

Repertory of Practice of United Nations Organs

SUPPLEMENT NO. 8

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Repertory of Practice of United Nations Organs)

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 jurisdiction of the competent organs of the United Nations.
2. As in *Supplement No. 7*, this study deals only with the cases that were the subject of active considerations by the organs of the United Nations during the period under review. Moreover, as in *Supplement No. 7*, numerical references to the dormant and the active cases have been omitted from the current *Supplement*.
3. During the period under review, Article 2(7) was referred to explicitly in six resolutions adopted by the United Nations General Assembly, in relation to the agenda item entitled “enhancing the effectiveness of the principle of periodic and genuine elections”¹ and in one resolution of the Security Council, in relation to the situation in Iraq.² In addition, although no other resolution of a principle 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.

¹ G A resolutions 44/147; 45/151; 46/130; 47/130; 48/124; 49/180.

² S C resolution 688 (1991).

4. The study does not cover decisions in connection with which no objections based on Article 2(7) were raised, although such decisions 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. Five cases dealt with in the previous studies pertaining to Article 2(7) in the *Repertory* and its seven *Supplements* are also dealt with in this study, as indicated in the following table:

Titles of the Cases	Relevant paragraphs of study	Organ
Question of the Comorian island of Mayotte	7-10	General Assembly
The situation in Kampuchea	11-14	General Assembly
The situation in the Middle East	15-16	General Assembly
The question of the Malagasy Islands of Glorieuses, Juan de Nova, Erupa and Bassas da India	17-18	General Assembly
The situation in Afghanistan	34-35	the Security Council

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

Titles of the cases	Relevant paragraphs of study	Organ
Human rights situations and reports of special rapporteurs and representatives	19-20	General Assembly
Enhancing the effectiveness of the principle of periodic and genuine elections	21-23	General Assembly
Consideration of the	24-25	General Assembly

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		
The situation between Iraq and Kuwait	26-27	the Security Council
The situation in Iraq	28-31	the Security Council
The question of the membership of the Republic of Korea in the United Nations	32-33	the Security Council
The situation in Yugoslavia	36-37	the Security Council
The situation in the Republic of Yemen	39-39	the Security Council
The situation in the Democratic Republic of Korea	40-41	the Security Council
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I. GENERAL SURVEY

A. General Assembly

QUESTION OF THE COMORIAN ISLAND OF MAYOTTE

7. The question of the Comorian island of Mayotte was the subject of further considerations by the General Assembly during its forty-fourth to its forty-ninth sessions.

8. During the discussions of the General Committee at the forty-fourth to the forty-eighth sessions of the General Assembly, the representative of France opposed the inclusion of the question of the Comorian island of Mayotte as an item in the agenda of the General Assembly on the grounds that it was a territory under French sovereignty, and stated that its inclusion would constitute a violation of Article 2(7).³ No such statement was made during the discussions of the General Committee at the forty-ninth session of the General Assembly.

9. Despite the objections raised on the grounds of Article 2(7), the General Assembly placed the item on its agenda at each session.⁴ During the discussions on this item at each session, the representative of France expressed regret that the question of the island of Mayotte, a territory under French sovereignty, was being considered by the General Assembly, and voted against the relevant resolution.⁵

10. During the period under review, the Assembly adopted six resolutions on the question of the Comorian Island of Mayotte,⁶ and decided to include it in the provisional agenda of its next session. Also, the Assembly requested the Secretary-General to present a report on the

³A/BUR/44/SR.1, p. 4, para.23; A/BUR/45/SR.1, p. 5, para.25; A/BUR/46/SR.1, p. 5, para.24; A/BUR/47/SR.1, p. 5, para.28; A/BUR/48/SR.1, p. 6, para.38. For arguments presented in favor or against the inclusion of the item see paras.46-47 below.

⁴ A/44/PV. 34, p. 16; A/45/PV. 36, p. 2; A/46/PV. 32, pp. 8-10; A/47/PV. 48, p. 2; A/48/PV. 76, p.1; A/49/PV. 69, p. 10.

⁵ A/44/PV.34, p.41; A/45/PV.36, p.26; A/46/PV.32, p.23; A/47/PV.48, p.11-12; A/48/PV.76, p.5; A/49/PV.69, p.13.

⁶ G A resolutions 44/9; 45/11; 46/9; 47/9; 48/56; 49/18.

matter to each session of the Assembly. These six resolutions contained, *inter alia*, the following identical operative paragraphs:

“1. Reaffirms the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte;

“2. Invites the Government of France to honour the commitments entered into prior to the referendum on the self-determination of the Comoro Archipelago of 22 December 1974 concerning respect for the unity and territorial integrity of the Comoros;

“3. Calls for the translation into practice of the wish expressed by the President of the French Republic to seek actively a just solution to the question of Mayotte;

“4. Urges the Government of France to accelerate the process of negotiations with the Government of the Comoros with a view to ensuring the effective and prompt return of the island of Mayotte to the Comoros;

“5. Requests the Secretary-General of the United Nations to maintain continuous contact with the Secretary-General of the Organization of African Unity with regard to this problem and to make available his good offices in the search for a peaceful negotiated solution to the problem;”⁷

THE SITUATION IN KAMPUCHEA

11. During the period under review, the General Assembly continued the consideration of its agenda item entitled “the situation in Kampuchea” or “the situation in Cambodia”⁸, in its forty-fourth to its forty-sixth sessions.

⁷ The above paragraphs are quotations from GA resolution 49/18, and are identical in previous General Assembly resolutions on the subject, referred to in footnote 3.

⁸ The title of the agenda item was changed after the forty-fourth session.

12. During the discussions of the item in the General Assembly, no specific references were made to Article 2(7). However, at the forty-fourth session, some representatives expressed the view that the adoption of the proposed draft resolution by the General Assembly would constitute interference in the internal affairs of Kampuchea.⁹ Counter-arguments were also made that the adoption of the resolution was necessary for the maintenance of international peace and security.¹⁰

13. After holding a substantial debate on the agenda item at its forty-fourth session, the General Assembly adopted a resolution containing, *inter alia*, the following operative paragraphs:

“2. Reiterates its conviction that the withdrawal of all foreign forces from Kampuchea under supervision and control of the United Nations, the creation of an interim administering authority, the promotion of national reconciliation among all Kampucheans under the leadership of Samdech Norodom Sihanouk, the non-return to the universally condemned policies and practices of a recent past, the restoration and preservation of the independence, sovereignty, territorial integrity and neutral and non-aligned status of Kampuchea, the reaffirmation of the right of the Kampuchean people to determine their own destiny and the commitment by all States to non-interference and non-intervention in the internal affairs of Kampuchea, with effective guarantees, are the principal components of any just, lasting and comprehensive political settlement of the Kampuchean problem;

“3. Emphasizes that the Kampuchean people should be allowed to exercise their inalienable right to self-determination through internationally supervised free, fair and democratic elections;

⁹ See for instance: A/44/PV.56, p.47, A/44/PV.57, p. 83.

¹⁰ A/44/PV.56, pp. 20, 31, 72, A/44/PV. 57, p. 121. For arguments presented in favor or against the discussion of the item in the General Assembly see paras.46-47 below.

“4. Affirms that any withdrawal of foreign forces from Kampuchea without United Nations supervision, control and verification is not within the framework of a comprehensive political settlement;

“5. Calls upon all parties concerned to intensify urgently all efforts towards ensuring that the Kampuchean problem be resolved through a comprehensive political settlement in order to prevent further hostilities and subsequent loss of life and the continued suffering of the Kampuchean people, and to ensure the independence, sovereignty, territorial integrity, neutral and non-aligned status of Kampuchea and the non-return to the universally condemned policies and practices of a recent past;”¹¹

14. While no debate was held in the plenary meetings on the agenda item during the forty-fifth and forty-sixth sessions of the General Assembly, the Assembly adopted resolutions on this agenda item at both sessions.¹² In resolution 46/18, the General Assembly expressed support for the role of the United Nations in Cambodia, *inter alia*, with the following language:

“2. Supports the efforts of the Secretary-General to set up an effective United Nations Transitional Authority in Cambodia as soon as possible, with the aim of restoring peace and stability in Cambodia and to implement the Paris Agreements;

“3. Welcomes the fact that commitment to self-determination for the Cambodian people through free and fair elections organized and conducted by the United Nations and full respect for human rights have been incorporated in the provisions of the settlement;”¹³

¹¹ G A resolution 44/22, adopted by 124 votes to 17 with 12 abstentions.

¹² G A resolution 45/3, adopted without a vote; G A resolution 46/18, adopted without a vote. During this period, the issue was also discussed in the Security Council, which adopted three relevant resolutions, resolutions 668 (1990) of 20 September 1990, 717 (1991) of 16 October 1991 and 718 (1991) of 31 October 1991.

¹³ G A resolution 46/18, adopted without a vote.

THE SITUATION IN THE MIDDLE EAST

15. During the period under review, the General Assembly continued its consideration of the agenda item entitled “the situation in the Middle East” in its forty-fourth to forty-ninth sessions, and adopted six resolutions¹⁴ on the item. The resolutions adopted at the forty-fourth and forty-fifth sessions contained, *inter alia*, the following almost identical paragraph:

“10. Considers that the agreements on strategic co-operation between the United States of America and Israel, signed on 30 November 1981, and the continued supply of modern arms and materiel to Israel, augmented by substantial economic aid, including the Agreement on the Establishment of a Free Trade Area between the two Governments, have encouraged Israel to pursue its aggressive and expansionist policies and practices in the Palestinian territory occupied since 1967, including Jerusalem, and the other occupied Arab territories, and have had adverse effects on efforts for the establishment of a comprehensive, just and lasting peace in the Middle East and pose a threat to the security of the region; ”¹⁵

16. During the consideration of the item at the forty-fourth and forty-fifth sessions of the General Assembly, the representative of the United States objected to the above paragraph and requested a separate vote on it, on the grounds that it made a critical reference to its relations with another Member States.¹⁶ Notwithstanding the objection of the United States, the above paragraph was approved in a separate vote at each session of the Assembly.¹⁷

QUESTION OF THE MALAGASY ISLANDS OF GLORIEUSES, JUAN DE NOVA, ERUPA AND BASSAS DA INDIA

17. During the period under review, the General Assembly considered the question of the Malagasy Islands of Glorieuses, Juan de Nova, Erupa and Bassas da India at its forty-fourth

¹⁴ G A resolution 44/40 (A)-(C); G A resolution 45/83 (A)-(C); G A resolution 46/82 (A)-(B); G A resolution 47/63 (A)-(B); G A resolution 48/59 (A)-(B); G A resolution 49/87 (A)-(B).

¹⁵ G A resolutions 44/40, para. 10; 45/83 (A), para. 10.

¹⁶ A/44/PV. 73, p. 4-5; A/45/PV. 67, p. 73/75.

¹⁷ At its forty-fourth session, the Assembly approved the paragraph by 63 votes to 35, with 47 abstentions. At its forty-fifth session, the paragraph was approved by 52 votes to 37 with 49 abstentions.

session.¹⁸ During the discussions in of the General Committee, the representative of France objected to the inclusion of the item in the agenda of the Assembly, on the grounds that it constituted a violation of Article 2 (7) of the Charter.¹⁹

18. Despite the objection of France, the item was included in the agenda of the forty-fourth session of the General Assembly,²⁰ and upon the recommendation of the Special Political Committee, the Assembly adopted a decision to include the question of the Malagasy Islands of Glorieuses, Juan de Nova, Erupa and Bassas da India, in the provisional agenda of its next session.²¹

HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

19. At the forty-ninth session of the General Assembly, the representative of the Sudan opposed the inclusion of the sub-item "Human rights situations and reports of Special Rapporteurs and representatives" in the agenda. He argued, *inter alia*, that "it was an item which in appearance dealt with human rights, but in reality had political designs aimed at intervening in the internal affairs of certain States."²² Other delegations supported the inclusion of the sub-item in the agenda of the General Assembly.²³

20. Despite the objection by the Sudan, the sub-item was included in the agenda of the General Assembly during the forty-ninth session.²⁴

¹⁸ In subsequent sessions, the consideration of this agenda item was deferred. A/45/PV.3, p. 8; A/46/PV.3, p. 10; A/47/PV.3, p. 16; A/48/PV.3, para 98; A/49/PV.3, p. 4.

¹⁹ A/BUR/44/SR. 1, p. 5.

²⁰ A/44/PV.3.

²¹ A/44/PV.78; A/44/685.

²² A/BUR/49/SR.1, p. 9, para. 66.

²³ *Ibid.*, paras. 67-69. The views expressed against and in favor of the inclusion of the item in the agenda are reflected in paras. 46-47 below.

²⁴ A/49/PV.3, p.6.

ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS

21. During the period under review, the agenda item entitled “enhancing the effectiveness of the principle of periodic and genuine elections” was continuously considered at each session of General Assembly. In the course of the discussions in the General Assembly, several delegations opposed the adoption of the resolution, noting that elections were a domestic affair of the State, and that the United Nations should not systematize the provision of electoral assistance.²⁵

22. Notwithstanding these objections, the General Assembly adopted two resolutions under this agenda item during each session of the General Assembly in the period under review, entitled “Enhancing the effectiveness of the principle of periodic and genuine elections”²⁶ and “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”,²⁷ respectively.

23. Each of the six General Assembly resolutions entitled “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”,²⁸ adopted during the period under review contained, *inter alia*, the following nearly identical paragraphs:

“Recalling further the principle enshrined in Article 2, paragraph 7, of the Charter of the United Nations, which establishes that nothing contained in the 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 Charter,

[...]

²⁵ A/44/PV.82; A/45/PV.69; A/46/PV.75; A/47/PV.92; A/48/PV.85; A/49/PV.94. The views expressed against and in favor of the inclusion of the item in the agenda are reflected in paras. 46-47, below.

²⁶ G A resolutions 44/146; 45/150; 46/137; 47/138; 48/131; 49/190.

²⁷ G A resolutions 44/147; 45/151; 46/130; 47/130; 48/124; 49/180.

²⁸ G A resolutions 44/147; 45/151; 46/130; 47/130; 48/124; 49/180.

“Recognizing that the principles of national sovereignty and non-interference in the internal affairs of any State should be respected in the holding of elections,

“Recognizing also that there is no single political system or single model for electoral processes equally suited to all nations and their peoples, and that political systems and electoral processes are subject to historical, political, cultural and religious factors,

[...]

“3. Reaffirms also that any activities that attempt, directly or indirectly, to interfere in the free development of national electoral processes, in particular in the developing countries, or that are intended to sway the results of such processes, violate the spirit and letter of 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;

“4. Reaffirms further that there is no universal need for the United Nations to provide electoral assistance to Member States, except in special circumstances such as cases of decolonization, in the context of regional or international peace processes or at the request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States;

“5. Urges all States to respect the principle of non-interference in the internal affairs of States and the sovereign right of peoples to determine their political, economic and social systems;”²⁹

²⁹ 44/147; 45/151; 46/130; 47/130; 48/124; 49/180. These provisions are taken from resolution 49/180, and are nearly identical in the previous resolutions listed above, with the exception of paragraph 4, which did not appear in the resolutions adopted during the forty-fourth and forty-fifth sessions.

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

24. The item entitled “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” was proposed for inclusion in the agenda of the forty-eighth and forty-ninth sessions of the General Assembly.³⁰ While no specific reference was made to Article 2(7) of the Charter, during the discussions in the General Committee, the representative of China stated that the inclusion of the item “constituted wanton interference in the internal affairs of a member State”³¹ would “constitute a serious infringement of China’s sovereignty and a gross interference in its internal affairs.”³² Several other delegations also made comments relating to whether the inclusion of the item on the agenda constituted interference in the domestic jurisdiction of a State.³³

25. At the end of its discussions on the proposed agenda item at both sessions, the General Committee decided not to recommend the inclusion of the item in the agenda.³⁴

****B. General Assembly and Economic and Social Council**

C. Security Council

THE SITUATION BETWEEN IRAQ AND KUWAIT

26. At its 2932nd meeting, in 1990, the Security Council began to consider the situation between Iraq and Kuwait, on the basis of two letters addressed to the President of the

³⁰ A/48/191; A/49/144 and Addenda 1-3.

³¹ A/BUR/48/SR.1, para. 95.

³² A/BUR/49/SR.1, para. 104.

³³ See A/BUR/48/SR.1, paras. 93-112; A/BUR/49/SR.1, paras. 102-144 and SR.2, paras. 1-17. The views expressed are reflected in para. 46-47 below.

³⁴ A/BUR/48/SR.1, para. 113; A/BUR/49/SR.2, para. 18.

Security Council from the representatives of Kuwait and the United States.³⁵ At that meeting, the representative of Iraq stated that “the events taking place in Kuwait are internal matters which have no relation to Iraq.”³⁶ Despite this objection, the Council adopted resolution 660 of 2 August 1990 “[d]etermining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait.”

27. During the period under review, the Security Council continued its consideration of this question and adopted 31 resolutions.³⁷ During the discussions on this item, the representative of Iraq claimed interference in the internal affairs of Iraq on a number of occasions.³⁸

THE SITUATION IN IRAQ

28. At its 2892nd meeting, the Security Council considered two letters addressed to the President of the Security Council, respectively from the Permanent Representative of Turkey to the United Nations³⁹ and from the Chargée d’Affaires a.i. of the Permanent Mission of France to the United Nations⁴⁰, relating to the exodus of refugees from Iraq.

29. During the discussions on this item, the representative of Iraq stated that “[t]his draft resolution itself is a flagrant illegitimate intervention in Iraq’s internal affairs and a violation of Article 2 of the Charter of the United Nations which prohibits intervention in the internal affairs of other States.”⁴¹ Several other representatives also referred to Article 2(7) of the Charter, and voiced concern over the possibility of intervention into the internal affairs of

³⁵ Letter dated 2 August 1990 from the Permanent Representative of Kuwait to the United Nations addressed to the President of the Security Council (S/21423) and Letter dated 2 August 1990 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/21424).

³⁶ S/PV.2932, p. 11.

³⁷ S C resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 667 (1990), 669 (1990), 670 (1990), 674 (1990), 676 (1990), 677 (1990), 678 (1990), 686 (1991), 687 (1991), 688 (1991), 689 (1991), 699 (1991), 705 (1991), 707 (1991), 712 (1991), 715 (1991), 773 (1992), 778 (1992), 806 (1993), 833 (1993), 899 (1994), 949 (1994).

³⁸ S/PV.3004, p.37; S/PV.3059 (Resumption 2), p. 186; S/PV.3139 (Resumption 2), p.181.

³⁹ S/22435.

⁴⁰ S/22442.

⁴¹ S/PV.2982, p. 17.

Iraq.⁴² On the other hand, some other representatives noted that the resolution addressed a threat to international peace and security caused by humanitarian concerns as well as mass violations of human rights.⁴³ It was also noted that the draft resolution made a direct reference to Article 2(7).

30. Despite the objections of some representatives, the Security Council adopted resolution 688 (1991), which reads, in pertinent part, as follows:

“The Security Council,

“Mindful of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

“Recalling Article 2, paragraph 7, of the Charter,

“Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region,

“Deeply disturbed by the magnitude of the human suffering involved,

[...]

“Reaffirming the commitment of all Member States to respect the sovereignty, territorial integrity and political independence of Iraq and of all States in the area,

[...]

⁴² S/PV.2982, p. 23 (Romania); p. 27 (Yemen); 31 (Zimbabwe), pp. 42-45 (Cuba).

⁴³ S/PV.2982, pp. 36-37 (Ecuador); p. 38 (Zaire) ; p.58 (United States); p. 61 (U.S.S.R.); p.63 (India); pp. 64-65 (United Kingdom).

“1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in the region;

“2. Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and, in the same context, expresses the hope that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;”⁴⁴

31. In a subsequent meeting of the Security Council, the representative of Iraq referred to resolution 688 (1991) as “a blatant interference in the internal affairs of Iraq.”⁴⁵

THE QUESTION OF THE MEMBERSHIP OF THE REPUBLIC OF KOREA

32. In 1989, the Democratic People’s Republic of Korea contended, in relation to the Republic of Korea’s request for membership in the United Nations, that the admission of the Republic of Korea would violate Article 2(7) of the Charter, since it could prejudice the question of the reunification of Korea.⁴⁶ In a memorandum submitted to the President of the Security Council, it was stated that the admission of the Republic of Korea “conflicts with paragraph 7, Article 2, of the Charter of the United Nations [...]. The question of the Korea’s reunification is an internal question which can and must be solved by the Korean people themselves without any foreign interference.”⁴⁷ The Republic of Korea maintained that the admission would be consistent with the principle of universality and would not prejudice the question of the reunification of Korea.⁴⁸

33. Despite the position taken by the Democratic People’s Republic of Korea, the Security Council adopted resolution 702 (1991), simultaneously admitting the Democratic

⁴⁴ S C resolution 688 (1991).

⁴⁵ S/PV.3139 (Resumption 2), p.181.

⁴⁶ S/20858, p. 4; S/20975, p. 3; S/21787, p. 5; S/21856, p. 2.

⁴⁷ S/20858, p. 4.

⁴⁸ S/20956; S/21827, p. 2; S/22455, pp. 3-4.

People's Republic of Korea and the Republic of Korea as separate members of the Organization.⁴⁹

THE SITUATION IN AFGHANISTAN

34. During the period under review, the Security Council continued its consideration of the question of the situation in Afghanistan and adopted one resolution on that question.⁵⁰ During the discussions regarding this agenda item in 1989, some delegations contended that, since Soviet troops had been withdrawn from Afghanistan, the conflict had become an internal matter of Afghanistan.⁵¹ Other delegations contended that the situation remained a threat to international peace and security due to continued foreign intervention in Afghanistan.⁵²

35. At its 2904th meeting, the Security Council adopted resolution 647 (1990), confirming its agreement with the Secretary-General's intention to deploy to Afghanistan and Pakistan military officers from existing United Nations missions to assist in the mission of good offices.⁵³

THE SITUATION IN YUGOSLAVIA

36. At the 3009th meeting, the Security Council considered the situation in the Socialist Federal Republic of Yugoslavia. Several delegations expressed concern that the Security Council was dealing with an internal situation of a Member State, Yugoslavia.⁵⁴ For instance, the representative of India stated:

“At the same time, we must not forget the provision contained in the time-tested Charter of the United Nations, Article 2 paragraph 7 clearly states:

⁴⁹ S C resolution 702 (1991).

⁵⁰ S C resolution 647 (1990).

⁵¹ S/PV.2856, p.28; S/PV.2859, p. 16; S/PV.2859, p.42.

⁵² S/PV.2857, p. 22; S/PV.2857, p.33; S/PV.2859, p.22; S/PV.2859, p. 32.

⁵³ S C resolution 647 (1990).

⁵⁴ S/PV.3009, p.33; 45-46; 50.

[...]

Let us therefore note here today in unmistakable terms that the Council's consideration of the matter relates not to Yugoslavia's internal situation as such, but specifically to its implication for peace and security in the region. Internal conflicts are for the State concerned to address, with assistance from its friends or well-wishers, if it so desires. The Council's intervention becomes legitimate and acceptable only when any conflict it faces has serious implications for international peace and security.”⁵⁵

It was nonetheless noted by the representatives of several States that the Security Council's intervention in this matter was being requested by Yugoslavia itself.⁵⁶

37. At the conclusion of its discussions, the Security Council unanimously adopted resolution 713 (1991), which states, in pertinent part:

“Conscious of the fact that Yugoslavia has welcomed the convening of a Security Council meeting through a letter conveyed by the Permanent Representative of Yugoslavia to the President of the Security Council (S/23069),

“Having heard the statement by the Foreign Minister of Yugoslavia,

“Deeply concerned by the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries,

“Concerned that the continuation of this situation constitutes a threat to international peace and security,

⁵⁵ S/PV.3009, p. 46.

⁵⁶ S/PV.3009, p. 45-46; 50.

“Recalling its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security,

[...]

“6. Decides, under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise following consultation between the Secretary-General and the Government of Yugoslavia;”⁵⁷

THE SITUATION IN THE REPUBLIC OF YEMEN

38. On 31 May 2004, the permanent representative of Yemen to the United Nations, in response to a request to convene a meeting of the Security Council to discuss the situation in Yemen⁵⁸ addressed a letter to the President of the Security Council stating: “I would like to inform you that my Government considers the above-mentioned request as interference in the internal affairs of the Republic of Yemen, contrary to Article 2, paragraph 7 of the Charter of the United Nations.”⁵⁹

39. Despite the objection of Yemen, the Security Council considered the question at its 3386th, 3394th and 3396th meetings and adopted two resolutions on the issue.⁶⁰

⁵⁷ S C resolution 713 (1991).

⁵⁸ S/1994/630.

⁵⁹ S/1994/644. Two other letters were sent that day from the permanent representative of Yemen to the United Nations to the President of the Security Council, containing respectively, a message from Yemeni Political parties and organizations (S/1994/641) and the Parliament of the Republic of Yemen (S/1994/642). These letters also contended that Security Council consideration of the situation in Yemen would constitute interference in its internal affairs.

⁶⁰ S C resolutions 924 (1994) and 931 (1994).

THE SITUATION IN THE DEMOCRATIC REPUBLIC OF KOREA

40. At the 3212nd meeting of the Security Council, the representative of the Democratic People's Republic of Korea opposed the consideration by the Council of the item relating to its withdrawal from the Nuclear Non-Proliferation Treaty, stating, *inter alia*:

“The United Nations has no right to debate our country's withdrawal from the NPT. Signing, accession to, termination of and withdrawal from the Treaty are legal actions within the sovereign rights of an independent State, and no one is entitled to interfere in these.”⁶¹

41. Notwithstanding this objection, the Security Council adopted resolution 825 (1993), *inter alia*, calling upon the Democratic People's Republic of Korea to honour its non-proliferation obligations under the Treaty. Following the adoption of the resolution, a spokesman for the Democratic People's Republic of Korea issued a statement calling the resolution “an interference in its internal affairs and a grave infringement on its sovereignty.”⁶²

THE SITUATION IN LIBERIA

42. At the 2794th meeting, the representative of Liberia stated, with regard to the situation in Liberia:

“That a response is now being made, more than one year since the conflict started, raises in my opinion, the imperative need to review, and perhaps reinterpret, the Charter, particularly its provision which calls for non-interference in the internal affairs of Member States.

⁶¹ S/PV.3212.

⁶² S/25768, Annex.

“Regretably, the strict application of this provision has hampered the effectiveness of the Council and its principle objective of maintaining international peace and security.”

43. During the period under review, the Security Council adopted six resolutions relating to the situation in Liberia.⁶³

D. INTERNATIONAL COURT OF JUSTICE

ADVISORY OPINION ON THE APPLICABILITY OF ARTICLE VI, SECTION 22 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.

44. In 1989, the issue of the domestic jurisdiction of a State was raised before the International Court of Justice in the *Advisory Opinion on the Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations*.⁶⁴ At the request of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the Secretary-General raised the possibility of establishing contact with Mr. Dumitru Mazilu, a Special Rapporteur of the Commission of Romanian nationality with the Romanian Government. During initial contacts with the Legal Counsel of the United Nations, the Chargé d'affaires of the Romanian Permanent Mission to the United Nations in New York “stated that any intervention by the United Nations Secretariat and any form of investigation in Bucharest would be considered interference in Romania’s internal affairs; the case of Mr. Mazilu was an internal matter between a citizen and his own Government and for that reason no visit would be allowed.”⁶⁵

⁶³ S C resolutions 788 (1992); 813 (1993); 856 (1993), 866 (1993); 911 (1994) and 950 (1994). In resolution 788 (1992) the Council determined that “the deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole”.

⁶⁴ *I.C.J. Reports* 1989, p. 177. For more information regarding the particulars of the advisory opinion see Repertory, Volume VI, Supplement 8, paras. 25-28.

⁶⁵ *Ibid.*, p. 183, para. 19.

45. Although the Court did not directly address what constituted the internal affairs of a State, it held that “it was for the United Nations to decide whether in the circumstances it wished to retain Mr. Mazilu as a Special Rapporteur”.⁶⁶

II. ANALYTICAL SUMMARY

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

46. 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 following items: the question of the Comorian Island of Mayotte, the question of the Malagasy Islands of Glorieuses, Juan de Nova, Erupa and Bassas da India; human rights situations and reports of Special Rapporteurs and representatives; and 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.

47. The inclusion of above items in the General Assembly’s agenda was opposed by representatives who expressed the view that the items fell essentially within the domestic jurisdiction of the State concerned, and that the United Nations is prohibited from interfering in matters essentially within the domestic jurisdiction of States and that such inclusion would constitute a violation of Charter Article 2(7).⁶⁷ The representatives who supported the inclusion of the items in the agenda of the Assembly stated that those matters were not considered to be the internal affairs of the States concerned, that their inclusion did not

⁶⁶ Ibid., p. 198, para. 59. In a separate opinion, Judge Shahabuddeen stated:

“No doubt States ordinarily have exclusive domestic jurisdiction over questions concerning the health of their own nationals and can and do intervene on such questions as between employer and employee. But the settled jurisprudence of the Court makes it clear that a matter which would normally be within a State’s domestic jurisdiction ceases to be exclusively so to the extent to which it has come to be also governed by any international obligations undertaken by the State.” Ibid. p. 216.

⁶⁷ See paras.9, 17, 19 and 24 above.

violate Charter provisions, and that the Assembly had included those items in its agenda in the past years and that it had adopted a number of resolutions on those items.⁶⁸ In some cases, it was suggested that the protection of human rights, as well as the principles of non-selectivity, universality and legal equality of States favored the consideration of the item.⁶⁹ Reference was also made in this regard to Articles 2(1) and 4 of the Charter.⁷⁰

****2. WHETHER A RECOMMENDATION CONSTITUTES “INTERVENTION”**

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

48. References to international law were made in the debates of the General Assembly on its agenda items entitled “the situation in Kampuchea”. References were also made in the debates of the Security Council in connection with the situation between Iraq and Kuwait, as well as the situation in Afghanistan.

49. In the debates concerning the situation in Kampuchea, several representatives maintained that the invasion and occupation of Kampuchea by Vietnamese armed forces constituted a grave violation of the basic principles of international law, including, in particular, respect for sovereignty, independence and territorial integrity of States, non-intervention in the internal affairs of States, respect for the self-determination of peoples, and the non-use of force in international relations.⁷¹

50. In the debates regarding the situation between Iraq and Kuwait, a number of representatives stated that the invasion and occupation of Kuwait by the military forces of Iraq constituted a violation of fundamental principles of international law, including the

⁶⁸ A/BUR/44/SR. 1, p. 5; A/BUR/47/SR. 1, p. 5; A/BUR/48/SR.1, pp. 14-16; A/BUR/49/SR. 1, p. 10; A/40/PV. 74, pp.36-37; A/40/PV. 74, pp. 7, 26.

⁶⁹ A/BUR/48/SR.1, pp. 14-16; A/BUR/49/SR.1, pp. 14-21; A/BUR/49/SR.2, pp. 2-4.

⁷⁰ A/BUR/49/SR.2, p. 2.

⁷¹ A/44/PV.56, pp. 20, 31, 72, 76; A/44/PV. 57, p. 121.

principles of non-use of force in international relations, non-interference in the internal affairs of other States, and non-aggression.⁷²

51. In debates relating to the situation in Afghanistan, a number of representatives stated that the interference of Pakistan in the internal affairs of Afghanistan constituted a violation of the principle of international law of the non-interference in the internal affairs of other States and the self-determination of peoples.⁷³

2. WHETHER A MATTER GOVERNED BY INTERNATIONAL AGREEMENT CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

52. In the debates of the Security Council on the situation in the Democratic People's Republic of Korea, a number of representatives noted that the participation of the Democratic People's Republic of Korea in the Nuclear Non-Proliferation treaty was a matter of international concern.⁷⁴

3. WHETHER A MATTER DEALT WITH BY THE CHARTER CAN FALL ESSENTIALLY WITHIN DOMESTIC JURISDICTION

53. In the debates of the General Assembly concerning the situation in Kampuchea, a number of representatives rejected the arguments based on Article 2 (7) and maintained that the General Assembly had the competence to consider the item on the grounds that Viet Nam had violated the basic principles of the Charter.⁷⁵ During the discussions in the General Committee of the General Assembly regarding the possible inclusion of the agenda item "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," several delegations referred to provisions of the Charter in response to objections by other delegations based on Article 2(7).⁷⁶

⁷² S/PV.2932, pp. 7, 27; S/PV.2933, pp. 36.

⁷³ S/PV.2857, pp.7, 17, 22; S/PV.2589, pp.12, 22; S/PV.2860, p.12.

⁷⁴ S/PV.3212, pp. 33, 53, 57, 59.

⁷⁵ A/44/PV.56, pp. 20, 31, 72, 76; A/44/PV. 57, p. 121.

⁷⁶ A/BUR/49/SR.2, p. 2.

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

54. In the discussions on whether to include the item “human rights situations and reports of special rapporteurs and representatives”, some representatives countered the claim that the consideration of the agenda item would violate Article 2(7), by noting the importance of the consideration of human rights questions.⁷⁷

55. During the discussions in the Security Council regarding the situation in Iraq, several delegations pointed to the mass violations of human rights and accompanying exodus of refugees from Iraq, which resulted in a cross-border humanitarian crisis, as a reason justifying the adoption of Security Council resolution 688 (1991).⁷⁸ Different views were expressed as to whether violations of human rights, in absence of such cross-border effects, could still be considered matters falling purely within the domestic jurisdiction of a State.⁷⁹

*** (b) Article 2(7) and the Charter provisions regarding Non-Self-Governing Territories*

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

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

56. During the deliberations of the General Assembly concerning the situation in Kampuchea, as well as Security Council deliberations on the situation between Iraq and Kuwait, the situation of human rights in Iraq, and the situation in Afghanistan, a number of references were made to the Charter provisions relating the maintenance of international peace and security.

57. In the course of the respective debates on the above items in the Assembly and the Council, several representatives maintained that a political situation that existed in a

⁷⁷ A/BUR/49/SR.1, p. 9, paras. 66-69.

⁷⁸ S/PV.2982, pp. 24-25, 36, 61, 64-65.

⁷⁹ See, for instance S/PV.2982, pp. 24-25 (United Kingdom) and S/PV.2982, p. 37 (Ecuador).

particular Member State constituted a threat to international peace and security, either as the result of an armed attack or other intervention into the internal affairs of that State by another State, or as the result of an internal situation which entailed serious cross-border consequences. Accordingly it was maintained that the situation could be addressed within the jurisdiction of the competent organs of the United Nations, i.e., the Security Council or the General Assembly.⁸⁰ Some other representatives, however, expressed the opinion that the political situation in question was the internal matter of the State concerned.⁸¹

4. WHETHER THE DOMESTIC JURISDICTION OF A STATE EXTENDS OVER ALL ITS TERRITORIES

58. During the deliberations of the General Assembly concerning the Comorian Island of Mayotte and the question of the Malagasy Islands of Glorieuses, Juan de Nova, Erupa and Bassas da India, the representative of France continued to maintain that the above Islands constituted an integral part the French Republic and the discussion of the items constituted the violation of Article 2(7) of the Charter.⁸²

**5. WHETHER CIVIL STRIFE IN CERTAIN SITUATIONS IS NOT A MATTER FALLING ESSENTIALLY WITHIN DOMESTIC JURISDICTION

**6. 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”

59. At the 3059th meeting of the Security Council, on the situation between Iraq and Kuwait, the representative of the United States, citing the last portion of Article 2(7) of the Charter, stated: “Iraq has made frequent references to its sovereignty and to internal affairs.

⁸⁰ A/44/PV.56, p.47, A/44/PV.57, p. 83; S/PV.2856, p.28; S/PV.2859, p. 16; S/PV.2859, p.42; S/PV.2857, pp.7, 17, 22; S/PV.2589, pp.12, 22; S/PV.2860, p.12; S/PV.2982, pp. 24-25, 36, 61, 64-65.

⁸¹ A/44/PV.56, pp. 20, 31, 72, A/44/PV. 57, p. 121; S/PV.3004, p.37; S/PV.3059 (Resumption 2), p. 186; S/PV.3139 (Resumption 2), p.181; S/PV.2982, p. 17.

⁸² A/BUR/44/SR.1, pp. 4-5; A/BUR/45/SR.1, p. 5, para.25; A/BUR/46/SR.1, p. 5, para.24; A/BUR/47/SR.1, p. 5, para.28; A/BUR/48/SR.1, p. 6, para.38.

However, Iraq knows as well as all of us that the Council is operating with regard to its resolutions under Chapter VII.”⁸³

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

60. The 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 Assembly⁸⁴ and in the course of the debates of the Security Council⁸⁵ and/or the General Assembly.⁸⁶ The same Article was also invoked as an explanation in abstaining from voting or casting negative vote to a number of resolutions adopted by the Assembly⁸⁷ and the Security Council.⁸⁸

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

61. In the deliberations of the General Assembly relating to the question of Kampuchea and the human rights situations and reports of Special Rapporteurs and representatives, the contention that the discussion of the items constituted violations of Article 2(7) was opposed by many delegations, and it was observed that the discussions of the item in the Assembly were justified by its earlier decisions.⁸⁹

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

⁸³ S/PV.3059 (Resumption 1), p. 161.

⁸⁴ A/BUR/44/SR.1, p. 4-5; A/BUR/45/SR.1, p. 5, para.25; A/BUR/46/SR.1, p. 5, para.24; A/BUR/47/SR.1, p. 5, para.28; A/BUR/48/SR.1, p. 6, para.38; A/BUR/48/SR.1, para. 95; A/BUR/49/SR.1, p. 9, para. 66; A/BUR/49/SR.1, para. 104.

⁸⁵ S/20858, p. 4; S/20975, p. 3; S/21787, p. 5; S/21856, p. 2; S/PV.2932, p. 11; S/PV.2982, p. 17; S/PV.3139 (Resumption 2), p.181; S/PV.3212; S/1994/644.

⁸⁶ A/44/PV.56, p.47, A/44/PV.57, p. 83; A/44/PV.82; A/45/PV.69; A/46/PV.75; A/47/PV.92; A/48/PV.85; A/49/PV.94.

⁸⁷ A/44/PV. 73, p. 4-5; A/45/PV. 67, p. 73/75; A/44/PV.34, p.41; A/45/PV.36, p.26; A/46/PV.32, p.23; A/47/PV.48, p.11-12; A/48/PV.76, p.5; A/49/PV.69, p.13.

⁸⁸ S/PV.2982, pp.27-31, 46, 56.

⁸⁹ A/44/PV.58, p.103; A/BUR/49/SR.1, p. 10, para. 67-69.