

Repertory of Practice of United Nations Organs
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Repertory of Practice of United Nations Organs)

ARTICLE 2(4)

CONTENTS

	<i>Paragraphs</i>
Text of Article 2(4)	
Introductory note	1-3
I. General survey	4-13
II. Analytical summary	14-32
A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any State”	14-24
1. In the Security Council	15-21
(a) Decisions of the Security Council regarding the situation between Ethiopia and Eritrea	15-17
(i) Precis of proceedings	15-16
(ii) Precis of relevant constitutional discussion	17
(b) Action by the Security Council on the draft resolution concerning the NATO military operation against the Federal Republic of Yugoslavia	18-19
(i) Precis of proceedings	18
(ii) Precis of relevant constitutional discussion	19
(c) The situation in the Great Lakes region	20-21
(i) Precis of proceedings	20
(ii) Precis of relevant constitutional discussion	21
2. In the General Assembly	22
3. In the International Court of Justice	23-24
** B. The question of the scope and limits of the phrase “in any other manner inconsistent with the purpose of the United Nations”	
C. The question of the bearing of the injunction in Article 2(4) on the right to self-defense	25-26

- D. The question of the bearing of the injunction in Article 2(4) on the delegation of powers by the Security Council to use force

27-32

ARTICLE 2(4)

TEXT OF ARTICLE 2(4)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

...

4. All Members shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations

INTRODUCTORY NOTE

1. As in the previous Supplements,¹ Article 2(4) requires treatment in a separate study since there were a number of decisions of the Security Council and of the General Assembly with bearing on this provision, which preceded or followed by extensive constitutional discussions.

2. The general survey briefly summarizes all those decisions of the Security Council and of the General Assembly, which referred explicitly or implicitly to the provision of Article 2(4).

¹ *Repertory of Practice of United Nations Organs, Supplement No. 2*, vol. I, pp. 69-116, covering the period from 1 September 1956 to 31 August 1959; *Repertory of Practice of United Nations Organs, Supplement No. 3*, vol. I, pp. 132-173, covering the period from 1 September 1959 to 31 August 1966; *Repertory of Practice of United Nations Organs, Supplement No. 4*, vol. I, pp. 36-70, covering the period from 1 September 1966 to 31 December 1969; *Repertory of Practice of United Nations Organs, Supplement No. 5*, vol. I, pp. 28-48, covering the period from 1 January 1970 to 31 December 1978; *Repertory of Practice of United Nations Organs, Supplement No. 6*, vol. I, pp. 68-89, covering the period from 1 January 1979 to 31 December 1984; *Repertory of Practice of United Nations Organs, Supplement No. 7*, vol. I, pp. ???, covering the period from 1 January 1985 to 31 December 1988; *Repertory of Practice of United Nations Organs, Supplement No. 8*, vol. I, pp. ???, covering the period from 1 January 1989 to 31 December 1994 .

3. The analytical summary of practice contains a detailed account of a number of decisions of the Security Council and of the General Assembly, which have direct bearing on the interpretation and application of Article 2(4) and were preceded or followed by constitutional discussions. The material in this section is organized under the following four subheadings. As in the study in the previous Supplement, subsection D reflects new developments in the practice of the Security Council in the period under consideration.

- A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any State”;
- B. The question of the scope and limits of the phrase “in any other manner inconsistent with the purpose of the United Nations”;
- C. The question of the bearing of the injunction in Article 2(4) on the right to self-defense;
- D. The question of the bearing of the injunction in Article 2(4) on the delegation of powers by the Security Council to use force.

I. GENERAL SURVEY

4. During the period under review, no explicit references were made to Article 2, paragraph 4, in the resolutions adopted by the Security Council and the General Assembly.

5. At the same period, the General Assembly adopted the Declaration in Commemoration of the Fiftieth Anniversary of the End of the Second World War, in which it reaffirmed the commitment of States to the principle of non-use of force in international relations, with full quotation of the text of Article 2(4).² Also at the same

² G A resolution 50/5 (annex, operative paragraph 5 (a)).

period, the Security Council adopted one resolution, in which it quoted the text of Article 2 (4).³ Moreover, the General Assembly and Security Council adopted several resolutions, in which they cited the basic principle enshrined in that provision, without referring to it explicitly.⁴

6. During the period under review, both the Security Council and the General Assembly adopted numerous resolutions, which contained what might be considered implicit references to Article 2(4). They employed various terms to condemn or express their concern over the “threat or use of force”⁵ or, specifically, “*aggression*”⁶ or “*armed/military intervention*”,⁷ “*occupation*”⁸ and “*annexation*”⁹ of territories. In a

³ The Security Council resolution 1234 (1999) (operative paragraph 1), concerning the situation in the Democratic Republic of Congo.

⁴ G A resolutions 50/68 (the preamble), 51/43 (the preamble), 52/36 (the preamble), 53/75 (the preamble) and 54/52 (the preamble), concerning the conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; G A resolutions 49/74 (the preamble), 50/69 (the preamble), 51/44 (the preamble), 52/37 (the preamble), 53/76 (the preamble) and 54/53 (the preamble), concerning the prevention of an arms race in outer space; G A resolutions 50/80 (the preamble), 51/55 (the preamble) and 53/71 (the preamble), concerning the maintenance of international security; GA resolution 52/40 [C] (operative paragraph 1), concerning the role of the United Nations in disarmament; the Security Council resolutions 981 (1995) (operative paragraph 8), on establishment of the UN Confidence Restoration Operation in Croatia (UNCRO); the Security Council resolution 1251 (1999) (operative paragraph 9), regarding the United Nations peace-keeping force in Cyprus.

⁵ G A resolution 49/31 (the preamble), regarding the protection and security of small States; G A resolutions 49/180 (operative paragraph 7), 50/172 (operative paragraph 6), 52/119 (operative paragraph 6) and 54/168 (operative paragraph 6), regarding the respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process; the Security Council resolutions 1177 (1998) (operative paragraph 1), 1226 (1999) (the preamble) and 1227 (1999) (the preamble and operative paragraph 1), concerning the conflict between Ethiopia and Eritrea; the Security Council resolution 1052 (1996) (the preamble), concerning the situation in the Middle East; the Security Council resolutions 1092 (1996) (operative paragraph 2) and 1218 (1998) (operative paragraph 5 (a)), concerning the United Nations peace-keeping force in Cyprus; the Security Council resolutions 1199 (1998) (the preamble), concerning the situation in Kosovo.

⁶ G A resolutions 49/180 (operative paragraph 7), 50/172 (operative paragraph 6), 52/119 (operative paragraph 6) and 54/168 (operative paragraph 6), regarding the respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process; G A resolutions 49/148 (operative paragraph 2), 50/139 (operative paragraph 2), 51/84 (operative paragraph 2), 52/113, (operative paragraph 2) and 53/134 (operative paragraph 2), regarding the universal realization of the right of peoples to self-determination; the Security Council resolution 984 (1995), on the security assurances against the use of nuclear weapons to non-nuclear-weapon States that are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

⁷ G A resolutions 49/148 (operative paragraph 2), 50/139 (operative paragraph 2), 51/84 (operative paragraph 2), 52/113 (operative paragraph 2) and 53/134 (operative paragraph 2), regarding the universal realization of the right of peoples to self-determination.

⁸ G A resolutions 49/148 (operative paragraph 2), 50/139 (operative paragraph 2), 51/84 (operative paragraph 2), 52/113 (operative paragraph 2) and 53/134 (operative paragraph 2), regarding the universal realization of the right of peoples to self-determination; GA resolutions 49/87 (the preamble and operative paragraph 4), 50/22 [B] (the preamble and operative paragraph 4), 51/28 (the preamble), 51/151 (the preamble), 52/68 (the preamble), 53/38 (the preamble) and 53/57 (the preamble), regarding the occupied Syrian Golan; G A resolution 49/43 (the preamble), regarding the situation in the occupied territories of Croatia.

number of resolutions adopted by the Security Council and the General Assembly, annexation, occupation, taking of territories by force and changing its legal status were declared “unlawful”, “illegal” or “null and void”.¹⁰ In several resolutions, the Security Council and the General Assembly called for the cessation of “use or threat of use of force”,¹¹ “hostilities”,¹² “aggression”,¹³ “military intervention”,¹⁴ “occupation”¹⁵ and “annexation”.¹⁶

⁹ G A resolutions 50/29 (the preamble), 51/134 (the preamble), 52/67 (the preamble) and 53/56 (the preamble), concerning the report of the special committee to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories; G A resolutions 49/87 [B] (the preamble and operative paragraph 4), 50/22 [B] (the preamble and operative paragraph 4), 51/28 (the preamble), 51/151 (the preamble), 52/68 (the preamble), 53/38 (the preamble), 53/57 (the preamble) and 54/80 (the preamble), regarding the occupied Syrian Golan.

¹⁰ G A resolutions ES/10/2 (operative paragraph 2) and ES/10/6 (operative paragraph 2), concerning “Illegal Israeli actions in Occupied East Jerusalem and the rest of Occupied Palestinian Territory; G A resolutions 51/28 (operative paragraph 2), 51/135 (operative paragraph 3), 52/54 (operative paragraph 2), 52/68 (operative paragraph 3), 53/38 (operative paragraph 2), 53/55 (operative paragraph 1) and 53/57 (operative paragraph 3), regarding the occupied Syrian Golan; G A resolutions 51/27 (operative paragraph 1), 52/53 (the preamble) and 53/37 (the preamble), regarding Jerusalem; G A resolutions 49/36 [D] (operative paragraph 1) and 50/29 (operative paragraph 1 and 3), concerning the report of the special committee to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories; G A resolution 49/43 (operative paragraph 3), regarding the situation in the occupied territories of Croatia; G A resolutions 49/87 [A] (operative paragraph 1), 49/87[B] (operative paragraph 2) and 52/22 (operative paragraphs 1 and 2), concerning the situation in the Middle East.

¹¹ The Security Council resolutions 1177 (1998) (operative paragraph 1), concerning the situation between Ethiopia and Eritrea.

¹² The Security Council resolutions 1177 (1998) (operative paragraph 1) and 1227 (1999) (operative paragraph 2), regarding the conflict between Ethiopia and Eritrea; the Security Council resolution 1052 (1996) (operative paragraph 1), concerning the situation in the Middle East.

¹³ G A resolutions 49/180 (operative paragraph 7), 50/172 (operative paragraph 6), 52/119 (operative paragraph 6), 54/168 (operative paragraph 6), concerning the respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes.

¹⁴ G A resolution 49/43 (operative paragraph 3), concerning the situation in the occupied territories of Croatia; G A resolutions 49/148 (operative paragraph 3), 50/139 (operative paragraph 3), 51/84 (operative paragraph 3), 52/113 (operative paragraph 3) and 54/134 (operative paragraph 3), regarding universal realization of the right of peoples to self-determination; G A resolution 50/22 [C] (operative paragraph 4), concerning the Israeli military attacks against Lebanon and their consequences.

¹⁵ G A resolutions 49/87 [B] (the preamble) and 50/22 [B] (the preamble), concerning the situation in the Middle East; G A resolutions 51/28 (the preamble), 51/135 (the preamble), 52/54 (the preamble), 53/57 (the preamble), 52/68 (the preamble) and 53/57 (the preamble), regarding the occupied Syrian Golan; G A resolutions 49/148 (operative paragraph 3), 50/139 (operative paragraph 3), 51/84 (operative paragraph 3), 52/113 (operative paragraph 3) and 53/134 (operative paragraph 3), concerning the universal realization of the right of peoples to self-determination.

¹⁶ G A resolutions 50/29 (the preamble), 51/134 (the preamble), 52/67 (the preamble) and 53/56 (the preamble), concerning the report of the special committee to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories; G A resolutions 49/87 [B] (the preamble and operative paragraph 4), 50/22 [B] (the preamble and operative paragraph 4), 51/28 (the preamble), 51/151 (the preamble), 52/68 (the preamble), 53/38 (the preamble), 53/57 (the preamble) and 54/80 (the preamble), regarding the occupied Syrian Golan.

7. In a number of resolutions adopted by the Security Council and the General Assembly, they called for ceasefire¹⁷ or withdrawal of troops from foreign territories.¹⁸

8. Throughout the period under review, the Security Council and the General Assembly adopted many resolutions, which contained implicit references to Article 2(4). In a number of resolutions adopted by both organs, they affirmed the principle of territorial integrity and political independence of States or deplored their violations and sought full respect for the said principles.¹⁹ Numerous resolutions adopted by the

¹⁷ The Security Council resolution 1199 (1998) (operative paragraph 1), concerning the issue of Kosovo.

¹⁸ G A resolutions 49/62 (operative paragraph 4 (b)), 50/84 (operative paragraph 5 (b)), 51/26 (operative paragraph 5 (b)), 52/52 (operative paragraph 5 (b)) and 53/42 (operative paragraph 5 (b)), regarding the peaceful settlement of the question of Palestine; G A resolution 53/164 (operative paragraph 2), regarding the situation of human rights in Kosovo; G A resolution 50/22 [C] (operative paragraph 4), concerning the Israeli military attacks against Lebanon and their consequences; G A resolutions 49/81 (operative paragraph 2), 50/75 (operative paragraph 2), 51/50 (operative paragraph 2), 52/43 (operative paragraph 2), 53/82 (operative paragraph 2) and 54/59 (operative paragraph 2), concerning the strengthening of security and cooperation in the Mediterranean region; G A resolution 50/22 [C] (operative paragraph 4), concerning the situation in the Middle East.

¹⁹ G A resolutions 49/73 (the preamble), 50/68 (the preamble), 51/43 (the preamble) and 52/36 (the preamble), concerning the conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; G A resolutions 49/81 (operative paragraph 2), 50/75 (operative paragraph 2), 51/50 (operative paragraph 2), 52/43 (operative paragraph 2), 53/82 (operative paragraph 2) and 54/59 (operative paragraph 2), concerning the strengthening of security and cooperation in the Mediterranean region; G A resolutions 51/195 [B] (the preamble and operative paragraphs 15), 52/150 [B] (the preamble), 53/165 (operative paragraph 9), 54/185 (operative paragraph 7) and A/RES/54/189 [A] (the preamble), relating to the situation in Afghanistan; G A resolutions 49/10 (the preamble), 51/203 (the preamble), 52/150 (the preamble), 53/35 (the preamble) and 54/119 (the preamble), concerning the situation in Bosnia and Herzegovina; G A resolution 52/48 (operative paragraph 8), regarding the Development of good-neighborly relations among Balkan States; G A resolution 54/184 (the preamble), concerning the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro); G A resolution 54/183 (the preamble), regarding the situation of human rights in Kosovo; G A resolution 50/96 [B] (the preamble), regarding special assistance for economic recovery and reconstruction of the Democratic Republic of the Congo; G A resolution 54/64 (operative paragraph 3), regarding Maintenance of international security-stability and development of South-Eastern Europe; the Security Council resolutions 1076 (1996) (the preamble), 1193 (1998) (the preamble), 1214 (1998) (the preamble) and 1247 (1999) (the preamble), concerning the situation in Afghanistan; the Security Council resolutions 1101 (1997) (the preamble) and 1114 (1997) (the preamble), concerning the situation in Albania; the Security Council resolutions 1118 (1997) (the preamble), 1127 (1997) (the preamble), 1135 (1997) (the preamble), 1149 (1998) (the preamble), 1157 (1998) (the preamble), 1164 (1998) (the preamble), 1173 (1998) (the preamble), 1180 (1998) (the preamble), 1190 (1998) (the preamble), 1195 (1998) (the preamble), 1196 (1998) (the preamble), 1202 (1998) (the preamble), 1213 (1998) (the preamble), 1237 (1999) (the preamble) and 1268 (1999) (the preamble), concerning the situation in Angola; the Security Council resolutions 1022 (1995) (the preamble), 1026 (1995) (the preamble), 1031 (1995) (the preamble), 1074 (1996) (the preamble), 1144 (1997) (the preamble), 1168 (1998) (the preamble), 1174 (1998) (the preamble) and 1247 (1999) (the preamble), concerning the conflicts in the former Yugoslavia; the Security Council resolutions 994 (1995) (the preamble), 981 (1995) (the preamble), 1003 (1995) (the preamble), 1023 (1995) (the preamble), 1025 (1995) (the preamble), 1037 (1996) (the preamble), 1038 (1996) (the preamble), 1066 (1996) (the preamble), 1079 (1996) (the preamble), 1093 (1997) (the preamble), 1119 (1997) (the preamble), 1120 (1997) (the preamble), 1145 (1997) (the preamble), 1147 (1998) (the preamble), 1183 (1998) (the preamble), 1222 (1999) (the preamble) and 1252 (1999) (the preamble) concerning the situation in Croatia; the Security Council resolutions 1234 (1999) (the preamble), 1258 (1999) (the preamble), 1273 (1999) (the preamble) and 1279 (1999) (the preamble), concerning the situation in the Democratic Republic of Congo; the Security Council resolutions 1264 (1999) (the preamble) and 1272 (1999) (the preamble),

Council and the Assembly reaffirmed the inadmissibility of the acquisition of territory by force²⁰ and the inviolability of international borders.²¹

concerning the situation in East Timor; the Security Council resolution 1177 (1998) (the preamble), concerning the conflict between Ethiopia and Eritrea; the Security Council resolutions 971 (1995) (the preamble and operative paragraph 4), 993 (1995) (the preamble and operative paragraph 3), 1036 (1996) (the preamble), 1065 (1996) (the preamble and operative paragraphs 3 and 4), 1077 (1996) (the preamble), 1096 (1997) (operative paragraphs 3 and 4), 1124 (1997) (operative paragraphs 3 and 4), 1187 (1998) (operative paragraph 8) and 1255 (1999) (operative paragraph 5), regarding the situation in Georgia; the Security Council resolutions 1216 (1999) (the preamble) and 1233 (1999) (the preamble), regarding the situation in Guinea-Bissau; the Security Council resolutions 1060 (1996) (the preamble), 1115 (1997) (the preamble), 1134 (1997) (the preamble), 1137 (1997) (the preamble), 1154 (1998) (the preamble), 1194 (1998) (the preamble), 1205 (1998) (the preamble) and 1284 (1999) (the preamble), concerning the situation between Iraq and Kuwait; 1160 (1998) (the preamble), 1199 (1998) (the preamble), 1203 (1998) (the preamble), 1239 (1999) (the preamble), 1244 (1999) (the preamble), regarding the issue of Kosovo; the Security Council resolutions 974 (1995) (operative paragraph 2), 1006 (1995) (operative paragraph 2), 1039 (1996) (operative paragraph 2), 1052 (1996) (operative paragraph 3), 1068 (1996) (operative paragraph 2), 1095 (1995) (operative paragraph 2), 1122 (1997) (operative paragraph 2), 1151 (1998) (operative paragraph 2), 1223 (1999) (operative paragraph 2), 1254 (1999) (operative paragraph 2), concerning the situation in the Middle East; the Security Council resolutions 983 (1995) (the preamble), 1027 (1995) (the preamble), 1082 (1996) (the preamble), 1105 (1997) (the preamble), 1110 (1997) (the preamble), 1239 (1999) (the preamble), 1142 (1997) (the preamble) and 1186 (1998) (the preamble), concerning the former Yugoslav Republic of Macedonia; the Security Council resolutions 1270 (1999) (the preamble), 1260 (1999) (the preamble), 1254 (1999) (the preamble), 1231 (1999) (the preamble) and 1196 (1998) (the preamble), concerning the situation in Sierra Leone; the Security Council resolution 999 (1995) (the preamble), 1030 (1995) (the preamble), 1061 (1996) (the preamble), 1089 (1996) (the preamble), 1099 (1997) (the preamble), 1113 (1997) (the preamble), 1128 (1997) (the preamble), 1138 (1997) (the preamble), 1167 (1998) (the preamble), 1206 (1998) (the preamble), 1240 (1999) (the preamble) and 1274 (1999) (the preamble), concerning the situation in Tajikistan;

²⁰ G A resolutions 49/62 [D] (the preamble), 50/83 [D] (the preamble), 51/26 (the preamble), 52/52 (the preamble), 53/42 (the preamble) and 54/42 (the preamble), regarding the peaceful settlement of the question of Palestine; G A resolutions 49/87 [B] (the preamble), 50/22 [B] (the preamble), 52/22 [B] (the preamble), 52/54 (the preamble) and 53/58 (the preamble), concerning the situation in the Middle East: the Syrian Golan; G A resolutions 49/81 (the preamble), 50/75 (the Preamble), 51/50 (the preamble), 52/43 (the preamble), 53/82 (operative paragraph 2) and 54/59 (operative paragraph 2), concerning the strengthening of security and cooperation in the Mediterranean region; G A resolutions 49/132 (the preamble) and 50/84 (the preamble), concerning the question of Palestine; G A resolution 50/129 (the preamble), on the agenda item entitled "Economic and social repercussions of the Israeli settlements on the Palestinian people in the Palestinian territory, including Jerusalem, occupied since 1967, and on the Arab population of the occupied Syrian Golan"; G A resolution 50/29 [C] (the preamble), relating to the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories; G A resolution 51/133 (the preamble), Israeli settlements in the occupied Palestinian territory, including Jerusalem, and the occupied Syrian Golan; G A resolution 51/134 (the preamble), regarding Israeli practices affecting the human rights of the Palestinian people in the occupied Palestinian territory, including Jerusalem; G A resolutions 51/190 (the preamble), 52/207 (the preamble), 53/196 (the preamble) and 54/230 (the preamble), relating to the permanent sovereignty of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources; G A resolution 52/66 (the preamble), regarding the Israeli settlements in the occupied Palestinian territory, including Jerusalem and the occupied Syrian Golan; G A resolution 53/55 (the preamble), concerning Israeli settlements in the occupied Palestinian and other territories; G A resolution 53/56 (the preamble), concerning the Israeli practices affecting the human rights of Palestinian people in the occupied Palestinian territory, including Jerusalem; G A resolution 54/79 (the preamble), relating to the Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian territory, including Jerusalem and the occupied Syrian Golan; G A resolution ES-10/2 (the preamble), concerning the illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory; G A resolutions 52/68 (the preamble), 53/57 (the preamble), 54/38 (the preamble) and 54/80 (the preamble), regarding the Syrian Golan; G A resolution 54/78 (the preamble), regarding Israeli settlements in the Occupied Palestinian Territory.

²¹ G A resolutions 50/83 [D] (operative paragraph 4 (b)) and 51/26 (operative paragraph 5 (b)), concerning the peaceful settlement of the question of Palestine; G A resolution 52/150 (the preamble), concerning the situation in Bosnia and Herzegovina; G A resolution 54/64 (operative paragraph 3), regarding the maintenance of international security-stability

9. Most of the decisions of the Security Council and of the General Assembly, which contain explicit or implicit references to Article 2(4), as listed above, did not give rise to a constitutional discussion regarding its interpretation and/or application. The decisions of the above organs, which preceded or followed by constitutional discussions, are covered in the analytical summary.

10. During the period under review, a proposal concerning a request for an advisory opinion from the International Court of Justice, with bearing on Article 2(4), was submitted to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Also at the same period, the Rome Statute of the International Criminal Court, with bearing on Article 2 (4) was adopted. These developments are briefly discussed in the following paragraphs.

11. In 1999 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the organization, the Russian Federation and Belarus submitted a working paper²² relating to a request for an advisory opinion from the International Court of Justice on the following questions:

“-Under contemporary international law, does a State or group of States have the right to make use of armed force without a decision of the Security Council taken pursuant to Chapter VII of the Charter of the United Nations, except in exercise of the right to individual or collective self-defence pursuant to Article 51 of the Charter?”

“- Is such use of armed force a violation of the obligations of that State or group of States under the Charter of the United Nations?”

and development of South-Eastern Europe; G A resolutions 51/55 (operative paragraph 4) and 53/71 (operative paragraph 4), relating to the maintenance of international peace and security-prevention of violent disintegration of States; G A resolution 52/48 (operative paragraph 8), regarding the development of good-neighborly relations among Balkan States; G A resolution 49/43 (the preamble), regarding the situation in the occupied territories of Croatia; the Security Council resolution 1234 (1999) (the preamble), concerning the situation in the Democratic Republic of Congo; the Security Council resolution 999 (1995) (the preamble), 1030 (1995) (the preamble), 1061 (1996) (the preamble), 1089 (1996) (the preamble), 1099 (1997) (the preamble), 1113 (1997) (the preamble), 1128 (1997) (the preamble), 1138 (1997) (the preamble), 1167 (1998) (the preamble), 1206 (1998) (the preamble), 1240 (1999) (the preamble), 1274 (1999) (the preamble), concerning the situation in Tajikistan.

²² A/54/33, p. 13.

“-Do States that are not the object of the use of armed force have a right to compensation for damages which they sustained as a consequence of such use of armed force inasmuch as they were unable fully to enjoy their rights under contemporary international law, particularly the Charter of the United Nations?”²³

12. As at 31 December 1999, the consideration of the proposal in the Special Committee had not been concluded.

13. On 17 July 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted the Rome Statute of the International Criminal Court, which included the crime of aggression among the crimes under the jurisdiction of the Court.²⁴ However, the court is not authorized to exercise its jurisdiction over this crime until it is defined and conditions for the exercise jurisdiction with respect to this crime is adopted.²⁵

²³ A/54/33, p. 16.

²⁴ Rome Statute of the International Criminal Court, Article 5, paragraph 1.

²⁵ Ibid, paragraph 2.

II. ANALYTICAL SUMMARY

A. The question of the scope and limits of the phrase “threat or use of force against the territorial integrity or political independence of any State”

14. Article 2(4) was referred to in the Security Council in connection with questions that involved allegations of the threat or use of force against the territorial integrity or political independence of a State. It was also invoked in the General Assembly in connection with the advisory opinion of the International Court of Justice concerning *the legality of the threat or use of nuclear weapons*. In the course of the discussion of those issues, questions arose concerning the interpretation and application of the principle included in Article 2(4). The following items entailed such relevant constitutional discussion:

In the Security Council:

(a) In connection with several letters by the Permanent Representatives of Eritrea²⁶ and Ethiopia²⁷ addressed to the President of the Security Council, the question under discussion was whether the military conflict in the border region between Eritrea and Ethiopia constituted an illegal act of aggression on behalf of one of the parties, justifying a recourse to military action for self-defense, or whether it was an attempt by both parties to solve the border dispute through the use of force, which would constitute a violation of Article 2(4).

(b) In connection with the letter dated 24 March 1999 from the Permanent Representative of the Russian Federation addressed to the President of the Security Council, the question under consideration was whether the NATO military action against the Federal Republic of Yugoslavia constituted a

²⁶ S/1998/459, S/1998/478, S/1998/482, S/1998/483, S/1998/492, S/1998/499, S/1998/505, S/1998/508, and S/1998/536.

²⁷ S/1998/467, S/1998/471, S/1998/490, S/1998/493, S/1998/521, S/1998/551, S/1998/552, S/1998/565, S/1999/36, S/1999/70, S/1999/115, S/1999/119, and S/1999/131.

violation of the Charter, in particular Article 2 (4), or its was an operation undertaken to avert a human catastrophe.

(c) In connection with several letters by the Permanent Representative of the Democratic Republic of the Congo,²⁸ addressed to the President of the Security Council, the question under discussion was whether the conflict in the Democratic Republic of the Congo was the result of acts of aggression by neighboring States (Rwanda, Burundi and Uganda) or it was an internal conflict within the territory of the Democratic Republic of the Congo.

In the General Assembly:

(d) In connection with the advisory opinion of the International Court of Justice concerning *the legality of the threat or use of nuclear weapons*, the question under discussion was whether the threat or use of nuclear weapons would violate Article 2 (4) or the court's opinion was inconclusive, in particular in the extreme circumstance where the existence of a State would be at stake.

1. IN THE SECURITY COUNCIL

(a) Decisions of the Security Council regarding the situation between Ethiopia and Eritrea

(i) Precipis of proceedings

15. Starting early in June 1998, the Permanent Representatives of Ethiopia and Eritrea each addressed several letters²⁹ to the President of the Security Council

²⁸ Zaire changed its name to the Democratic Republic of the Congo on 17 May 1997.

²⁹ Letters from Eritrea dated 3 June 1998 (S/1998/459), 6 June 1998 (S/1998/478), 8 June 1998 (S/1998/482), 9 June 1998 (S/1998/483), 10 June 1998 (S/1998/492 and S/1998/499), 15 June 1998 (S/1998/505 and S/1998/508), 18 June 1998 (S/1998/536), 19 June 1998 (S/1998/541), 22 June 1998 (S/1998/556), 12 January 1999 (S/1999/32 and S/1999/34), 15 January 1999 (S/1999/43), 29 January 1999 (S/1999/97), 5 February 1999 (S/1999/117), and 8 February 1999 (S/1999/128); Letters from Ethiopia dated 4 June 1998 (S/1998/467), 5 June 1998 (S/1998/471), 10 June 1998 (S/1998/490 and S/1998/493), 16 June 1998 (S/1998/521), 22 June 1998 (S/1998/551 and S/1998/552), 24 June 1998 (S/1998/565), 13

describing their positions regarding the escalating territorial dispute in the border region between the two States. Both parties accused the other of initiating the aggression, of violating each other's sovereignty and territorial integrity, and of thwarting the efforts of the Organization of African Unity to reach a peaceful solution, seeking instead recourse to the use of force. Both parties also stressed their own commitment to reaching a peaceful solution to the territorial dispute, and underlined their repudiation of the threat and use of force, despite their right to self-defense under Article 51 of the UN Charter.

16. In the period under consideration, the Security Council adopted three resolutions on the situation between Ethiopia and Eritrea—1177³⁰ (1998), 1226³¹ (1999) and 1227³² (1999)—in which it condemned the use of force by the two parties to the conflict. These resolutions contained, *inter alia*, paragraphs that:

- affirmed the commitment of the UN to the territorial integrity of its member states;³³
- rejected the use of armed force as a means of addressing territorial disputes;³⁴
- condemned the use of force by both Eritrea and Ethiopia;³⁵ and
- demanded an immediate halt to the hostilities, particularly the use of air strikes.³⁶

(ii) Precis of relevant constitutional discussion

17. In the Security Council discussion preceding the adoption of resolution 1227 (1999),³⁷ Ethiopia claimed that the aggression was initiated by Ethiopia and that “the Ethiopian Government has had no option but to exercise its legitimate right of self-

January 1999 (S/1999/36), 25 January 1999 (S/1999/70), 4 February 1999 (S/1999/115), 5 February 1999 (S/1999/119), and 9 February 1999 (S/1999/131).

³⁰ Adopted unanimously and without discussion on 26 June 1998, S/PV.3895.

³¹ Adopted unanimously and without discussion on 29 January 1999, S/PV.3973.

³² Adopted unanimously on 10 February 1999, S/PV.3975.

³³ S/RES/1177 (1998), the preamble.

³⁴ S/RES/1177 (1998), the preamble; S/RES/1226 (1999), operative paragraph 7.

³⁵ S/RES/1177 (1998), operative paragraph 1; S/RES/1227 (1999), operative paragraph 1.

³⁶ S/RES/1177 (1998), operative paragraph 2; S/RES/1227 (1999), operative paragraph 2.

³⁷ S/PV.3895.

defense, as clearly stipulated in Article 51 of the Charter of the United Nations.”³⁸ Similarly, Eritrea urged the Security Council to recognize Ethiopia as responsible for the conflict, because it had “escalated this conflict from a containable border skirmish to an all-out war,”³⁹ which had “forced” Eritrea to exercise its right of self-defense.⁴⁰

(b) Action by the Security Council on the draft resolution concerning the NATO military operation against the Federal Republic of Yugoslavia

(i) Precis of proceedings

18. On 24 March 1999, the Security Council, in response to a request made by the Permanent Representative of the Russian Federation,⁴¹ convened a meeting⁴² to consider the NATO military action against the Federal Republic of Yugoslavia. Subsequently, on 26 March 1999, the Council considered and took action on the draft resolution, submitted by Belarus, India and the Russian Federation,⁴³ which was not adopted, as it received 3 votes in favor and 12 against.⁴⁴ The failed draft, *inter alia*, would have affirmed “that such unilateral use of force constitutes a flagrant violation of the United Nations Charter in particular Article 2 (4), [...]”,⁴⁵ as well as would have demanded “an immediate cessation of the use of force against the Federal Republic of Yugoslavia [...]”.⁴⁶

(ii) Precis of relevant constitutional discussion

19. During the debate of the Security Council, in the above meetings, one side viewed the use of force by NATO “against a sovereign State without the authorization

³⁸ S/PV.3895, p. 3.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ S/1999/320.

⁴² S/PV. 3988, p.1.

⁴³ S/1999/328, dated 26 March 1999.

⁴⁴ S/PV.3989, p. 6.

⁴⁵ S/1999/328, dated 26 March 1999, the preamble.

⁴⁶ *Ibid*, operative paragraph 1.

and in circumvention of the Security Council”⁴⁷ as “a gross violation of the United Nations Charter”⁴⁸, including “in particular, Article 2, paragraph 4”⁴⁹ and “a challenge to the authority of the Security Council”.⁵⁰ The other side maintained that the military action was necessary to avert the “humanitarian catastrophe and to deter further aggression and repression in Kosovo”,⁵¹ and that it followed directly from the continuing refusal of the Government of the Federal Republic of Yugoslavia “to act in compliance with the requirements of successive Security Council resolutions” 1199 (1998) and 1203 (1998).⁵²

(c) The situation in the Great Lakes region

(i) *Precis of proceedings*

20 On 17 August 1997, the Prime Minister of Zaire,⁵³ in a letter addressed to the Secretary-General, expressed his governments concern about the lifting of the arms embargo⁵⁴ imposed by the Security Council on Rwanda,⁵⁵ as well as regarding the concentration of the armed forces of Rwanda and Burundi on their borders with Zaire. In the same letter, he indicated the intention of his government to evacuate the Rwandan and Burundi’s refugees to the countries of their origin. The Secretary-General communicated the subject to the President of the Security Council.⁵⁶ The Security Council kept the situation in the Great Lakes region under constant review, during the period under consideration and adopted several resolutions⁵⁷ on the question. A number of the resolutions of the Security Council contained, *inter alia*, elements with bearing on Article 2 (4) along the following lines:

⁴⁷ S/PV/3989, p. 5; see also S/PV/3988, pp. 2, 12 and 15; and S/PV/3989, pp. 11, 12.

⁴⁸ S/PV/3989, p. 5; see also S/PV/3988, pp. 2, 3, 12, 13, 14, 15 and 16; and S/PV/3989, p. 9.

⁴⁹ S/PV/3989, p. 5.

⁵⁰ S/PV.3989, p. 9; see also S/PV/3988, p. 12.

⁵¹ S/PV/3988, p. 4; see also S/PV/3988, pp. 5, 6, 11, 12 and 18; and S/PV/3989, pp. 3, 5.

⁵² S/PV/3988, p. 5; see also S/PV/3988, pp. 9, 11 and 17; and S/PV/3989, pp. 3, 4, 10.

⁵³ On 17 May 1997, its name was changed to the Democratic Republic of the Congo.

⁵⁴ S/RES/1011 (19995).

⁵⁵ S/RES/918 (1994).

⁵⁶ S/1995/723.

⁵⁷ S/RES/1053 (1996), S/RES/1078 (1996), S/RES/1080 (1996), S/RES/1097 (1997), S/RES/1161 (1998), S/RES/1234 (1999), S/RES/1258 (1999), S/RES/1273 (1999) and S/RES/1279 (1999).

- condemned all acts of violence and called for immediate ceasefire and complete cessation of hostilities in the region;⁵⁸
- called upon States in the Great Lakes region to ensure that their territory is not used as a base for armed groups to launch incursions or attacks against any other State in violation of the Charter of the United Nations and other provisions of international law;⁵⁹
- reaffirmed the obligation of all States to respect the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations;⁶⁰
- called upon all parties to the conflict to cease hostilities, to implement fully the provision of the Ceasefire Agreement, and to use the JMC to resolve disputes over military issues;⁶¹
- deplored the continuing fighting and the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with the principles of the Charter of the United Nations and called upon those States to bring to an end the presence of these uninvited forces and to take immediate steps to that end.⁶²

(ii) Precis of relevant constitutional discussion

21. During the discussion of the above question in the Security Council, one side viewed the armed hostilities in the region as a result of acts of aggression, ⁶³committed

⁵⁸ S/RES/1053 (1996), S/RES/1078 (1996), S/RES/1080 (1996).

⁵⁹ S/RES/1161 (1998), operative paragraph 4.

⁶⁰ S/RES/1234 (1999), operative paragraph 1.

⁶¹ S/RES/1279 (1999), operative paragraph 1.

⁶² S/RES/1234 (1999), operative paragraph 2.

⁶³ S/PV.3713, pp. 3-4 and S/PV.3987, pp. 2, 4 and 5.

by Rwanda, Burundi and Uganda against the Democratic Republic of the Congo.⁶⁴ The other side stated that the crisis was a consequence of the presence in the Democratic Republic of the Congo of large numbers of armed elements of Rwandan nationality, including the former Government forces and militia, who launched attacks on Rwanda⁶⁵ and Uganda⁶⁶ from the territory of the Democratic Republic of the Congo. Uganda stated that it had acted in self-defense by recapturing its territory and following the armed elements into Zairian territory.⁶⁷

2. IN THE GENERAL ASSEMBLY

22. The conclusion of the International Court of Justice in its advisory opinion concerning *the legality of the threat or use of nuclear weapons*,⁶⁸ specifically in relation to the unlawfulness of the threat or use of force under Charter Article 2 (4), gave rise to different interpretations in the course of the discussions of the subject in the First Committee of the General Assembly. Some delegations stressed that the threat or use of nuclear weapons would violate the Charter,⁶⁹ including Article 2 (4).⁷⁰ Other delegations observed that the advisory opinion was inconclusive on the illegality of the threat or use of nuclear weapons in all circumstances.⁷¹

3. IN THE INTERNATIONAL COURT OF JUSTICE

23. On 8 July 1996, the International Court of Justice, in response to a request made by the General Assembly, prior to the period under consideration,⁷² delivered its advisory opinion on *the legality of the threat or use of nuclear weapons*.⁷³

⁶⁴ S/PV.3987, p. 4

⁶⁵ Ibid, p. 5.

⁶⁶ Ibid, p. 10.

⁶⁷ Ibid.

⁶⁸ See paragraphs 23-24 below.

⁶⁹ A/C.1/51/PV. 10, p.1; A/C.1/53/PV. 21, p.28 and A/C.1/53/PV. 29, p. 5.

⁷⁰ A/C.1/51/PV. 5, p.5.

⁷¹ A/C.1/51/PV. 3, p. 24; A/C.1/51/PV. 3, p. 6; A/C.1/51/PV. 10, p. 11; A/C.1/51/PV.11, p. 16; A/C.1/51/PV. 22, pp. 5 and 10.

⁷² A/RES/49/75 K, dated 15 December 1994.

⁷³ *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, ICJ reports, 1996, Volume I, pp. 226-268.

24. In its advisory opinion, the Court considered the notions of “threat” and “use of force” contained in Article 2, paragraph 4, of the Charter and observed “The notions of ‘threat’ and ‘use of force’ under Article 2, paragraph 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal – for whatever reason – the threat to use such force will likewise be illegal.”⁷⁴ In this regard the Court concluded:

“A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful”⁷⁵

****B. The question of the scope and limits of the phrase “in any other manner inconsistent with the purpose of the United Nations”**

C. The question of the bearing of the injunction in Article 2(4) on the right to self-defense

25. In the Security Council discussions preceded the adoption of resolution 1227 (1999),⁷⁶ Ethiopia and Eritrea both maintained that they had resorted to force in the exercise of their right of self-defense.⁷⁷

26. The conclusions of the International Court of Justice, in its advisory opinion concerning *the legality of the threat or use of nuclear weapons*,⁷⁸ specifically regarding the prohibition of the threat or use of force under Charter Article 2 (4) and its connection with self-defense, including the circumstance in which the survival of a State would be at stake, was the subject of different interpretations in the course of the discussions of the topic in the First Committee of the General Assembly. Some delegations contested the assertion that the International Court of Justice had accepted

⁷⁴ Ibid, p. 246, paragraph 47.

⁷⁵ Ibid, p. 266, paragraph 105.

⁷⁶ S/PV.3895.

⁷⁷ See paragraph 17 above.

⁷⁸ See paragraphs 23-24 above.

that self-defense constituted an exception to the prohibition on threat or use of nuclear weapons. In their view, the Court had not arrived at a consensus view point on this particular issue.⁷⁹ Some other delegations maintained that the Court's opinion demonstrated that the threat or use of nuclear weapons might be lawful in the context of self-defense under Charter Article 51.⁸⁰

D. The question of the bearing of the ban in Article 2(4) on the authorization by the Security Council to use force

27. During the period under review, the Security Council adopted a number of resolutions, in which it explicitly or implicitly authorized States and/or the Secretary-General to use force nationally or through regional agencies or arrangements for various objectives.⁸¹ Relevant paragraphs of the resolutions read as follows:

(a) The situation in Croatia

28. The Security Council, in accordance with its resolution 981 (1995),⁸² decided "to establish under its authority the United Nations Confidence Restoration Operation in Croatia, which shall be known as UNCRO",⁸³ and authorized the Member States to take all necessary measures to extend close air support to the territory of the Republic of Croatia in defence of UNCRO personnel in the performance of UNCRO's mandate. The relevant paragraph of the resolution read as follows:

"6. *Decides* that Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and the United Nations Theatre Force Commander, using the existing procedures which have been agreed with the Secretary-General, all necessary measures to

⁷⁹ A/C.1/PV.22, p. 11 and A/C.1/54/PV. 19, p.5.

⁸⁰ A/C.1/51/PV. 22, p. 4.

⁸¹ S/RES/678 (1990), concerning the situation between Iraq and Kuwait; S/RES/837 (1993), concerning the situation in Somalia; S/RES/836 (1993), concerning the situation in Bosnia, to implement a naval blockade; S/RES/665 (1990), concerning the situation between Iraq and Kuwait; S/RES/875 (1993), concerning the situation in Haiti, to achieve humanitarian objectives; S/RES/794 (1992), concerning the situation in Somalia; S/RES/770 (1992), concerning the situation in Bosnia; S/RES/929 (1994), concerning the situation in Rwanda; S/RES/940 (1994), concerning the situation in Haiti.

⁸² Adopted at 3512th meeting of the Security Council on 31 March 1995.

⁸³ S/RES/981 (1995) (operative paragraph 2).

extend close air support to the territory of the Republic of Croatia in defence of UNCRO personnel in the performance of UNCRO's mandate, and *requests* the Secretary-General to continue to report to the Council on any use of close air support".⁸⁴

29. Moreover, the Security Council in accordance with its resolution 1037 (1996),⁸⁵ decided to establish the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES),⁸⁶ and authorized the Member States to take all necessary measures, including close air support, in defence of UNTAES and, as appropriate, to assist in the withdrawal of UNTAES. The relevant paragraph of the resolution read as follows:

"14. *Decides* that Member States, acting nationally or through regional organizations or arrangements, may, at the request of UNTAES and on the basis of procedures communicated to the United Nations, take all necessary measures, including close air support, in defence of UNTAES and, as appropriate, to assist in the withdrawal of UNTAES".⁸⁷

30. The Security Council, in accordance with its resolution 1120 (1997),⁸⁸ extended the mandate of UNTAES until 15 January 1998,⁸⁹ which also contained a paragraph authorizing the use of air force as follows:

"12. *Reiterates* its decision in its resolution 1037 (1996) that Member States, acting nationally or through regional organizations or arrangements, may, at the request of UNTAES and on the basis of procedures communicated to the United Nations, take all necessary measures, including close air support, in defence of UNTAES and, as appropriate, to assist in the withdrawal of UNTAES".⁹⁰

31. In the deliberations of the Council concerning the above resolutions, a representative expressed reservations about taking enforcement action and about the

⁸⁴ S/RES/981 (1995) (operative paragraph 6).

⁸⁵ Adopted at 3619th meeting of the Security Council on 15 January 1996.

⁸⁶ S/RES/1037 (1996) (operative paragraph 1).

⁸⁷ S/RES/1037 (1996) (operative paragraph 14).

⁸⁸ Adopted at 3800th meeting of the Security Council on 14 July 1997.

⁸⁹ S/RES/1120 (1997) (operative paragraph 8).

⁹⁰ S/RES/1120 (1997) (operative paragraph 12).

use of force in peace-keeping operations under Chapter VII of the Charter.⁹¹ It advanced the argument that due to explicit agreement of the parties to the conflict to cooperate, the military component of the UNTAES would be mainly engaged in monitoring and assisting demilitarization, and therefore, it would not have been necessary to invoke Chapter VII.⁹²

(b) The situation in the Great Lakes region

32. In accordance with its resolution 1080 (1996), the Security Council welcomed “the offers made by Member States [...] concerning the establishment for humanitarian purposes of a temporary multinational force to facilitate the immediate return of humanitarian organizations [...]”, and invited “other interested States to offer to participate in these efforts”.⁹³ In the same resolution, the Council authorized the Member States cooperating with the Secretary-General to use all necessary means to achieve the humanitarian objectives set out in the resolution. Paragraph 5 of the resolution read as follows:

"5. Authorizes the Member States cooperating with the Secretary-General to conduct the operation referred to in paragraph 3 above to achieve, by using all necessary means, the humanitarian objectives set out therein."

⁹¹ S/PV. 3512, p. 28 and S/PV. 3619, p. 9.

⁹² S/PV. 3619, p. 9.

⁹³ S/RES/1080 (1996), operative paragraph 3.