the remote consequences that the sovereign actions of a country could possibly have for international peace and security.⁵²⁷

6. Prevention of armed conflict

67. At its 4174th meeting, on 20 July 2000, the Security Council held a thematic debate on the item entitled “Role of the Security Council in the prevention of armed conflicts”.

68. At this meeting, the representative of the Netherlands observed that the overwhelming majority of present-day conflicts on the agenda of the Council were of an internal, domestic nature, while at the same time threatening international peace and security. Thus, in view of its primary responsibilities, the Security Council could not but subscribe to a more flexible interpretation of Article 2 (7).⁵²⁸ The representative of China expressed a different view, according to which the principle of non-interference in internal affairs was essential in guiding the conflict-prevention activities of the United Nations, and argued that, therefore, preventive measures should be taken only upon request

⁵¹⁵ *Ibid.*, p. 13 (Tunisia).

⁵¹⁶ [S/PV.4109](#) (Resumption 1), p. 13.

⁵¹⁷ [S/2000/845](#).

⁵¹⁸ [S/PV.4194](#).

⁵¹⁹ *Ibid.*, p. 6.

⁵²⁰ *Ibid.*, p. 7.

⁵²¹ [S/2007/72](#).

⁵²² [S/PV.5632](#).

⁵²³ *Ibid.*, p. 9.

⁵²⁴ [S/PV.5632](#) (Resumption 1), p. 13.

⁵²⁵ [S/2007/334](#).

⁵²⁶ [S/PV.5705](#), p. 9 (Qatar), p. 16 (Peru), p. 17 (China) and p. 30 (Egypt); and [S/PV.5705](#) (Resumption 1), p. 3 (India).

⁵²⁷ [S/PV.5705](#), p. 32.

⁵²⁸ [S/PV.4174](#), p. 11.

or with the consent and cooperation of the countries concerned.⁵²⁹

69. At its 4334th meeting,⁵³⁰ on 21 June 2001, the Security Council held another thematic debate on the item entitled “Role of the Security Council in the prevention of armed conflicts”, based on the report of the Secretary-General on the prevention of armed conflict.⁵³¹

70. The representative of China stated: “Because countries have different social systems, ideologies, value systems and religious beliefs, it is necessary in

international relations to strictly abide by the basic principles of mutual respect for sovereignty and territorial integrity, non-aggression, non-interference in the internal affairs of other States...”.⁵³² The representative of Pakistan took the view that, in instances where two or more Member States were involved, the ultimate responsibility rested “with this intergovernmental world body, this being one of its obligations under the Charter”.⁵³³

****D. International Court of Justice**

⁵²⁹ Ibid., p. 13.

⁵³⁰ S/PV.4334.

⁵³¹ S/2001/574.

⁵³² S/PV.4334, p. 11.

⁵³³ S/PV.4334 (Resumption 1), p. 23.

II. Analytical summary of practice

A. The term “to intervene” in Article 2 (7)

1. Whether inclusion of an item in the agenda constituted interference in the internal affairs of a State in violation of Article 2 (7) of the Charter

71. The question whether the inclusion of an item in the agenda of the General Assembly constitutes intervention in the internal affairs of a State arose in the debates concerning the inclusion of the item entitled “Need to examine the exceptional international situation pertaining to the Republic of China on Taiwan, to ensure that the fundamental right of its twenty-three million people to participate in the work and activities of the United Nations is fully respected”.

72. The inclusion of that item in the agenda of the General Assembly was opposed by representatives who expressed the view that it was an attempt to intervene in the internal affairs of China,⁵³⁴ which would violate Article 2 (7).⁵³⁵ The representatives who supported the inclusion of the item in the agenda of the Assembly stated that “in the spirit of the Charter, it was a question of the right of the 23 million people of the Republic of China on Taiwan to be represented”⁵³⁶ and

that “the United Nations should recognize the legitimate rights and aspirations of the people of Taiwan, while making every effort to ensure that tensions between the two sides of the Taiwan Strait did not become a threat to international peace and security”.⁵³⁷

****2. Whether a recommendation constitutes “intervention”**

3. Whether the creation of a tribunal constitutes “intervention”

73. In the discussions in the Security Council of the situation in the Middle East, the representative of the United Kingdom stated that the creation by the Security Council of a tribunal in Lebanon was not “a capricious intervention or interference in the domestic political affairs of a sovereign State. It is a considered response by the Council, properly taken, to a request from the Government of Lebanon for action to overcome a continued impasse in Lebanon’s internal procedures, despite long and serious efforts to find a solution within Lebanon”.⁵³⁸

⁵³⁴ A/BUR/55/SR.2, para. 56 (Myanmar), para. 57 (Lesotho), and para. 93 (Viet Nam); A/BUR/56/SR.1, para. 134 (Sudan); and A/BUR/56/SR.2, para. 51 (Kuwait), para. 64 (Congo), and para. 80 (Libyan Arab Jamahiriya).

⁵³⁵ A/BUR/55/SR.2, para. 64 (Iraq).

⁵³⁶ Ibid., para. 21 (Sao Tome and Principe).

⁵³⁷ Ibid., para. 50 (El Salvador).

⁵³⁸ S/PV.5685, p. 6.

B. The expression in Article 2 (7): “matters which are essentially within the domestic jurisdiction of any State”

1. Whether a matter governed by international law can fall essentially within domestic jurisdiction

(a) In general

74. During the discussions in the Security Council relating to the protection of civilians in armed conflict, a number of representatives noted the applicability of international human rights law and international humanitarian law to the protection of civilians in armed conflict.⁵³⁹ It was also stated that Member States were responsible for meeting their obligations under international law⁵⁴⁰ and that all parties to an armed conflict must fully comply with the provisions of international law, especially humanitarian, human rights and refugee law.⁵⁴¹

(b) Whether a matter governed by an international agreement can fall essentially within domestic jurisdiction

75. Under the item entitled “The situation in the Middle East”, in the annex to identical letters dated 30 August 2004, addressed to the Secretary-General and the President of the Security Council, the representative of Lebanon stated that the presence of Syrian troops in Lebanon was (i) linked to the Taif Treaty and other bilateral agreements between the Governments of Lebanon and the Syrian Arab Republic, (ii) under the auspices and supervision of the competent legitimate institutions in each country. “No external entity is entitled to intervene with regard to its modalities or to impose changes.”⁵⁴²

76. The representative of the Syrian Arab Republic added that Syrian-Lebanese relations were governed by the Treaty of Brotherhood, Cooperation and Coordination concluded between the two countries and deposited with the United Nations and that intervention of the Security Council in this area would constitute illegal interference in the internal affairs of the

independent and sovereign States Members of the United Nations.⁵⁴³

77. The representative of France responded that the Security Council was “not committing an act of interference by denouncing the risk to international peace and security represented by the current crisis. Rather, if it refrained from taking action, the Council would be sanctioning the inadmissible interference by a State in the internal affairs of another sovereign State”.⁵⁴⁴

(c) Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction

78. During the discussions in the General Committee of the General Assembly regarding the possible inclusion in the agenda of the item entitled “Need to examine the exceptional international situation pertaining to the Republic of China on Taiwan, to ensure that the fundamental right of its twenty-three million people to participate in the work and activities of the United Nations is fully respected”, several delegations referred to provisions of the Charter in response to objections raised by other delegations based on Article 2 (7).⁵⁴⁵

** (i) Article 2 (7) and the Charter provisions on human rights

** (ii) Article 2 (7) and the Charter provisions regarding non-self-governing territories

** (iii) Article 2 (7) and the Charter provisions on the self-determination of peoples

(iv) Article 2 (7) and the Charter provisions on the maintenance of international peace and security

79. At the 11th plenary meeting of the fifty-eighth session of the General Assembly, on 25 September 2003, the representative of Ireland expressed the view that “when events within a country threaten international peace and security, they become the legitimate interest of the international community. Similarly, I cannot accept that the international community should stand by and accept the large-scale, flagrant and persistent violation of human rights”.⁵⁴⁶

⁵³⁹ S/PV/4990, p. 7.

⁵⁴⁰ Ibid., p. 9.

⁵⁴¹ Ibid., p. 21.

⁵⁴² A/58/879-S/2004/699.

⁵⁴³ A/58/883-S/2004/706.

⁵⁴⁴ S/PV.5028, p. 4.

⁵⁴⁵ A/BUR/55/SR.2, p. 7 (Nicaragua).

⁵⁴⁶ A/58/PV.11, p. 20.

80. At the 8th plenary meeting of the fifty-ninth session of the General Assembly, on 23 September 2004, the representative of the United Kingdom stated that: “an abuse from within which threatens the peace could and should be dealt with by the Security Council, under the powers enshrined in the other articles of Chapter VII of the Charter ... No longer — we all said — could or should the world turn away from unspeakable barbarities like that of the Holocaust. But we have not always lived up to those high expectations, as the tragedies of Rwanda and Bosnia 10 years ago reminded us. Today we must resolve to do so and to engage in situations of humanitarian catastrophe or grave violations of international humanitarian law and to act in the face of other threats to international peace and security.”⁵⁴⁷

****2. Whether the domestic jurisdiction of a State extends over all its territories**

****3. Whether civil strife in certain situations is not a matter falling essentially within domestic jurisdiction**

****4. Whether minority questions can fall essentially within domestic jurisdiction**

C. The last phrase of Article 2 (7): “but this principle shall not prejudice the application of enforcement measures under Chapter VII”

81. In the General Assembly, the representative of New Zealand expressed the view that, under Article 2 (7), there were circumstances where Member States did not have exclusive jurisdiction over their domestic affairs, in particular in the case of measures under Chapter VII of the Charter. In other words, the Charter provided that measures to preserve international peace and security could override State sovereignty. National sovereignty was therefore not absolute.⁵⁴⁸

⁵⁴⁷ A/59/PV.8, p. 34.

⁵⁴⁸ A/55/PV.31, p. 14.

D. Procedure by which Article 2 (7) was invoked

82. Objections to the jurisdiction of the United Nations organs on the basis of Article 2 (7) of the Charter were made during the discussions of the General Committee on the agenda of each session of the Assembly⁵⁴⁹ and in the course of the debates of the Security Council⁵⁵⁰ and/or the General Assembly.⁵⁵¹ The same Article was also invoked as an explanation for abstaining from voting or casting a negative vote to a number of resolutions adopted by the Assembly⁵⁵² and the Security Council.⁵⁵³

E. Effects of previous decisions by the General Assembly or the Security Council to deal with the question

83. In the deliberations of the General Committee concerning the proposed agenda items relating to the representation of Taiwan in the United Nations, several representatives asserted that the question had already been decided by General Assembly resolution 2758 (XXVI).⁵⁵⁴ Other delegations stated that the proposed items should be included in the agenda of the General Assembly since the Assembly had previously dealt with similar situations relating to the admission of other divided States.⁵⁵⁵

****F. Article 2 (7) and the principle of non-intervention**

⁵⁴⁹ See paras. 8-10 above, [A/BUR/55/SR.2](#) and [A/BUR/56/SR.2](#).

⁵⁵⁰ See paras. 31-68 above.

⁵⁵¹ See paras. 11-27 above.

⁵⁵² *Ibid.*

⁵⁵³ See paras. 37-50 above.

⁵⁵⁴ [A/BUR/55/SR.2](#); and [A/BUR/56/SR.2](#).

⁵⁵⁵ *Ibid.*