

# Repertory of Practice of United Nations Organs

## SUPPLEMENT NO. 9

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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 *Supplements No. 7* and *No. 8*, this study deals only with the cases that were the subject of active consideration by the principal organs of the United Nations during the period under review, and which are relevant to the interpretation of Article 2(7) of the Charter. Moreover, as in the aforementioned *Supplements*, 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 three resolutions adopted by the United Nations General Assembly, in relation to the agenda item entitled “Human rights questions”.<sup>1</sup> In addition, although no other resolution of a principal organ of the United Nations explicitly referred to Article 2(7), many of them incorporated, as grounds for action, some of the considerations advanced during the relevant discussions.
4. The study does not cover decisions in connection with which no objections based on Article 2(7) were raised, although such decisions constitute, at least implicitly, an affirmation

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<sup>1</sup> G A res. 50/172, 52/119 and 54/168.

of the competence of the United Nations, and may therefore have a bearing on the question of domestic jurisdiction.

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

<b>Titles of the Cases</b>	<b>Relevant paragraphs of study</b>	<b>Organ</b>
Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes <sup>2</sup>	7	General Assembly
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	8-10	General Assembly
The situation between Iraq and Kuwait	18-21	the Security Council

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

<b>Tiles of the cases</b>	<b>Relevant paragraphs of study</b>	<b>Organ</b>
The situation of human rights in Kosovo	11-13	General Assembly
The situation of human rights in Iraq	14-17	General Assembly
Protection of civilians in	22-24	the Security Council

<sup>2</sup> The issue was covered under the heading “Enhancing the effectiveness of the principle of periodic and genuine elections” in the previous *Supplement*.

armed conflict		
Situation in Kosovo, Federal Republic of Yugoslavia	25-30	the Security Council

## I. GENERAL SURVEY

### A. General Assembly

#### RESPECT FOR THE PRINCIPLES OF NATIONAL SOVEREIGNTY AND NON-INTERFERENCE IN THE INTERNAL AFFAIRS OF STATES IN THEIR ELECTORAL PROCESSES

7. The General Assembly, at its fiftieth, fifty-second and fifty-fourth sessions, adopted under the agenda item entitled “human rights questions”, a resolution entitled “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes.” Each of these resolutions contained the following nearly identical provisions:

“The General Assembly,

[...]

“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,

“Reaffirming the obligation of Member States to comply with the principles of the Charter and the resolutions of the United Nations regarding the right to self-determination, by virtue of which all peoples can freely determine, without external interference, their political status and freely pursue their economic, social and cultural development,

[...]

“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,

[...]

“1. Reiterates that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right, freely and without external interference, to determine their political

status and to pursue their economic, social and cultural development, and that every State has the duty to respect that right in accordance with the provisions of the Charter;

“2. Reaffirms that it is the concern solely of peoples to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation, and that, consequently, States should establish the necessary mechanisms and means to guarantee full and effective popular participation in those processes;

“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 electoral assistance to Member States should be provided by the United Nations only at the request and with the consent 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, or in special circumstances such as cases of decolonization, or in the context of regional or international peace processes;”<sup>3</sup>

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<sup>4</sup>

8. The items “Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations”<sup>5</sup>, “Consideration of the exceptional situation of the inability, resulting from General Assembly resolution 2758 (XXVI), of the 21.3 million people on Taiwan, Republic of China,

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<sup>3</sup> G A res. 50/172, 52/119, and 54/168.

<sup>4</sup> Although the question of the representation of Taiwan in the United Nations was addressed under four different proposed agenda item titles during the period under consideration, for the purposes of the instant study the four proposed agenda items shall be considered jointly under the common title “Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations”.

<sup>5</sup> Fiftieth session; A/50/145 and Addenda 1.

to participate in the activities of the United Nations”<sup>6</sup>, “Need to review General Assembly resolution 2758 (XXVI) of 25 October 1971 owing to the fundamental change in the international situation and to the coexistence of two Governments across the Taiwan Strait”<sup>7</sup> and “Need to examine the exceptional international situation pertaining to the Republic of China on Taiwan, to ensure that the fundamental rights of its twenty-two million people to participate in the work and activities of the United Nations is fully respected”<sup>8</sup> were proposed for inclusion in the agenda of the General Assembly during the period under review.

9. During the discussions of the General Committee, at each session, the inclusion of the item on the agenda of the General Assembly was opposed by some delegations, on the ground that its inclusion would violate article 2(7) of the Charter. In particular, these delegations asserted that inclusion of the proposed agenda items would constitute interference in the domestic affairs of China, since Taiwan constituted part of China.<sup>9</sup> Some other delegations maintained that the item should be included in the agenda, inter alia, on the basis of the principle of universality and past practice with regard to divided States. The arguments presented in favor and against the inclusion of the above-mentioned agenda items are included in the analytical summary of practice and relate to the following questions: (a) Whether inclusion of an item in the agenda constitutes interference in the internal affairs of a State in violation of Article 2(7) of the Charter.

10. At the end of its discussions on each proposed agenda item at each session, the General Committee decided not to recommend the inclusion of the item in the agenda.<sup>10</sup>

## THE SITUATION OF HUMAN RIGHTS IN KOSOVO

11. During the period under review, the General Assembly continued its consideration of the agenda sub-item entitled “Human rights situations and reports of Special Rapporteurs and

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<sup>6</sup> Fifty-first session; A/51/142.

<sup>7</sup> Fifty-second and fifty-third session; A/52/143 and Addenda 1 and 2; A/53/145 and Addenda 1-3.

<sup>8</sup> Fifty-fourth session; A/54/194 and Addenda 1.

<sup>9</sup> The position was reiterated by the representative of China during the general debate in the General Assembly at its fifty-first and fifty-second sessions. See A/51/PV.8, p. 17; A/52/PV.9, p. 16.

<sup>10</sup> A/BUR/50/SR.2, para. 69; A/BUR/51/SR. 1, para. 129; A/BUR/52/SR.1, para. 135; A/BUR/53/SR.2, para. 60; A/BUR/54/SR.2, para. 79.



Representatives” and adopted, inter alia, one resolution about “the situation of human rights in Kosovo” at each session.<sup>11</sup>

12. During the discussion of the item at each session during the period under review, the delegations of China and India expressed reservations to the adoption of the resolution on the basis of Article 2(7). They considered that adopting a resolution relating to the human rights situation in one part of a State only could constitute an interference in its domestic affairs. In two letters addressed to the Secretary-General, the Government of the Federal Republic of Yugoslavia asserted the same argument.<sup>12</sup> The arguments of delegations for this position are set forth in the analytical summary of practice and relate to the following question: (a) Article 2(7) and the Charter provisions on human rights.

13. Despite these objections, the General Assembly adopted a resolution entitled “The human rights situation in Kosovo” at each session during the period under consideration.<sup>13</sup>

#### THE SITUATION OF HUMAN RIGHTS IN IRAQ

14. During the period under review, the question of the human rights situation in Iraq was considered in the General Assembly under the agenda sub-item entitled “Human rights situations and reports of Special Rapporteurs and Representatives”.

15. During the consideration of the sub-item at the fiftieth session, the representative of Iraq voiced opposition to the adoption of draft resolutions on this sub-item, inter alia, on the grounds that they constituted “interference in the internal affairs of States”.<sup>14</sup> A similar objection was made by the representative of Syria during the consideration of the draft resolution on the situation of human rights in Iraq at the fifty-fourth session, since

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<sup>11</sup> G A resolutions 50/190; 51/111; 52/139; 53/164; 54/183.

<sup>12</sup> Letters dated 27 November 1998 and 24 November 1999 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General (A/53/717; A/54/639).

<sup>13</sup> G A resolutions 50/190; 51/111; 52/139; 53/164; 54/183.

<sup>14</sup> A/50/PV.99, p. 12.

addressing the human rights situation in the northern part of Iraq was considered to be interference into its internal affairs.<sup>15</sup>

16. This point of view was underlined in two letters dated 20 September 1995 and 23 September 1996, respectively, from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General.<sup>16</sup> The Iraqi Government, inter alia, stressed its objections to the recommendations contained in the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq,<sup>17</sup> that human rights monitors should be sent to Iraq, "...since it would represent flagrant interference in its internal affairs and be blatantly incompatible with the concepts of sovereignty and independence."<sup>18</sup>

17. Despite these objections, the General Assembly adopted a resolution entitled "Situation of Human rights in Iraq" at each session during the period under consideration.<sup>19</sup> In each of these resolutions, the General Assembly requested "the Secretary-General to provide the Special Rapporteur with all necessary assistance in carrying out his mandate".<sup>20</sup>

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

### **C. Security Council**

#### **THE SITUATION BETWEEN IRAQ AND KUWAIT**

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<sup>15</sup> A/54/PV.11, pp. 45-46.

<sup>16</sup> A/50/471 and A/C.3/51/3, pp. 5 and 11.

<sup>17</sup> Report on the situation of human rights in Iraq, submitted by Mr. van der Stoep, Special Rapporteur of the Commission on Human Rights, E/CN. 4/1995/56.

<sup>18</sup> A/50/471, p. 4.

<sup>19</sup> GA resolutions 50/191; 51/106; 52/141; 53/157; 54/178.

<sup>20</sup> Ibid. In the resolutions adopted during the fiftieth to fifty-second sessions, the General Assembly also requested the Secretary-General approve the allocation of sufficient human and material resources for the sending of human rights monitors to such locations as would facilitate improved information flow and assessment and help in the independent verification of reports on the situation of human rights in Iraq.

18. During the period under review, the Security Council continued to consider the situation between Iraq and Kuwait and adopted 22 resolutions on this item.<sup>21</sup>

19. At its 3519<sup>th</sup> meeting, in 1995, the representative of Indonesia, *inter alia*, stated:

“We must respect the sovereignty and territorial integrity of Iraq, ... Furthermore, we believe that the application of Chapter VII of the Charter should be specifically addressed to peace and security in the region, and should not be applied so as to interfere in the internal affairs of Iraq. My delegation would also like to express its reservations regarding paragraph 8 (b) [of resolution 986 (1995)], describing Iraq’s obligation to complement the distribution of humanitarian relief and to provide an amount exceeding 10 per cent of its oil production revenue. Within the context of the principles of the sovereignty and territorial integrity of States, it would be more appropriate not to mention a specific amount to be allocated for the three northern Governorates within Iraq. This, in our view, would constitute an infringement on the principle of non-interference in the internal affairs of sovereign States, as it would provide encouragement to separatist movements in the northern part of Iraq.”<sup>22</sup>

Despite these objections, the Security Council unanimously adopted resolution 986 (1995), as proposed.<sup>23</sup>

20. In a letter dated 2 July 1998 from the Permanent Representative of Iraq addressed to the Secretary-General and to the President of the Security Council<sup>24</sup> and in one dated 15 January 1999 addressed to the President of the Security Council,<sup>25</sup> the Iraqi Government expressed concern over the use of resolution 688 (1991) to justify the imposition of “no-fly zones” over its territory. It stated: “The United States Government’s reliance on resolution 688 (1991) as justification for the imposition of the no-fly-zones contradicts the provisions of that resolution. The second preambular paragraph of the resolution refers to Article 2, paragraph 7, of the Charter of the United Nations, which declares that the United Nations is not authorized to intervene in matters within the domestic jurisdiction of any State. The seventh preambular paragraph of resolution 688 clearly reaffirms the commitment of all

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<sup>21</sup> S C resolutions 986 (1995), 1051 (1996), 1060 (1996), 1111 (1997), 1115 (1997), 1129 (1997), 1134 (1997), 1137 (1997), 1143 (1997), 1153 (1998), 1154 (1998), 1158 (1998), 1175 (1998), 1194 (1998), 1205 (1998), 1210 (1998), 1242 (1999), 1266 (1999), 1275 (1999), 1280 (1999), 1281 (1999), 1284 (1999).

<sup>22</sup> S/PV.3519, p. 5.

<sup>23</sup> S/PV.3519.

<sup>24</sup> S/1998/606, p. 3

<sup>25</sup> S/1999/45, p. 2.

Member States to respect the sovereignty, territorial integrity and political independence of Iraq.”<sup>26</sup>

21. During the discussions on this agenda item at the 3980<sup>th</sup>, 4008<sup>th</sup> and 4084<sup>th</sup> meetings in 1999, differing views were expressed regarding the compatibility of “no-fly zones” with the text of Security Council resolution 688 (1991).<sup>27</sup>

#### PROTECTION OF CIVILIANS IN ARMED CONFLICT

22. In 1999, the Security Council considered the agenda item “Protection of civilians in armed conflict”, in connection with the report of the Secretary-General on the protection of civilians in armed conflict,<sup>28</sup> at its 3977<sup>th</sup>, 3978<sup>th</sup>, 3980<sup>th</sup> and 4046<sup>th</sup> meetings.

23. During the discussions on this agenda item, a number of delegations stressed the view that activities taken by the United Nations, and the Security Council in particular, for the protection of civilians during an armed conflict could in some cases constitute interference into the internal affairs of a State, and should therefore be consistent with Article 2(7) of the Charter.<sup>29</sup> For example, the representative of Egypt stated: “The legal framework for Council action is defined by respect for the purposes and principles of the Charter, that is the non-use of force except in the implementation of Council’s resolutions adopted pursuant to Chapter VII. This means that a conflict must threaten or violate international peace or be deemed aggressive. The Council should not intervene in the internal affairs of States pursuant to paragraph 7 of Article 2 of the Charter.”<sup>30</sup>

24. At the conclusion of its discussions, the Council adopted unanimously, resolution 1265 (1999), which contained inter alia, the following language:

“The Security Council,

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<sup>26</sup> S/1998/606, p. 3;

<sup>27</sup> See S/PV.3980 (Resumption 1), p. 17; S/PV.4008, p. 3; S/PV.4084, pp. 5-6, 12.

<sup>28</sup> S/1999/957.

<sup>29</sup> See S/PV.3977, p. 30; S/PV.3980 (Resumption 1), p. 4; S/PV.4046, p. 20.

<sup>30</sup> S/PV.4046, p. 20.

[...]

*“Noting* that civilians account for the vast majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements, gravely concerned by the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and recognizing the consequent impact this will have on durable peace, reconciliation and development,

*“Bearing in mind* its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution,

*“Stressing* the need to address the causes of armed conflict in a comprehensive manner in order to enhance the protection of civilians on a longterm basis, including by promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights,

*“Expressing* its deep concern at the erosion in respect for international humanitarian, human rights and refugee law and principles during armed conflict, in particular deliberate acts of violence against all those protected under such law, and *expressing also* its concern at the denial of safe and unimpeded access to people in need,

[...]

“7. Underlines the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them, and recalls in this regard the statements of its President of 19 June 1997 (S/PRST/1997/34) and 29 September 1998 (S/PRST/1998/30);

“8. Emphasizes the need for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of international humanitarian organizations, and recalls in this regard the statements of its President of 12 March 1997 (S/PRST/1997/13) and 29 September 1998;”<sup>31</sup>

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<sup>31</sup> S C res. 1265 (1999)

## SITUATION IN KOSOVO, FEDERAL REPUBLIC OF YUGOSLAVIA

25. During the period under consideration, the Security Council considered the situation in Kosovo, Federal Republic of Yugoslavia at its 3868<sup>th</sup>, 3918<sup>th</sup>, 3930<sup>th</sup>, 3937<sup>th</sup> and 3944<sup>th</sup> meetings in 1998 and at its 3967<sup>th</sup>, 3974<sup>th</sup>, 3988<sup>th</sup>, 3989<sup>th</sup>, 4000<sup>th</sup>, 4001<sup>st</sup>, 4003<sup>rd</sup>, 4011<sup>th</sup>, 4061<sup>st</sup> and 4086<sup>th</sup> meetings in 1999.

26. The question of the situation in Kosovo was included in the agenda of the Security Council on the basis of two letters addressed to the President of the Security Council from the representatives of the United Kingdom and the United States.<sup>32</sup> In a letter dated 30 March 1998, the Government of the Federal Republic of Yugoslavia objected to the inclusion of the question of Kosovo on the agenda.<sup>33</sup> It stated, *inter alia*: “The Federal Republic of Yugoslavia and the Republic of Serbia are firmly against the inclusion of Kosovo and Metohija, which is an internal matter of the Republic of Serbia, on the agenda of the Security Council of the United Nations. They have never given, nor will they give, their consent to having an internal matter considered by the Security Council. [...] However, the organization of internal political relations falls within the exclusive jurisdiction of the Member States of the United Nations. It is therefore unacceptable that the situation in Kosovo and Metohija should be the subject of deliberation in the Security Council without the prior consent of the Federal Republic of Yugoslavia, that is, the Republic of Serbia.”

27. During the discussions on the question of Kosovo at the 3868<sup>th</sup> meeting of the Security Council, on 31 March 1998, numerous representatives referred to Article 2(7) of the Charter. The positions expressed by representatives are reflected in the analytical summary and relate primarily to the questions of: (a) whether a matter governed by international law

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<sup>32</sup> Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223) and Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272). See also Letter dated 4 March 1998 from the Permanent Representative of Albania to the United Nations addressed to the President of the Security Council (S/1998/193).

<sup>33</sup> Letter dated 30 March 1998 from the Chargé d’Affaires A.I. of the Permanent Mission of Yugoslavia to the United Nations addressed to the President of the Security Council (S/1998/285).

can fall essentially into domestic jurisdiction and (b) Article 2(7) and the Charter provisions on the maintenance of international peace and security and (c) Article 2(7) and the Charter provisions on human rights. After the adoption of the resolution, the representative of the Federal Republic of Yugoslavia<sup>34</sup> reiterated the position of his Government that the question of Kosovo was an internal matter of his State and could not be the subject of deliberation by the Security Council absent the consent of the Federal Republic of Yugoslavia. Moreover, the view was expressed that such an internal matter could not constitute a threat to international peace and security.<sup>35</sup> At the same meeting, the Security Council adopted resolution 1160 (1998), by 14 votes to zero with one abstention (China). The representative of China explained that its decision to abstain was based on the view that Kosovo was an internal matter of the Federal Republic of Yugoslavia.<sup>36</sup>

28. At its 3930<sup>th</sup> meeting, the Security Council adopted resolution 1199 (1998), relating to Kosovo. China abstained from voting on the draft resolution and after the vote, reiterated its position that “the question of Kosovo is an internal matter of the Federal Republic of Yugoslavia” and that the Security Council “has invoked Chapter VII of the United Nations Charter all too indiscretely”.<sup>37</sup> Similar reservations were also expressed by the representative of China after the adoption of resolution 1203 (1998) at the 3937<sup>th</sup> meeting.<sup>38</sup>

29. On 24 March 1999, the Security Council met pursuant to a request by the Russian Federation, to discuss the military actions undertaken by the North Atlantic Treaty Organization in the Federal Republic of Yugoslavia.<sup>39</sup> During the discussions at the 3988<sup>th</sup> meeting, the representatives of several States referred to the domestic jurisdiction of a State and Article 2(7) of the Charter, while speaking in favour or against the NATO bombings. The representatives of China and India expressed the view that Kosovo was an internal

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<sup>34</sup> The representative of the Government of the Federal Republic of Yugoslavia was only recognized as Mr. Jovanović since pursuant to Security Council resolution 777 (1992) the Federal Republic of Yugoslavia could not continue automatically to membership of the former Socialist Federal Republic of Yugoslavia in the United Nations.

<sup>35</sup> S/PV.3868, pp. 15-19.

<sup>36</sup> *Ibid.*, at p. 11.

<sup>37</sup> S/PV.3930, pp. 3-4.

<sup>38</sup> S/PV.3937, pp. 14-15.

<sup>39</sup> S/1999/320.

matter of the Federal Republic of Yugoslavia and could not be used to justify the actions of NATO.<sup>40</sup> The representative of India stated:

“Kosovo is recognized as part of the sovereign territory of the Federal Republic of Yugoslavia. Under the application of Article 2, paragraph 7, the United Nations has no role in the settlement of the domestic political problems of the Federal Republic. The only exception laid down by Article 2, paragraph 7, would be the “application of enforcement measures under Chapter VII”. The attacks now taking place against the Federal Republic of Yugoslavia have not been authorized by the Council, acting under Chapter VII, and are therefore completely illegal. [...] We have heard that the attack on the Federal Republic of Yugoslavia will be called off if its Government accepts what are described as NATO peacekeeping forces on its territory. In other forums, we, along with the entire membership of the Non-Aligned Movement, have repeatedly said that the United Nations cannot be forced to abdicate its role in peacekeeping and that a peacekeeping operation can be deployed only with the consent of the Government concerned. Quite apart from being a violation of Article 2, paragraph 7, of the Charter, a peacekeeping operation forced upon a reluctant Government or population stands little chance of success.”<sup>41</sup>

Other representatives expressed the view that the situation in Kosovo constituted a threat to international peace and security.<sup>42</sup> The representative of the Netherlands expressed the view that the Security Council had not been able to adopt a resolution authorizing military intervention “due to one or two permanent members’ rigid interpretation of the concept of domestic jurisdiction”.<sup>43</sup>

30. Despite these objections, the question of Kosovo was considered at fifteen meetings during the period under consideration, during which the Security Council adopted five resolutions on the question.<sup>44</sup> China abstained from voting during the adoption of all five resolutions.<sup>45</sup>

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<sup>40</sup> S/PV.3988.

<sup>41</sup> *Ibid.*, at p. 16.

<sup>42</sup> See, e.g., statement by the representative of Slovenia, *ibid.*, at p.19. (“The situation in Kosovo is defined by the Security Council as a threat to international peace and security in the region. This defines that situation as something other than a matter which is essentially within the domestic jurisdiction of a State. In other words, Article 2, paragraph 7, of the Charter clearly does not apply.”)

<sup>43</sup> *Ibid.*, at p.8. This view was contested by the representative of the Russian Federation, claiming that no discussions on a draft resolution took place involving the Russian Federation. See *ibid.*, at p. 13.

<sup>44</sup> SC Res. 1160 (1998); 1199 (1998); 1203 (1998); 1239 (1999) and 1244 (1999).

<sup>45</sup> See S/PV.3868 ; S/PV.3930; S/PV.3937 ; S/PV.4003 ; S/PV.4011.



## **D. INTERNATIONAL COURT OF JUSTICE\*\***

### **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**

31. The question whether the inclusion of an item in the agenda of the General Assembly constitutes intervention in the internal affairs of a State arose in the debates concerning the inclusion of the item “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”.<sup>46</sup> The question of whether the inclusion of an item in the agenda of the Security Council constitutes intervention in the internal affairs of a State arose in the debates concerning the inclusion of the question of the situation in Kosovo, Federal Republic of Yugoslavia.

32. The inclusion of the above item in the agenda of the General Assembly was opposed by representatives who expressed the view that the item 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).<sup>47</sup> The representatives who supported the inclusion of the item 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 violate Charter provisions, and that the Assembly had included similar items in its agenda in

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<sup>46</sup> As noted supra, the question of the representation of Taiwan in the General Assembly was considered under four different proposed agenda item titles during the period under consideration.

<sup>47</sup> See paras. 8-10 above. A/BUR/50/SR. 1: para. 144 (Libyan Arab Jamahiriya), para. 101 (Kuwait); A/BUR/SR. 2: paras. 12-13 (Yemen), para. 18 (Kenya), paras. 20-22 (Pakistan), para. 40 (Benin), para. 54 (Egypt); A/BUR/SR. 1: para. 75 (Indonesia), para. 79 (Kuwait), para. 80 (Iraq), para. 86 (Nepal), para. 113 (Columbia), para. 117 (Myanmar); A/BUR/53/SR. 1: para. 86 (Iraq), para. 88 (Kuwait); A/BUR/53/SR. 2: para. 30 (Nepal), para. 33 (Libyan Arab Jamahiriya), para. 54 (Uganda); A/BUR/54/SR. 2: para. 10 (Myanmar), para. 16 (Nepal).

the past years and that it had adopted a number of resolutions on those items.<sup>48</sup> 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.<sup>49</sup>

33. The inclusion of the above item in the agenda of the Security Council was opposed by representatives who expressed the view that the situation in a region of a State fell essentially within the domestic jurisdiction of the State concerned, and that the inclusion of the item on the agenda of the Security Council absent consent of that State would constitute a violation of Charter Article 2(7).<sup>50</sup> The representatives who supported the inclusion of the item in the agenda of the Security Council stated that the matter was not considered to be an internal affair of the States concerned, that it constituted a threat to international peace and security, and that its inclusion did not violate Charter provisions. Moreover, it was pointed out that Security Council had already adopted resolutions on the issue under Chapter VII of the Charter.<sup>51</sup>

## **\*\*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**

34. References to international law were made in the debates of the General Committee on its proposed agenda item entitled “Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of

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<sup>48</sup> A/BUR/50/SR. 1: para. 91 (Guinea-Bissau); A/BUR/52/SR. 1: paras. 87-88 (Burkina Faso), paras. 96-98 (Liberia); A/BUR/53/SR. 2: paras. 2-5 (Liberia), paras. 45-46 (El Salvador).

<sup>49</sup> A/BUR/50/SR. 2: paras. 5-9 (Guatemala), para. 57 (Niger); A/BUR/52/SR. 1: paras. 83-85 (Swaziland), paras. 87-88 (Burkina Faso), paras. 96-98 (Liberia), paras. 99-101 (Nicaragua), para. 102 (Chad), paras. 129-130 (El Salvador); A/BUR/53/SR. 1: paras. 55-58 (Senegal), paras. 78-79 (Gambia); A/BUR/53/SR. 2: paras. 2-5 (Liberia); A/BUR/54/SR. 2: paras. 12-13 (Burkina Faso).

<sup>50</sup> See para. 26 above.

<sup>51</sup> See S/PV.3868.

divided countries at the United Nations”. References were also made in the debates of the Security Council in connection with the protection of civilians in armed conflict, as well as the situation in Kosovo, Federal Republic of Yugoslavia .

35. During the discussions of the General Committee concerning under the agenda item “Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations”, a number of representatives stated that the issue of whether a territory constituted a State was determined by international law.<sup>52</sup>

36. In the Security Council discussions relating to the protection of civilians in armed conflict, a number of representatives noted the applicability of international human rights law and international humanitarian law to the protection of civilian in armed conflict. They also stressed the need to ensure the application and implementation of relevant international law norms, including by United Nations action.<sup>53</sup>

37. In the discussions in the Security Council relating to the situation in Kosovo, Federal Republic of Yugoslavia, several representatives referred to provisions of international law.<sup>54</sup>

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

38. During the Security Council consideration of the situation in Kosovo, Federal Republic of Yugoslavia at the 3988th meeting, the delegate of the United States noted “The actions of the Federal Republic of Yugoslavia also violate its commitments under the Helsinki Final Act, as well as its obligations under the international law of human rights. Belgrade’s actions in Kosovo cannot be dismissed as an internal matter.”<sup>55</sup>

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<sup>52</sup> A/BUR/SR. 2: paras. 5-9 (Guatemala); A/BUR/SR. 1: paras. 55-58 (Senegal).

<sup>53</sup> S/PV.3977, pp. 13 (United Kingdom), 15 (Russian Federation), 20-21 (Netherlands); S/PV.3980, p. 8 (Norway); S/PV.4046 (Resumption 1), p. 14 (the Former Yugoslav Republic of Macedonia).

<sup>54</sup> See S/PV.3988, pp.4 (United States), 17 (Germany), 18 (Bosnia and Herzegovina) and 19 (Slovenia).

<sup>55</sup> S/PV.3988, p. 4.

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

39. 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).<sup>56</sup>

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

40. In the discussions on whether to include the item “Consideration of the exceptional situation of the Republic of China on Taiwan in the international context, based on the principle of universality and in accordance with the established model of parallel representation of divided countries at the United Nations” in the agenda of the General Assembly, 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.<sup>57</sup> During the General Assembly consideration of the situation of human rights in Kosovo and the situation of human rights in Iraq, several representatives objected to the consideration of the human rights situation in one portion of a State as an interference into the internal affairs of that State.<sup>58</sup>

41. In the Security Council debates relating to the protection of civilian in armed conflict, a number of representatives pointed to the importance of ensuring the application of international human rights law in situations of armed conflict.<sup>59</sup> During the discussion of Security Council regarding the situation between Iraq and Kuwait and the situation in

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<sup>56</sup> A/BUR/50/SR. 1: para. 112 (Grenada); A/BUR/53/SR. 1: paras. 82-83; A/BUR/53/SR. 2: paras. 16-17 (Dominica); A/BUR/54/SR. 2: paras. 25-27 (Nicaragua).

<sup>57</sup> A/BUR/50/SR. 1: para 91 (Guinea-Bissau).

<sup>58</sup> See paras. 12, 15-16, above.

<sup>59</sup> See S/PV.3077, S/PV.4046, S/PV.4046 (Resumption 1).

Kosovo, Federal Republic of Yugoslavia, some representatives emphasized that mass violations of human rights could not be considered an internal affair of a State.<sup>60</sup>

*\*\* (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*

42. During the deliberations of the Security Council on the situation between Iraq and Kuwait and on the situation of Kosovo, Federal Republic of Yugoslavia, a number of references were made to the Charter provisions relating the maintenance of international peace and security.

43. In the course of the respective debates on the above items in the General Assembly and the Security Council, several representatives maintained that a political situation that existed in a particular Member State constituted a threat to international peace and security, as the result of a 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.<sup>61</sup> Some other representatives, however, expressed the opinion that the political situation in question was the internal matter of the State concerned.<sup>62</sup> Other representatives cautioned that Chapter VII should not be relied upon solely to circumvent the requirement of Article 2(7).<sup>63</sup>

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

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<sup>60</sup> See S/PV.3868, pp. 3 (Japan, Costa Rica), 8 (Slovenia), 9 (Portugal), 12 (United Kingdom).

<sup>61</sup> See S/PV.3868, S/PV.3930, S/PV.3955, S/PV/3988, S/PV.4084.

<sup>62</sup> See S/PV.3868, S/PV.3930, S/PV.3937, S/PV.3988.

<sup>63</sup> Ibid.

**\*\*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**

44. With regard to the Security Council consideration of the situation in Kosovo, Federal Republic of Yugoslavia, the Government of the Federal Republic of Yugoslavia asserted in a letter dated 30 March 1998, “The realization of the rights of national minorities is the subject of international cooperation. [...] However, the organization of internal political relations falls within the exclusive jurisdiction of the Member States of the United Nations.”<sup>64</sup> However, during the discussions on the question, several representatives pointed to the importance of protecting minority rights as a reason why consideration of the question did not constitute a violation of Article 2(7).<sup>65</sup>

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

45. During the deliberations of the Security Council on the situation in Kosovo, Federal Republic of Yugoslavia, several representatives noted that the Council had adopted relevant resolutions under Chapter VII, and that therefore the consideration of the question could not constitute a violation of Article 2(7) of the Charter. For instance, the representative of Slovenia pointed out that the Security Council, in its resolutions 1199 (1998) and 1203 (1998), defined the situation in Kosovo as a threat to international peace and security in the region. He continued to state that such a determination “defines that situation as something other than a matter which is essentially within the domestic jurisdiction of a State... in other words, Article 2, paragraph 7, of the Charter clearly does not apply”.<sup>66</sup>

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

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<sup>64</sup> Letter dated 30 March 1998 from the Chargé d’Affaires A.I. of the Permanent Mission of Yugoslavia to the United Nations addressed to the President of the Security Council (S/1998/285).

<sup>65</sup> S/PV.3988, pp. 11 (Argentina), 17 (Germany). See also S/PV.3868.

<sup>66</sup> Ibid., p. 19.

46. 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 Assembly<sup>67</sup> and in the course of the debates of the Security Council<sup>68</sup> and/or the General Assembly.<sup>69</sup> 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 Assembly<sup>70</sup> and the Security Council.<sup>71</sup>

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

47. In the deliberations of the General Committee relating to the proposed agenda items relating to the representation of Taiwan in the United Nations, several representatives asserted that the question had already been decided by General Assembly resolution 2758 (XXVI).<sup>72</sup> Other delegations stated that the proposed items should be included in the agenda of the General Assembly since the Assembly had previously dealt with similar situations relating to the admission of other divided States.<sup>73</sup>

48. During the deliberations of the Security Council on the situation in Kosovo, Federal Republic of Yugoslavia, several representatives pointed to the previous adoption of resolutions under Chapter VII of the Charter as evidence that the situation in Kosovo could not be considered exclusively an internal affair of the Federal Republic of Yugoslavia.<sup>74</sup>

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

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<sup>67</sup> See paras. 8-10, above; A/BUR/50/SR.2; A/BUR/51/SR. 1; A/BUR/52/SR.1; A/BUR/53/SR.2; A/BUR/54/SR.2.

<sup>68</sup> See paras 18-30 above.

<sup>69</sup> See paras 11-17 above.

<sup>70</sup> See paras 11-17 above.

<sup>71</sup> See paras 25-30 above.

<sup>72</sup> A/BUR/50/SR. 1; A/BUR/51/SR.1; A/BUR/52/SR.1; A/BUR/53/SR. 1; A/BUR/53/SR. 2; A/BUR/54/SR. 2.

<sup>73</sup> Ibid.

<sup>74</sup> See S/PV.3988, pp. 5-6, 8-9.