

## Annex II

[Original: French]

### The principle of non-intervention in international law\*

#### New topic proposed by Ivon Mingashang

#### Introduction

1. The purpose of the present syllabus is to submit a proposed topic to the Working Group on the long-term programme of work, highlighting the ways in which it meets the criteria for inclusion on the Commission's agenda.
2. The syllabus focuses on questions of international law concerning the terminological aspects, normative content and substance of the principle of non-intervention in international law.
3. A careful examination of State practice and lessons drawn from relevant international case law could aid in the identification of major themes, potential approaches and, to some extent, the salient points on which the study should focus, depending on whether the outcome to be produced is a work of codification or simply of progressive development of international law.<sup>1</sup>

#### I. Overview of the debate on the principle of non-intervention in international law

4. The principle of non-intervention is enshrined in Article 2, paragraph 7, of the Charter of the United Nations, which provides that:

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.<sup>2</sup>

5. It appears, from a literal reading of this provision, that the prohibition it establishes in respect of the United Nations is *a fortiori* applicable in respect of Member States.<sup>3</sup> The

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<sup>1</sup> Report of the Committee on the Progressive Development of International Law and its Codification, *Official Records of the General Assembly, Second Session, Sixth Committee, annex 1, para. 7*. See also the statute of the International Law Commission, art. 15; and *The Work of the International Law Commission*, 10th ed., vol. I (2023), p. 49.

<sup>2</sup> Charter of the United Nations, San Francisco, 1945, Article 2, paragraph 7.

<sup>3</sup> M. Roscini, *International Law and the Principle of Non-Intervention: History, Theory, and Interactions with Other Principles*, Oxford, Oxford University Press, 2024. The author considers that the basis of the principle of non-intervention differs depending on whether it is invoked under customary international law or the Charter of the United Nations. In the latter case, the prohibition of intervention applies to the organs of the United Nations and not to Member States, and such intervention need not be coercive to be unlawful. According to G. Guillaume, "Article 2, §7", in J.-P. Cot, A. Pellet and M. Forteau, *La Charte des Nations Unies. Commentaire article par article*, 3rd ed., Paris, Economica, 2005, p. 490, "[l]es travaux préparatoires montrent que ce texte avait été élaboré en vue de réglementer l'action de l'Organisation elle-même et non celle de ses Membres" [the

imperative of State sovereignty dictates simply that, at least in theory, no State enjoys any privilege authorizing it to intervene in the examination or solution of matters or situations falling within the internal order of a third State or, as the case may be, of a group of States to which it does not belong.

6. State practice is rife with striking examples of interventions that are potentially unlawful or prohibited under international law.<sup>4</sup> This is especially true of armed interventions and various forms of support for opposition political parties, rebel movements and civil society or other movements against established Governments.

7. A close look at the relevant international practice reveals that the principle lends itself to a variety of interpretations and applications.<sup>5</sup> The indeterminacy of the term's substantive content gives rise to confusion.

8. The Commission could thus draw on available elements of such practice to identify the legal parameters of this principle more precisely. It could also go further and demonstrate, for example, the existence or otherwise of a current *opinio juris* on this practice.

9. The difficulties arising from the ambiguity of the term are compounded by the tendency to conflate it with other legal institutions or categories such as non-interference, the obligation to protect and, in the distant past, concepts such as humanitarian intervention. Its exact content and formal limits thus do not seem to have been clearly determined in relation to other rules of this kind from the standpoint of modern international law. These difficulties mirror those surrounding the concepts<sup>6</sup> of which it is comprised and in relation to which its content and contours must be determined. Above all, this principle has been tempered by the enshrinement of parallel principles such as the non-recognition or rejection of regimes based

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drafting history shows that this text was meant to regulate the action of the Organization itself and not that of its Members]. He acknowledges, however, that “représentants [des États], tout en reconnaissant que le paragraphe 7 [de l'article 2] ne se réfère qu'aux pouvoirs et fonctions de l'ONU elle-même, ont estimé qu'il ne laisse pas les États libres d'intervenir, individuellement ou collectivement, là où les Nations Unies ne le peuvent pas” [representatives [of States], while recognizing that paragraph 7 [of Article 2] refers only to the powers and functions of the United Nations itself, have taken the view that it does not leave States free to intervene, individually or collectively, where the United Nations cannot] (p. 492). See also the commentary on the same article in the 2nd edition, 1991, pp. 146 ff.

<sup>4</sup> O. Corten, A. Verdebout, “Les interventions militaires récentes en territoire étranger: vers une remise en cause du *jus contra bellum*?”, in *Annuaire français de droit international*, vol. 60, 2014, pp. 135–169.

<sup>5</sup> It suffices to recall the diverging positions taken by States, international organizations, legal scholars, learned societies and many others when applying this principle to a given factual situation or assessing the latter in the light of the former. See Bannelier-Christakis, K., “Military Interventions against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent”, *Leiden Journal of International Law*, 2016; O. Corten, A. Verdebout, “Les interventions militaires récentes en territoire étranger...”, *op. cit.*, pp. 135–169; A. Orford, “Muscular Humanitarianism: Reading the Narratives of the New Interventionism”, *European Journal of International Law*, 1999, pp. 679–711; J. Michael Glennon, “The New Interventionism. The Search for a Just International Law”, *Foreign Affairs*, 1999, pp. 2–7; J. Michael Glennon, “The Limitations of Traditional Rules and Institutions Relating to the Use of Force”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford, Oxford University Press, 2015, pp. 79–95; Michael W. Doyle, “The New Interventionism”, *Metaphilosophy*, 2001, pp. 212–235; R. Müllerson, “*Jus Ad Bellum*: Plus Ça Change (Le Monde) Plus C'Est La Même Chose (Le Droit)”, *Journal of Conflict and Security Law*, 2002, pp. 149–190; D. Brown, “Use of Force against Terrorism after September 11th: State Responsibility, Self-Defense and Other Responses”, *Cardozo Journal of International and Comparative Law*, 2003–2004, pp. 1–54; J. Brunnée and S.J. Toope, “The Use of Force: International Law after Iraq”, *International and Comparative Law Quarterly*, 2004, pp. 785–806; M.C. Wood, “Towards New Circumstances in Which the Use of Force May Be Authorized? The Cases of Humanitarian Intervention, Counter-Terrorism, and Weapons of Mass Destruction”, in N. Blokker and N. Schrijver (eds.), *The Security Council and the Use of Force. Theory and Reality – A Need for Change?*, Leiden, Martinus Nijhoff, 2005, pp. 75–90.

<sup>6</sup> In particular, “reserved domain” or matters relating to the internal affairs of the State, “intervention”, “coercion”, etc.

on racial discrimination<sup>7</sup> and apartheid,<sup>8</sup> and the principles of democratic legitimacy,<sup>9</sup> the rule of law<sup>10</sup> and the imperative of protecting human rights. Even more significant in this respect is the development of the doctrine of the responsibility to protect.<sup>11</sup>

10. There is nonetheless a system of international rights and obligations inherent in the enshrinement of the principle in question in international relations. The manipulation of this system to suit the subjective interests at stake raises, in turn, the question of legal certainty, predictability and enforceability when the principle is invoked in a particular case.

11. The Commission could also consider the possibility of analysing the notion of coercion in treaty-making, insofar as it seems likely to constitute another form of unlawful intervention in the internal affairs of a State.<sup>12</sup> The Commission could thus help to define and clarify the parameters of this principle in the light of recent developments in international relations.

## II. Issues to be addressed in the study on non-intervention in international law

12. Determining what is and what is not permissible under the principle of non-intervention in international law basically entails defining the concept of intervention

<sup>7</sup> Security Council resolution 217 (1965) of 20 November 1965; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965; Ben Achour, R., “Changements Anticonstitutionnels de Gouvernement et Droit International”, in *Collected Courses of the Hague Academy of International Law*, vol. 379, Brill-Nijhoff, Leiden-Boston, 2016, pp. 397–548, at pp. 438 ff.

<sup>8</sup> General Assembly resolutions 395 (V) of 2 December 1950 and 511 (VI) of 12 January 1952; International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973; P. Pierson-Mathy, “L’Action des Nations Unies contre l’Apartheid”, in *Belgian Review of International Law*, 1970, vol. 1, pp. 203–245.

<sup>9</sup> L.-A. Sicilianos, *L’ONU et la démocratisation de l’État*, Paris, Pedone, 2000; Guarino, G., “Autodétermination des peuples, respect de la volonté populaire et Charte africaine de la démocratie”, in R. Ben Achour (ed.), *Les changements anticonstitutionnels de gouvernement. Approches de droit constitutionnel et de droit international*, international symposium held in Tunis on 4 and 5 April 2013, *Les Cahiers de l’Institut Louis-Favoreu*, No. 3, Presses universitaires d’Aix-Marseille, 2014, pp. 134 ff.

<sup>10</sup> General Assembly resolution 62/7, 2007. J. Chevallier, *L’État de droit*, 7th ed., Paris, Librairie générale de droit et de jurisprudence, Coll.: Clefs, 2023, 168 pp.

<sup>11</sup> Report of the International Commission on Intervention and State Sovereignty on the Responsibility to Protect, December 2001; report of the Secretary-General on implementing the responsibility to protect (A/63/677), 12 January 2009.

<sup>12</sup> United Nations Conference on the Law of Treaties, first session, Vienna, 26 March–24 May 1968, *Official Records, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11), 1969; see also second session, Vienna, 9 April–22 May 1969, *Official Records, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11/Add.1), 1970; first and second sessions, Vienna, 26 March–24 May 1968 and 9 April–22 May 1969, *Official Records, Documents of the Conference* (A/CONF.39/11/Add.2), 1971; United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, vol. I, Vienna, 18 February–21 March 1986, *Official Records, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.129/16), 1995; vol. II, Vienna, 18 February–21 March 1986, *Official Records, Documents of the Conference* (A/CONF.129/16/Add.1), 1995. See also G. Tenekides, “Les effets de la contrainte sur les traités à la lumière de la Convention de Vienne du 23 mai 1969”, in *Annuaire français de droit international*, 1974, vol. 20, pp. 79–102; International Court of Justice, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1973, p. 3, at p. 14, para. 24. See also O. Corten and P. Klein (eds.), *Les conventions de Vienne sur le droit des traités*, Brussels, Bruylant, 2006 (3 volumes), 3024 pp., in particular the commentaries on articles 51 (Giovanni Distefano) and 52 (Olivier Corten). See also the English version edited by the same authors, *The Vienna Conventions on the Law of Treaties: A Commentary*, Oxford, Oxford University Press, 2011, 1128 pp.; T. Garcia and L. Chan-Tung, *La Convention de Vienne sur le droit des traités: bilan et perspectives 50 ans après son adoption*, Paris, Pedone, 2019, 204 pp.

more precisely. This is a daunting task, because the concept is long-standing, vague and in constant evolution.<sup>13</sup> In a contemporary international context marked by uncertainty and complexity in the relations between subjects of law, in the wake of numerous conceptual and structural changes in the international legal order, taking stock of established State practices and attitudes and of State conduct in relation to the invocation of this principle appears essential for determining its exact legal import and its concrete effects in contemporary international relations.

## A. Title of the proposed topic

13. The title chosen, “The principle of non-intervention in international law”, is intended to delimit the scope of the study, which will not cover the implications of invoking this principle from the perspective of international relations in general. In terms of content, the topic is focused on specific considerations relating to the “legal discourse on non-intervention and international practice”, to echo the title of the proceedings of the seventh Reims colloquium, held in 1986.<sup>14</sup>

14. The relevant international practice to be referenced involves both States and other subjects of international law capable of intervening in the internal affairs of States through various legal procedures.

15. The wording suggested for this principle may potentially encompass actors on the international scene other than States and international organizations. International financial institutions and multinational corporations, in particular, have emerged as having the capacity and the power to play an active and often insidious role in reorienting whole swathes of States’ domestic policies by imposing conditionalities that ultimately turn out to be veiled measures of coercion.<sup>15</sup> United Nations reports have established the responsibility of multinational corporations as perpetrators of economic crimes that can destabilize national Governments.

## B. Content and significance of the principle of non-intervention in international law

16. The Charter of the United Nations established the principle of non-intervention in the internal affairs of other States. General Assembly resolution 2625 (XXV) subsequently addressed it in detail.<sup>16</sup> The legal meaning of the principle in State practice nevertheless remains shrouded in uncertainty, which explains its fluidity. International law experts and

<sup>13</sup> E. David, “Portée et Limite du Principe de Non-Intervention”, in *Belgian Review of International Law*, 1990, vol. 2, Éditions Bruylant, Brussels, p. 350.

<sup>14</sup> *Réalités du droit international contemporain*, proceedings of the seventh Reims colloquium on “Le discours juridique sur la non-intervention et la pratique internationale”, 2 and 3 June 1986.

<sup>15</sup> F. Polet, “Que devient la conditionnalité néolibérale?”, in B. Dutermé (ed.), *Économies du Sud: toujours sous conditions néolibérales?*, Éditions Syllepse, Coll.: Alternatives Sud, 2022, pp. 7–24. Some studies have challenged conditionalities such as those imposed by the International Monetary Fund: <https://www.imf.org/en/About/Factsheets/Sheets/2023/IMF-Conditionality>; <https://www.csogffhub.org/resources/unhealthy-conditions-imf-loan-conditionality-and-its-impact-on-health-financing/>; <https://publicservices.international/resources/news/les-conditionnalites-du-fmi-ont-des-consquences-nfastes-sur-la-sant-rapport-eurodad?id=9958&lang=en>; and by the World Bank: “Conditionnalités de la Banque mondiale aux Philippines et en Indonésie”, in B. Dutermé (ed.), *Économies du Sud: toujours sous conditions néolibérales?*, Éditions Syllepse, Coll.: Alternatives Sud, 2022, pp. 29–46.

<sup>16</sup> General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970. See also General Assembly resolutions 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 21 December 1965; 2225 (XXI), Status of the implementation of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 19 December 1966; and 36/103, Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, 9 December 1981.

State representatives are generally able to perceive what the principle of non-intervention looks like in spirit, while remaining deeply divided as to its implications and scope.<sup>17</sup> State practice in this area is obviously abundant. It is, however, contradictory and has developed in all directions, depending on the spatial and temporal context in which it is invoked.

17. The political, ideological or geostrategic interests and motives underlying the actions and reactions of the players involved in each specific case do not help to clarify the matter. The many expressions and guises in which the principle is embodied further obscure its meaning.

### III. Invocation of the principle in international practice

#### A. Treaty practice of States

##### 1. Treaty practice at the universal level

18. The treaty practice of States, as reflected in universal treaties referring to or including the principle of non-intervention in international law, such as the Charter of the United Nations and other agreements of this nature, will be analysed as part of the study. In the same vein, the Commission will examine constituent and other legal instruments of specialized agencies of the United Nations system in particular, insofar as they establish the principle of non-intervention. One example is the Constitution of the United Nations Educational, Scientific and Cultural Organization. Its article I (3) provides that “the Organization is prohibited from intervening in matters which are essentially within [the] domestic jurisdiction” of its member States. Provisions of this kind are also found in the Articles of Agreement of the International Monetary Fund<sup>18</sup> and the Articles of Agreement of the International Bank for Reconstruction and Development.<sup>19</sup>

##### 2. Treaty practice at the regional level

19. Reference will also be made to the constituent instruments of regional organizations and other relevant legal texts that establish the principle of non-intervention in the relations between States in the regions concerned or, at the very least, the principle of non-interference, whose relationship with the principle of non-intervention will need to be explored.

20. In the case of Africa, article 4 (g) of the Constitutive Act of the African Union refers to the principle of “non-interference by any Member State in the internal affairs of another”.<sup>20</sup> The Protocol relating to the Establishment of the Peace and Security Council of the African Union refers to this principle in identical terms.<sup>21</sup> It is also alluded to in the Pact on Security, Stability and Development in the Great Lakes Region, whereby “[m]ember States undertake to base their relations on respect for the principles ... of non-interference in the internal affairs of other Member States”.<sup>22</sup>

21. For Europe, the principle of non-intervention appears in the 1975 Helsinki Final Act of the Conference on Security and Co-operation in Europe. Title V of the Treaty on European Union, “General provisions on the Union’s external action and specific provisions on the Common Foreign and Security Policy”, makes implicit reference to the principle.<sup>23</sup> The same is true of the 1990 Charter of Paris for a New Europe, adopted at the Meeting of Heads of State or Government of the participating States of the Conference on Security and Co-operation in Europe.

<sup>17</sup> B. Conforti, “Chapitre XXII: Le principe de non-intervention”, in M. Bedjaoui (ed.), *Droit international: bilan et perspectives*, vol. 2, Paris, Pedone, 1991, pp. 489–500.

<sup>18</sup> Art. IV, sect. 3 (b).

<sup>19</sup> Art. IV, sect. 10.

<sup>20</sup> Constitutive Act of the African Union, Lomé, 11 July 2000.

<sup>21</sup> Protocol relating to the Establishment of the Peace and Security Council of the African Union, Durban, 9 July 2002.

<sup>22</sup> Pact on Security, Stability and Development in the Great Lakes Region, Nairobi, 15 December 2006.

<sup>23</sup> See art. 21.

22. Although the Treaty on European Union and the Charter of Paris do not refer directly to the principle of non-intervention, they refer explicitly to the principles of the Helsinki Final Act, including the principle of non-intervention.

23. For the Americas, this principle is set out in article 8 of the Convention on Rights and Duties of States, adopted by the Seventh International Conference of American States and signed at Montevideo on 26 December 1933. In 1936, the States Parties to this Convention “resolved to reaffirm this principle through the negotiation” of the Additional Protocol Relative to Non-Intervention, adopted at the Inter-American Conference for the Maintenance of Peace.<sup>24</sup> The Charter of the Organization of American States, signed in Bogotá on 30 April 1948, also enshrines the principle of non-intervention in the internal affairs of States.<sup>25</sup>

24. For Asia, the Charter of the Islamic Conference, adopted in Jeddah on 4 March 1972 by the Third Islamic Conference of Foreign Ministers, establishes respect for “the right of self-determination and non-interference in the domestic affairs” of member States.<sup>26</sup>

### **3. Treaty practice at the bilateral level**

25. For the purposes of the present study, it is important for the Commission to also take into consideration bilateral treaty practice between States, between States and international organizations and between international organizations when such practice involves this principle. Such treaties could include headquarters agreements between States and international organizations or other bilateral agreements between States.

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<sup>24</sup> See art. 1.

<sup>25</sup> See arts. 15 and 16.

<sup>26</sup> Preamble and art. 1 (3).

## B. Practice in international organizations

### 1. Situations in which the principle of non-intervention has been invoked in the practice of United Nations organs

26. The principle of non-intervention has been invoked in many situations dealt with by United Nations organs. The subject matter spans a variety of areas or issues in the relations between Members of the United Nations or between them and the Organization. These situations have been dealt with essentially by the General Assembly,<sup>27</sup> the General Assembly and the Economic and Social Council,<sup>28</sup> the Security Council<sup>29</sup> and the International Court of Justice.<sup>30</sup>

### 2. Positions taken by States in United Nations organs

27. The relevant practice to which it is important to refer in this context also concerns the positions that States have adopted or expressed in debates within the organs of international

<sup>27</sup> Before the General Assembly, see, in particular, *Case No. 1: Relations of Member States with Spain*; *Case No. 2: Treatment of people of Indian origin in the Union of South Africa*; *Case No. 3: The question of convening conferences of representatives of Non-Self-Governing Territories*; *Case No. 4: The question of the establishment of committees on information transmitted under Article 73 e*; *Case No. 5: The question of the competence of the General Assembly to determine the Territories to which Article 73 e applies*; *Case No. 6: Threats to the political independence and territorial integrity of Greece*; *Case No. 7: Observance of human rights in the Union of Soviet Socialist Republics*; *Case No. 8: Observance of human rights in Bulgaria, Hungary and Romania*; *Case No. 9: The question of Morocco*; *Case No. 10: The Tunisian question*; *Case No. 11: The question of race conflict in the Union of South Africa*; *Case No. 24: The question of Cyprus*; *Case No. 25: The question of West Irian*; *Case No. 26: Complaint of detention and imprisonment of United Nations military personnel in violation of the Korean Armistice Agreement*; *Case No. 27: The question of Algeria*; *Case No. 30: The question of Hungary*; *Case No. 34: The policies of apartheid of the Government of the Republic of South Africa*; *Case No. 35: The question of Tibet*; *Case No. 36: The question of Oman*; *Case No. 37: The question of Southern Rhodesia*; *Case No. 38: The status of the German-speaking element in the Province of Bolzano (Bozen)*; *Case No. 39: The situation in Angola*; *Case No. 40: The situation in Aden*; *Case No. 41: Consideration of principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations*; *Case No. 42: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (resolution 2131 (XX))*; *Case No. 52: The Korean question*; *Case No. 54: The question of the Comorian island of Mayotte*; *Case No. 55: The colonial case of Puerto Rico*; *Case No. 56: The question of Palestine refugees in the Near East*; *Case No. 57: The question of Cambodia*; *Case No. 61: The situation in Kampuchea*; *Case No. 62: Question of the islands of Glorieuses, Juan de Nova, Europa and Bassas da India*; *Case No. 64: The situation in Afghanistan and its implications for international peace and security*; and many other cases: The question of the Comorian island of Mayotte; Human rights situations and reports of special rapporteurs and representatives; Enhancing the effectiveness of the principle of periodic and genuine elections; 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; The situation of human rights in Kosovo; The situation of human rights in Iraq; Consideration of the exceptional situation of the Republic of China on Taiwan in the international context; Promotion and protection of human rights: moratorium on the use of the death penalty; The situation of human rights in Myanmar; Human rights and State sovereignty, in *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954); vol. 1, *Supplement No. 1* (1954–1955); *Supplement No. 2* (1955–1959); *Supplement No. 3* (1959–1966); *Supplement No. 4* (1966–1969); *Supplement No. 5* (1970–1978); *Supplement No. 6* (1979–1984).

<sup>28</sup> Before the General Assembly and the Economic and Social Council, see, in particular, *Case No. 12: Draft International Covenants on Human Rights*; *Case No. 13: Recommendations concerning international respect for the self-determination of peoples*; *Case No. 58: The question of Greece*, in *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954); vol. 1, *Supplement No. 1* (1954–1955); *Supplement No. 2* (1955–1959); *Supplement No. 3* (1959–1966); *Supplement No. 4* (1966–1969); *Supplement No. 5* (1970–1978); *Supplement No. 6* (1979–1984).

<sup>29</sup> Before the Security Council, see, in particular, *Case No. 14: The Spanish question*; *Case No. 15: The Greek question (I)*; *Case No. 16: The Greek question (II)*; *Case No. 17: The Indonesian question*; *Case No. 18: The Czechoslovak question*; *Case No. 19: The Greek question (III)*; *Case No. 20: The*

organizations on the principle of non-intervention. The *Repertory of Practice of United Nations Organs* provides a representative sample of the conduct of States in this regard. This practice is taken up in section IV below, “Legal aspects to be considered by the Commission”. It is drawn essentially from the part of the *Repertory of Practice* on Article 2, paragraph 7, of the Charter.

### 3. Resolutions of United Nations organs

28. In the practice of United Nations organs, the principle of non-intervention has been addressed in an impressive number of resolutions, decisions, instruments and declarations.

29. The General Assembly has adopted many resolutions, decisions and declarations relating to this principle. Some of them reflect customary international law on the subject. Several texts can be cited in this regard, in particular resolutions 2131 (XX) on the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,<sup>31</sup> 2625 (XXV) on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations<sup>32</sup> and 36/103 on the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States.<sup>33</sup> Other landmark texts that primarily concern other matters are sometimes mentioned as involving the issue of non-intervention in the internal affairs of States.<sup>34</sup>

30. A number of other resolutions are noteworthy in this connection. For example, a series of resolutions have been adopted under the title “Non-interference in the internal affairs of

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Anglo-Iranian Oil Company question; *Case No. 21*: The question of Morocco; *Case No. 28*: The question of Algeria; *Case No. 31*: The question of Hungary; *Case No. 32*: The question of Oman; *Case No. 43*: The situation in the Republic of the Congo; *Case No. 44*: The question of race conflict in South Africa (I); *Case No. 45*: The question of race conflict in South Africa (II); *Case No. 46*: The situation in Angola (I); *Case No. 47*: The situation in Angola (II); *Case No. 48*: The situation in Southern Rhodesia; *Case No. 49*: The situation in the Dominican Republic; *Case No. 53*: The situation in Northern Ireland; *Case No. 59*: The situation in Chile; *Case No. 60*: Complaint by Democratic Kampuchea; *Case No. 63*: The Afghanistan situation; and many other cases: The situation in the Middle East; The question of South Africa; The situation in Namibia; The situation between Iraq and Kuwait; The situation in Iraq; The question of the membership of the Republic of Korea in the United Nations; The situation in Yugoslavia; The situation in the Republic of Yemen; The situation in the Democratic Republic of Korea; The situation in Liberia; The situation between Iraq and Kuwait; Protection of civilians in armed conflict; Situation in Kosovo, Federal Republic of Yugoslavia; The situation in Myanmar; The situation between Iraq and Kuwait; Protection of civilians in armed conflict; The maintenance of international peace and security; Prevention of armed conflicts, in *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954); vol. 1, *Supplement No. 1* (1954–1955); *Supplement No. 2* (1955–1959); *Supplement No. 3* (1959–1966); *Supplement No. 4* (1966–1969); *Supplement No. 5* (1970–1978); *Supplement No. 6* (1979–1984).

<sup>30</sup> International Court of Justice, *Anglo-Iranian Oil Co. case (United Kingdom v. Iran)*, *Preliminary Objection, Judgment of 22 July 1952, I.C.J. Reports 1952*; *Interhandel Case (Switzerland v. United States of America)*, *Preliminary Objections, Judgment of 21 March 1959, I.C.J. Reports 1959*; *Case concerning Right of Passage over Indian Territory (Portugal v. India)*, *Merits, Judgment of 12 April 1960*; *Nottebohm case (Liechtenstein v. Guatemala) (second phase)*, *Judgment of 6 April 1955*; *Case of Certain Norwegian Loans (France v. Norway)*, *Judgment of 6 July 1957*; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, 15 December 1989; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion, I.C.J. Reports 1950*, 30 March 1950. *Case No. 22*: Interpretation of peace treaties with Bulgaria, Hungary and Romania; *Case No. 23*: The Anglo-Iranian Oil Company case; *Case No. 29*: The Nottebohm case; *Case No. 33*: The case of certain Norwegian loans; *Case No. 50*: The Interhandel case; *Case No. 51*: The case concerning right of passage over Indian territory; *Advisory Opinion on the Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations*.

<sup>31</sup> Adopted on 21 December 1965.

<sup>32</sup> Adopted on 24 October 1970.

<sup>33</sup> Adopted on 9 December 1981.

<sup>34</sup> General Assembly resolution 1514 (XV) of 14 December 1960.

States”.<sup>35</sup> Others in the same vein have been adopted under various titles but include the question of non-intervention.<sup>36</sup>

31. It should also be noted that a number of resolutions relating to the principle of non-intervention in various fields of international law refer to the subject matter of the present study. For example, the General Assembly has adopted many resolutions on the specific theme of “economic measures as a means of political and economic coercion against developing countries”.<sup>37</sup> It has also adopted many others on non-intervention in the field of elections under the title “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”.<sup>38</sup> This theme has evolved to include the phrase “as an important element for the promotion [*défense*” in French] and protection of human rights”<sup>39</sup> or “as an important element for the promotion [*promotion*” in French] and protection of human rights”.<sup>40</sup> Other resolutions in the field of elections include those on “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization”<sup>41</sup> and on “Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization”.<sup>42</sup>

32. A number of other resolutions relating to the principle of non-intervention have been adopted on the “use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”.<sup>43</sup> Still others have been adopted on “human rights and unilateral coercive measures”.<sup>44</sup>

<sup>35</sup> General Assembly resolutions 31/91 of 14 December 1976; 32/153 of 19 December 1977; 33/74 of 15 December 1978; 34/101 of 14 December 1979; 35/159 of 12 December 1980.

<sup>36</sup> General Assembly resolutions 40/9, “Solemn appeal to States in conflict to cease armed action forthwith and to settle disputes between them through negotiations, and to States Members of the United Nations to undertake to solve situations of tension and conflict and existing disputes by political means and to refrain from the threat or use of force and from any intervention in the internal affairs of other States”, 8 November 1985; 55/2, “United Nations Millennium Declaration”, 8 September 2000; 60/1, “2005 World Summit Outcome”, 16 September 2005; 3171 (XXVIII), “Permanent sovereignty over natural resources”, 17 December 1973; 3201 (S-VI), “Declaration on the Establishment of a New International Economic Order”, 1 May 1974; 3281 (XXIX), “Charter of Economic Rights and Duties of States”, 12 December 1974.

<sup>37</sup> General Assembly resolutions 39/210 of 18 December 1984, 40/185 of 17 December 1985, 41/165 of 5 December 1986, 42/173 of 11 December 1987, 44/215 of 22 December 1989, 46/210 of 20 December 1991, 48/168 of 21 December 1993, 52/181 of 18 December 1997, 54/200 of 22 December 1999, 56/179 of 21 December 2001, 58/198 of 23 December 2003, 60/185 of 22 December 2005, 62/183 of 19 December 2007, 64/189 of 21 December 2009, 66/186 of 22 December 2011, 68/200 of 20 December 2013, 70/185 of 22 December 2015, 72/201 of 20 December 2017, 74/200 of 19 December 2019, 76/191 of 17 December 2021.

<sup>38</sup> General Assembly resolutions 44/147 of 15 December 1989, 45/151 of 18 December 1990, 46/130 of 17 December 1991, 47/130 of 18 December 1992, 48/124 of 20 December 1993, 50/172 of 22 December 1995, 52/119 of 12 December 1997, 54/168 of 17 December 1999.

<sup>39</sup> General Assembly resolution 56/154 of 19 December 2001.

<sup>40</sup> General Assembly resolutions 58/189 of 22 December 2003 and 60/164 of 16 December 2005.

<sup>41</sup> General Assembly resolution 62/150 of 18 December 2007.

<sup>42</sup> General Assembly resolutions 64/155 of 18 December 2009, 66/163 of 19 December 2011, 68/164 of 18 December 2013, 70/168 of 17 December 2015, 72/164 of 19 December 2017, 74/158 of 18 December 2019, 76/164 of 16 December 2021.

<sup>43</sup> General Assembly resolutions 64/151 of 18 December 2009, 65/203 of 21 December 2010, 66/147 of 19 December 2011, 67/159 of 20 December 2012, 68/152 of 18 December 2013, 69/163 of 18 December 2014, 70/142 of 17 December 2015, 71/182 of 19 December 2016, 72/158 of 19 December 2017, 73/159 of 17 December 2018, 74/138 of 18 December 2019, 75/171 of 16 December 2020, 76/151 of 16 December 2021, 77/206 of 15 December 2022.

<sup>44</sup> General Assembly resolutions 51/103 of 12 December 1996, 52/120 of 12 December 1997, 53/141 of 9 December 1998, 54/172 of 17 December 1999, 55/110 of 4 December 2000, 56/148 of 19 December 2001, 57/222 of 18 December 2002, 58/171 of 22 December 2003, 59/188 of 20 December 2004, 60/155 of 16 December 2005, 61/170 of 19 December 2006, 62/162 of 18 December 2007, 63/179 of 18 December 2008, 64/170 of 18 December 2009, 65/217 of 21 December 2010, 66/156 of 19 December 2011, 67/170 of 20 December 2012, 68/162 of 18 December 2013, 69/180 of 18 December 2014, 70/151 of 17 December 2015, 71/193 of 19 December 2016, 72/168 of 19 December 2017, 73/167 of 17 December 2018, 74/154 of

33. Also included in the scope of this study are resolutions adopted following the debates on the situations listed in the part of the *Repertory of Practice of United Nations Organs* concerning Article 2, paragraph 7, of the Charter of the United Nations.

#### 4. Practice in regional organizations

34. General Assembly resolution 2131 (XX) of 21 December 1965 provides an important overview of regional practice by noting, in particular, that the principle of non-intervention was “affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Cooperation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion adopted at Accra by the Heads of State and Government of the African States”.

35. More recent resolutions, declarations and decisions of regional organizations that reflect their practice on the principle of non-intervention in international relations will also be analysed.

### C. International practice of States

36. The principle of non-intervention can also be found in the unilateral practice of States under international law. In this regard, reference will be made essentially to optional declarations of acceptance of the compulsory jurisdiction of the International Court of Justice. The declarations considered will be those that are still in force, while others may be mentioned for historical reasons. Their relevance lies in the fact that they reflect the position of States on matters relating to the principle of non-intervention in international law.

### D. National practice of States

37. The national practice of States will be examined as well. The analysis will encompass all relevant State practice, whether legislative, executive, judicial or other, in connection with the issue of non-intervention. The pragmatic usefulness of such practice stems from the light that it sheds on States’ perception of the principle of non-intervention, which is likely to explain their attitudes and conduct under international law in relation to this issue.

### E. International legal practice

38. The abundant international case law on the question of non-intervention is worthy of consideration. The Commission will focus in particular on the legal practice of the Permanent Court of International Justice, which issued judgments and advisory opinions<sup>45</sup> dealing with the principle of non-intervention. In particular, the Court ruled on the meaning of one of the constituent elements of the principle of non-intervention.<sup>46</sup>

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18 December 2019, 75/181 of 16 December 2020, 76/161 of 16 December 2021, 77/214 of 15 December 2022.

<sup>45</sup> Permanent Court of International Justice, *Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion No. 4*, 7 February 1923, Series B.

<sup>46</sup> Permanent Court of International Justice, *Nationality Decrees Issued in Tunis and Morocco, op. cit.*, pp. 23 and 24.

39. Subsequently, the International Court of Justice also issued a number of judgments<sup>47</sup> and advisory opinions<sup>48</sup> of practical relevance to the present topic.<sup>49</sup> As its predecessor had done, the International Court of Justice has ruled on the question of non-intervention in international law with regard to the actors involved in the practice on this principle, the form of such practice and the subject matter of the intervention.<sup>50</sup> It has also ruled on the criterion of unlawfulness of the intervention and on a number of typical examples of acts constituting interventions prohibited under international law.<sup>51</sup>

40. In addition, the Court has ruled on aspects of this principle in other cases, both contentious and advisory.<sup>52</sup> Its decisions have involved, in particular, determining the scope of one of the constituent elements of non-intervention, in this case the reserved domain of the State or the matters forming part of it.<sup>53</sup>

#### IV. Legal aspects to be considered by the Commission

41. The legal questions raised by the principle of non-intervention mainly concern the definition of its meaning and significance, in the light of the practice identified.

42. International case law generally recognizes two essential conditions for determining the existence of an unlawful intervention in the internal affairs of a State. On the one hand, the act by the intervening State must concern matters pertaining to the internal affairs of another State; on the other, it must represent coercion against the victim State with regard to matters over which that State is recognized, under international law, as having freedom of action and freedom of choice.<sup>54</sup>

<sup>47</sup> International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, paras. 259 ff.; *Interhandel Case* (*Switzerland v. United States of America*), Preliminary Objections, Judgment, 21 March 1959, I.C.J. Reports 1959, p. 23; *Case concerning Right of Passage over Indian Territory* (*Portugal v. India*), Merits, Judgment of 12 April 1960, p. 31; *Nottebohm case* (*Liechtenstein v. Guatemala*) (second phase), judgment of 6 April 1955, p. 21; *Case of Certain Norwegian Loans* (*France v. Norway*), Judgment of 6 July 1957, pp. 8, 21 and 22; *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda*), Judgment, I.C.J. Reports 2005; *Anglo-Iranian Oil Co. case* (*United Kingdom v. Iran*), Preliminary Objection, Judgment of 22 July 1952, I.C.J. Reports 1952, p. 10.

<sup>48</sup> International Court of Justice: *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion, 30 March 1950, pp. 9 and 10; *Western Sahara*, Advisory Opinion of 16 October 1975, I.C.J. Reports 1975, para. 94; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, 15 December 1989.

<sup>49</sup> International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, p. 24, para. 48.

<sup>50</sup> International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua*, *op. cit.*, p. 108, para. 205; *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*) and *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*), Judgment of 16 December 2015, I.C.J. Reports 2015, p. 738, para. 223.

<sup>51</sup> International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua*, *op. cit.*, p. 108, para. 205; *Certain Activities Carried Out by Nicaragua in the Border Area*, *op. cit.*, p. 738, para. 223.

<sup>52</sup> International Court of Justice, *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, *op. cit.* See also the separate opinion of Judge Shahabuddeen attached to this advisory opinion, p. 43.

<sup>53</sup> International Court of Justice: *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *op. cit.*, pp. 9 and 10; *Interhandel Case*, *op. cit.*, pp. 24 ff.; *Case concerning Right of Passage over Indian Territory*, *op. cit.*, p. 33.

<sup>54</sup> International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua*, *op. cit.*, p. 108, para. 205; *Certain Activities Carried Out by Nicaragua in the Border Area*, *op. cit.*, and *Construction of a Road in Costa Rica along the San Juan River*, *op. cit.*, p. 738, para. 223.

## A. Intervention and unlawfulness of intervention

### 1. Definition of “intervention”

43. The term “intervention” is one of the key elements of the principle of non-intervention in international law. During debates within United Nations organs, “[s]ome representatives held that ‘intervention’ was a technical term traditionally defined in international law as ‘dictatorial interference’, and that that definition was applicable to Article 2 (7).<sup>55+56</sup>

44. According to this practice, intervention prohibited under international law was said to be characterized by “dictatorial interference” with the State subjected to it. Moreover, it was understood that “[t]he term ‘to intervene’ denoted interference of an imperative character”.<sup>57</sup> Obviously, this remained a question to be assessed *in concreto* on a case-by-case basis, given that “the question of whether action by a United Nations organ had the imperative element important to the notion of ‘intervention’ could be answered only by reference to the language of the relevant resolution and to the attendant circumstances”.<sup>58</sup>

45. It should be noted, however, that in the practice of United Nations organs, “[n]o decision has been found containing a general definition of intervention in the sense of Article 2 (7)”.<sup>59</sup> This conclusion has not changed over time, as “[n]o decision appears to have been taken containing a general definition of the term”.<sup>60</sup> On the other hand, in the absence of a general definition, the term “intervention” has been considered in relation to certain categories of measures. The question to be determined was whether, in a given situation, these measures amounted to intervention in the internal affairs of a State whose situation was under consideration by a United Nations organ. One such question was whether the inclusion of an item in the agenda<sup>61</sup> of a United Nations organ and/or its discussion<sup>62,63</sup> constituted intervention.<sup>64</sup> This trend has continued over the years.<sup>65,66</sup> Some States answer this question in the affirmative, while others take the opposite view, reflecting a lack of consensus in the practice of United Nations organs.<sup>67</sup>

<sup>55</sup> *Case No. 2*: G A (III/1), Plen., 146th mtg., p. 226; G A (III/2), 1st Com., 267th mtg., p. 308; G A (VIII), Suppl. No. 16, paras. 139–141 ... (G A (V), *Ad Hoc* Pol. Com., 42nd mtg., para. 57; 43rd mtg., para. 8; 45th mtg., para. 10). *Case No. 11*: G A (VII), *Ad Hoc* Pol. Com., 18th mtg., para. 19; G A (VIII), *Ad Hoc* Pol. Com., 36th mtg., para. 30.

<sup>56</sup> *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954), para. 342.

<sup>57</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 3* (1959–1966), para. 279.

<sup>58</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 3* (1959–1966), para. 279.

<sup>59</sup> *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954), para. 344.

<sup>60</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 1* (1954–1955), para. 120.

<sup>61</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 5* (1970–1978), para. 53. See G A (28), Gen. Com., 212th mtg., para. 67.

<sup>62</sup> *Case No. 2*: G A (VI), Plen., 341st mtg., para. 37. *Case No. 11*: G A (VII), Plen., 381st mtg., paras. 21–28; G A (VIII), Plen., 435th mtg., para. 32. *Case No. 18*: S C, 3rd yr., Nos. 36–51, 268th mtg., pp. 90–97. *Case No. 20*: S C, 6th yr., 559th mtg., para. 4.

<sup>63</sup> See *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954), para. 347.

<sup>64</sup> *Case No. 2*: G A (VI), Plen., 341st mtg., para. 33; G A (VII), Plen., 380th mtg., paras. 130 *et seqq.*; G A (VIII), Plen., 435th mtg., paras. 6 *et seqq.* *Case No. 7*: G A (III/1), General Com., 43rd mtg., pp. 10 and 11; Plen., 142nd mtg., pp. 97, 98 and 108. *Case No. 8*: G A (III/2), Plen., 190th mtg., pp. 20–29; G A (V), Plen., vol. I, 284th mtg., paras. 137–157. *Case No. 9*: G A (VII), General Com., 79th mtg., para. 18. *Case No. 10*: G A (VII), General Com., 79th mtg., para. 18. *Case No. 11*: G A (VII), Plen., 381st mtg., paras. 1–67; G A (VIII), Plen., 435th mtg., paras. 19–48. *Case No. 15*: S C, 1st yr., 2nd Series, No. 7, 59th mtg., p. 196. *Case No. 18*: S C, 3rd yr., Nos. 36–51, 268th mtg., pp. 90, 91 and 96. *Case No. 19*: S C, 5th yr., No. 35, 493rd mtg., pp. 22 and 23. *Case No. 20*: S C, 6th yr., 559th mtg., paras. 3, 4 and 9–12. *Case No. 21*: S C, 8th yr., 619th mtg., paras. 25–31; 620th mtg., paras. 16–24; 623rd mtg., para. 29.

<sup>65</sup> *Case No. 54*: see footnote 3 above. *Case No. 55*: see footnote 13 above. *Case No. 60*: see footnote 47 above. *Case No. 61*: see footnotes 16–17 above. *Case No. 62*: see footnote 26 above. *Case No. 63*: see footnote 57 above. *Case No. 64*: see footnote 36 above.

<sup>66</sup> See *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 6* (1979–1984), para. 67.

<sup>67</sup> *Case No. 2*: G A (VII), Plen., 380th mtg., para. 137. *Case No. 7*: G A (III/1), General Com., 43rd mtg., pp. 10 and 11. *Case No. 8*: G A (III/2), Plen., 190th mtg., pp. 24 and 28; G A (V), Plen., vol. I, 284th mtg., para. 159. See *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954),

46. Nevertheless, intervention has not always been defined as having a “dictatorial” or “imperative” character, according to some teachings. It is argued in this connection that even when intervention is not “dictatorial” or “coercive”, it can still be considered interference in matters which are essentially within the domestic jurisdiction of a State and is therefore prohibited under international law.<sup>68</sup>

47. Accordingly, the Commission could consider the definition of both the content and the parameters of the concept of “intervention”. It would focus in particular on the types of acts and facts of the subjects and actors of international law that should be considered to fall within the scope of this concept, including new phenomena that are not covered by the existing criteria concerning the principle of non-intervention. In fact, recent State practice includes examples of actions by one State against another that *prima facie* seem to fall outside the legal framework applicable to this principle. For instance, actions in cyberspace can raise relevant substantive issues.<sup>69</sup>

## 2. The nature of prohibited intervention

48. The Charter of the United Nations does not specify the type of intervention prohibited under international law, whereas other instruments expressly do so. For example, the 1975 Final Act of the Conference on Security and Co-operation in Europe prohibits “any form of armed intervention or threat of such intervention against another participating State”, but also

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para. 349. See also *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954), para. 350. See *Case No. 2*: G A (III/1), Plen., 146th mtg., p. 226. *Case No. 8*: G A (III/2), Plen., 189th mtg., p. 12. *Case No. 11*: G A (VII), Plen., 381st mtg., para. 102. Also: *Case No. 55*: G A (37), Plen., 4th mtg., a.i. 8: Cuba, para. 25; Gen. Comm., 2nd mtg.: Cuba, paras. 52–54; Libyan Arab Jamahiriya, para. 57; Nicaragua, para. 59; USSR, para. 65; Poland, para. 66. *Case No. 60*: S C (34), 2108th mtg., paras. 17–22. *Case No. 61*: G A (34), Gen. Comm., 2nd mtg.: Thailand, para. 18; Costa Rica, para. 31; Singapore, para. 37; United States, para. 38; United Kingdom, para. 40; Papua New Guinea, para. 41; G A (35), Gen. Comm., 1st mtg.: China, para. 39; Malaysia, para. 41; Thailand, para. 42; G A (36), Gen. Comm., 1st mtg.: Philippines, para. 29; China, para. 30; G A (37), Gen. Comm., 1st mtg.: China, para. 30; G A (38), Gen. Comm., 1st mtg.: Thailand, para. 46; China, para. 47; G A (39), Gen. Comm., 1st mtg.: Malaysia, paras. 31–32; China, para. 35. *Case No. 62*: G A (34), Gen. Comm., 5th mtg.: Madagascar, paras. 5, 7; Mozambique, para. 11; Libyan Arab Jamahiriya, para. 16. *Case No. 63*: S C (35), 2185th mtg., paras. 35 and 37. *Case No. 64*: G A (35), Plen., 3rd mtg., paras. 82, 84–86, 90, 92 and 96; Gen. Comm., 1st mtg.: Pakistan, para. 113; Madagascar, para. 119; G A (36), Plen., 4th mtg., a.i. 8: Pakistan, 6th and 7th paras.; Australia, 3rd para.; and China, 2nd para.; Gen. Comm., 1st mtg., paras. 44 and 46; G A (37), Plen., 4th mtg., a.i. 8: Pakistan, 1st and 2nd paras., and China, 1st and 3rd paras.; Gen. Comm., 1st mtg., paras. 57–59 and 62; G A (39), Gen. Comm., 1st mtg.: Pakistan, para. 50; China, paras. 55 and 57. See also *Case No. 55*: G A (37), Plen., 4th mtg., a.i. 8: Cuba, para. 25; Gen. Comm., 2nd mtg.: Cuba, paras. 52–54; Libyan Arab Jamahiriya, para. 57; Nicaragua, para. 59; USSR, para. 65; Poland, para. 66. *Case No. 60*: S C (34), 2108th mtg., paras. 17–22. *Case No. 61*: G A (34), Gen. Comm., 2nd mtg.: Thailand, para. 18; Costa Rica, para. 31; Singapore, para. 37; United States, para. 38; United Kingdom, para. 40; Papua New Guinea, para. 41; G A (35), Gen. Comm., 1st mtg.: China, para. 39; Malaysia, para. 41; Thailand, para. 42; G A (36), Gen. Comm., 1st mtg.: Philippines, para. 29; China, para. 30; G A (37), Gen. Comm., 1st mtg.: China, para. 30; G A (38), Gen. Comm., 1st mtg.: Thailand, para. 46; China, para. 47; G A (39), Gen. Comm., 1st mtg.: Malaysia, paras. 31–32; China, para. 35. *Case No. 62*: G A (34), Gen. Comm., 5th mtg.: Madagascar, paras. 5, 7; Mozambique, para. 11; Libyan Arab Jamahiriya, para. 16. *Case No. 63*: S C (35), 2185th mtg., paras. 35 and 37. *Case No. 64*: G A (35), Plen., 3rd mtg., paras. 82, 84–86, 90, 92 and 96; Gen. Comm., 1st mtg.: Pakistan, para. 113; Madagascar, para. 119; G A (36), Plen., 4th mtg., a.i. 8: Pakistan, 6th and 7th paras.; Australia, 3rd para.; and China, 2nd para.; Gen. Comm., 1st mtg., paras. 44 and 46; G A (37), Plen., 4th mtg., a.i. 8: Pakistan, 1st and 2nd paras., and China, 1st and 3rd paras.; Gen. Comm., 1st mtg., paras. 57–59 and 62; G A (39), Gen. Comm., 1st mtg.: Pakistan, para. 50; China, paras. 55 and 57. *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 6* (1979–1984), para. 67.

<sup>68</sup> H. Rolin, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, submitted by Charles Rousseau (Second Commission), in *Yearbook of the Institute of International Law*, issue 44, vol. I, 1952, p. 175.

<sup>69</sup> *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2nd ed., Cambridge, Cambridge University Press, 2017. See also the critical study by B. Karine, “‘Rien que la *lex lata*’? Étude critique du Manuel de Tallinn 2.0 sur le droit international applicable aux cyber-opérations”, in *Annuaire français de droit international*, vol. 63, 2017, pp. 121–160.

“any other act of military, or of political, economic or other coercion”. The Charter of the Organization of American States “prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements”. Article 20 of the Charter provides that “[n]o State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind”.

49. Resolutions adopted by United Nations organs contain similar provisions. The principal General Assembly resolutions on the question refer to various types of intervention, whether armed, political and/or economic or in any other way incompatible with the Charter of the United Nations. General Assembly resolutions 2131 (XX) on the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,<sup>70</sup> 2625 (XXV) on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations<sup>71</sup> and 36/103 on the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States<sup>72</sup> are somewhat more specific in this regard.

50. It is nonetheless true that State practice concerning the nature of the measures that amount to intervention prohibited under international law is not very clear. Armed activities are consistently recognized as typifying the kinds of actions prohibited by this principle. This is true of both the threat and the use of armed force against a State. Other measures generally referred to include those whereby a State encourages unlawful activities by non-State actors against another State or allows such actors to use its territory to carry out such acts against another State. International case law and teachings also recognize this category in international practice. The nature of prohibited intervention has not received sufficient attention in the practice of United Nations organs.

51. Conversely, economic measures do not seem to be similarly accepted in State practice as constituting or potentially constituting acts of prohibited intervention. An analysis of this practice shows that some economic measures are still widely tolerated among States. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice did not rule out such measures as a matter of principle, but noted that it was “unable to regard such action on the economic plane as is here complained of as a breach of the customary-law principle of non-intervention”.<sup>73</sup>

52. The Secretary-General of the United Nations has also recognized that “(a) [t]here is no clear consensus in international law as to when coercive economic measures are improper, despite relevant treaties, declarations and resolutions adopted in international organizations which try to develop norms limiting the use of such measures ...; (d) [t]he United Nations should establish a capacity to deal with coercive economic measures. The designated entity should strive to develop the concept and related criteria, in close consultation with Member States”.<sup>74</sup>

53. It is necessary to identify these different categories of measures in order to decide whether or not they are lawful under the principle of non-intervention in international law. It will also be important to take into account the practice of the Security Council on the adoption and use of economic measures to maintain or restore peace. Under the Charter of the United Nations, this organ “may decide what measures not involving the use of armed force are to be employed to give effect to its decisions”.<sup>75</sup>

<sup>70</sup> Adopted on 21 December 1965.

<sup>71</sup> Adopted on 24 October 1970.

<sup>72</sup> Adopted on 9 December 1981.

<sup>73</sup> International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua, Merits*, *op. cit.*, para. 245.

<sup>74</sup> Note by the Secretary-General on economic measures as a means of political and economic coercion against developing countries (A/48/535), 25 October 1993.

<sup>75</sup> Article 41 of the Charter of the United Nations.

### 3. Forms of intervention covered by the principle of non-intervention in international law

54. The international legal instruments and resolutions of United Nations organs referred to above prohibit “direct” or “indirect”, “individual” or “collective” intervention in “internal” or “external” affairs which are essentially within the domestic jurisdiction of a State.

55. It has sometimes been argued that non-intervention in international law has a much broader meaning and cannot be confined solely to Article 2 (7) of the Charter. An analysis of the practice of United Nations organs shows that, “on the question of the relation between Article 2 (7) and the principle of ‘non-intervention’ ... although there existed a tendency to use the term ‘non-intervention’ to cover non-intervention in matters within the national jurisdiction of a State, as embodied in Article 2 (7) of the Charter, that was only one aspect of non-intervention, which, in that restricted sense, should more accurately be referred to as non-interference (*non-ingérence*), for the concept of intervention in international law covered a much wider field than ‘immixtion’ in the internal affairs of another State, including also the unlawful use of force against another State, which was prohibited under Article 2 (4) of the Charter”.<sup>76</sup>

56. In some cases, Article 2 (7) of the Charter has been invoked in connection with the maintenance of international peace and security.<sup>77</sup> It has also been invoked in various other fields of international law, although it has not been clear what precise content was being referred to in each instance. In respect of the invocation of so-called democratic values, the relationship between the principle of rejecting governments said to be “undemocratic” or “unconstitutional” and the principle of non-intervention in the internal affairs of a State, which recalls the principle of constitutional autonomy,<sup>78</sup> should also be analysed and clarified, given that each State or people has the right freely to determine its political organization.<sup>79</sup> The same applies to the question of foreign State funding of non-governmental organizations under the jurisdiction or competence of other States, given that

<sup>76</sup> G A (XXII), 6th Com., 1001st mtg., para. 34. See *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 4* (1966–1969), para. 126.

<sup>77</sup> *Case No. 60*: S C (34), 2108th mtg.: China, para. 107; 2109th mtg.: Norway, para. 17; France, para. 43; and Bolivia, para. 55; 2110th mtg.: Gabon, para. 15; Portugal, para. 25; United Kingdom, para. 63; and United States, para. 72; 2111th mtg.: Japan, para. 15; Philippines, paras. 96–98. *Case No. 61*: G A (34), Plen., 62nd mtg.: Viet Nam, para. 61; Democratic Kampuchea, paras. 89 and 90–93; G A (35), Plen., 36th mtg.: Malaysia, para. 94; 37th mtg.: China, para. 23; 38th mtg.: Samoa, paras. 99–100; 39th mtg.: Canada, para. 43; 40th mtg.: Nepal, paras. 7–8; G A (36), Plen., 36th mtg.: Philippines, paras. 3 and 4; 37th mtg.: Pakistan, para. 51; Chile, paras. 80 and 82; and China, 2nd penultimate para.; G A (37), Plen., 47th mtg.: Pakistan, paras. 1 and 4; and United States, paras. 14 and 44; G A (38), Plen., 37th mtg.: Sudan, para. 88. *Case No. 62*: G A (34), Gen. Comm., 5th mtg.: paras. 3–8. *Case No. 63*: S C (35), 2185th mtg.: Bangladesh, para. 35; China, para. 37; and Egypt, para. 126; 2186th mtg.: China, para. 35; United Kingdom, paras. 52 and 54; Democratic Kampuchea, para. 105; Saudi Arabia, paras. 109–110; and New Zealand, para. 132; 2187th mtg.: United States, paras. 8, 20 and 25; Australia, para. 30; Singapore, para. 44; Norway, para. 52; Spain, para. 62; Somalia, para. 73; Malaysia, para. 86; Liberia, paras. 115 and 116; 2188th mtg.: Portugal, paras. 24 and 26; Venezuela, para. 37; Netherlands, paras. 55 and 56; and Jamaica, para. 98; 2189th mtg.: Bangladesh, para. 46; Niger, para. 56; Federal Republic of Germany, para. 63; and Yugoslavia, para. 80; 2190th mtg.: Panama, paras. 19 and 21; Zaire, para. 39; Canada, para. 63; Chile, paras. 77–79 and 84; and France, para. 127. *Case No. 64*: G A (ES-6), Plen., 2nd mtg.: Canada, paras. 14–15; Sweden, para. 51; Ecuador, paras. 95 and 96; Nigeria, para. 120; Spain, paras. 154 and 155; 3rd mtg.: Albania, para. 4; Austria, para. 25; Venezuela, paras. 81, 94 and 96; and France, para. 105; 4th mtg.: United States, paras. 78–80; Federal Republic of Germany, paras. 120 and 123; Turkey, paras. 130 and 131; 5th mtg.: Egypt, paras. 27 and 28; Zaire, paras. 56–66; New Zealand, para. 88; USSR, paras. 8 and 93; Chile, paras. 98, 102 and 109; Singapore, para. 185; 6th mtg.: Democratic Kampuchea, paras. 52 and 53; and 7th mtg.: Sierra Leone, para. 49; G A (35), Plen., 65th mtg.: Pakistan, paras. 22 and 23; 67th mtg.: Saudi Arabia, paras. 52 and 53; 68th mtg.: Bangladesh, paras. 60 and 61; G A (36), Plen., 58th mtg.: Malaysia, paras. 78 and 88.

<sup>78</sup> M. Kamto, “Constitution et principe de l’autonomie constitutionnelle”, in *Constitution et droit international*, International Academy of Constitutional Law, *Recueil des cours*, No. 8, Tunis, CPU, 2000.

<sup>79</sup> International Covenant on Civil and Political Rights, art. 1 (1).

the territorial States generally regard such activities as unlawful intervention in their internal affairs.

57. In the field of human rights, the resurgence of certain obsolete principles such as humanitarian intervention or humanitarian interference, particularly under the guise of the responsibility to protect, should also be analysed in terms of their relationship with the principle of non-intervention in international law. The Libyan crisis of 2011 provides a particularly relevant illustration. The same applies to interventions deemed unlawful by the States in which they occur, particularly under the guise of protecting ethnic and religious minorities, whenever such interventions involve the use of some form of coercion against a State in an area where it is recognized under international law as having freedom of action or freedom of choice.

## **B. The question of which matters are essentially within the domestic jurisdiction of States**

58. The ever-increasing material expansion of international law into almost all areas of State activity is likely to undermine certainties about the so-called “reserved domain” of the State, the existence of which affects the affirmation of the principle of non-intervention, as well as its observance or violation.<sup>80</sup> At its session of Aix-en-Provence on this issue, the Institute of International Law stated that the “reserved domain” is “the domain of State activities in which the jurisdiction of the State is not bound by international law”. But it added that “[t]he extent of this domain depends on international law and varies according to its development”.<sup>81</sup>

59. The Commission can accordingly focus on determining the precise content and scope of what should constitute the reserved domain of the State, and thus the matters pertaining to its internal and external affairs. A few examples may serve to illustrate the point. But the Commission could also consider establishing a general definition in principle. In part, this raises the question of the methodology to be followed.

### **1. Normative content of matters which are reserved to State jurisdiction**

60. The question of which matters are essentially within a State’s domestic jurisdiction is regularly discussed in the practice of United Nations organs. It emerges that “[t]here appears to be no decision of any United Nations organ containing a general definition of the domestic jurisdiction clause”,<sup>82</sup> nor has it been possible to determine its content *a priori* and *in abstracto*.

61. The Institute of International Law noted, in its report on the determination of matters that are essentially within the domestic jurisdiction of States, that defining the exact scope of this domain is an impossible task for the jurist.<sup>83</sup> The report also notes that the various replies received by the Rapporteur expressed the same opinion in this respect, namely that it is impossible to define in advance the matters reserved to domestic jurisdiction.<sup>84</sup> It further

<sup>80</sup> Institute of International Law, *La détermination du domaine réservé et ses effets* [Determination of the “reserved domain” and its effects], Session of Aix-en-Provence, 1954; R. Kolb, “Du domaine réservé: réflexions sur la théorie de la compétence nationale”, in *Revue générale de droit international public*, 2006, No. 3, pp. 597–646; B. Jouzier, “Déclin et persistance de la théorie du domaine réservé: le constat d’un rôle de ‘transition’ du domaine réservé”, in *Revue québécoise de droit international*, 2020, 33 (2), pp. 53–75.

<sup>81</sup> Institute of International Law, “Determination of the ‘reserved domain’ and its effects”, Session of Aix-en-Provence, 1954 [English text available in *American Journal of International Law*, vol. 49 (1955), p. 82].

<sup>82</sup> *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954), para. 389.

<sup>83</sup> Report and draft final resolutions on “La détermination des affaires qui relèvent essentiellement de la compétence nationale des Etats” [Determination of matters which are essentially within the domestic jurisdiction of States], submitted by Charles Rousseau (Second Commission), in *Yearbook of the Institute of International Law*, issue 44, vol. I, 1952, point 2, p. 157.

<sup>84</sup> Report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, point 2, pp. 157–158: “Pour l’instant, il est impossible d’en

notes that any attempt to draw up a list of such matters would imperil the development of international law.<sup>85</sup>

62. To soften this assertion, it has been said that the reserved domain is not legally indeterminable at a given point in time, as that would dangerously preclude the possibility that an international court could rule on the matter; rather, it is indeterminable *in abstracto* because it is constantly evolving.<sup>86</sup>

63. In the absence of a general definition, various criteria are generally used, both in the practice of United Nations organs and in case law and teachings. During debates in United Nations organs, some States “held that a matter was essentially within the domestic jurisdiction of a State only if it was not regulated by international law or if it was not capable of regulation by international law”.<sup>87</sup> The Institute of International Law proposed a similar criterion in its report on the subject.<sup>88</sup>

64. In addition to the criteria of absence of international regulation<sup>89</sup> or control, it is sometimes suggested that matters are outside a State’s domestic jurisdiction when there is at least a recognition of the interest of third States or of the community.<sup>90</sup> Other proposals are to leave it to international case law and practice to determine these matters<sup>91</sup> or to define them “by reference to political considerations, and legal considerations could even be ignored”.<sup>92</sup>

## 2. Scope of matters which are essentially within the domestic jurisdiction of States

65. It is generally accepted, as shown by the practice described above, that the scope of the domain reserved to the domestic jurisdiction of States is, or should be, determined by international law and its evolution. International case law has enshrined this principle, which was recalled by the Permanent Court of International Justice in the case of the *Nationality Decrees Issued in Tunis and Morocco*.<sup>93</sup> The greater the encroachment or “invasion” of international law into matters which are reserved to the domestic jurisdiction of States, the smaller the scope of the latter will become. In practice, this question must be analysed on a case-by-case basis, limiting the scope of the intervention to the part of the matter affected. The International Court of Justice took a similar approach when it concluded that “[a] State’s domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law”.<sup>94</sup> Even in its approach to resolving differences between States on this issue, the International Court of Justice examines whether the point at issue concerns a question of international law<sup>95</sup> or whether its resolution requires the

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dresser une liste qui soit complète et limitative. Toute définition ne peut être qu’empirique et *a posteriori*” [For the moment, it is impossible to draw up a complete and exhaustive list. Any definition cannot but be empirical and *a posteriori*].

<sup>85</sup> E. Hambro, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, point 2, p. 166.

<sup>86</sup> H. Rolin, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, art. 2, p. 173.

<sup>87</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 1* (1954–1955), para. 133.

<sup>88</sup> Report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, point 2, p. 157. See also art. 1, p. 162.

<sup>89</sup> See A. Verdross, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, 2nd para., p. 179.

<sup>90</sup> H. Rolin, comments on the report and draft final resolutions, *op. cit.*, 2nd para., p. 174.

<sup>91</sup> Report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, point 3, p. 158.

<sup>92</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 3* (1959–1966), para. 315.

<sup>93</sup> Permanent Court of International Justice, *Nationality Decrees Issued in Tunis and Morocco*, *op. cit.*, pp. 23 and 24.

<sup>94</sup> International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua*, *op. cit.*, p. 131, para. 258.

<sup>95</sup> International Court of Justice: *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *op. cit.*, pp. 9 and 10; *Case concerning Right of Passage over Indian Territory*, *Merits*, *op. cit.*, 12 April 1960, p. 31.

interpretation or application of international law.<sup>96</sup> The same is true in cases where the Court has upheld an objection based on the invocation of reserved domain.<sup>97</sup>

66. The majority of internationalist writers share this approach. Hans Kelsen, for example, has acknowledged that:

Any matter may become the object of an international treaty and thus cease to be solely within the domestic jurisdiction of the contracting States. A matter is “solely” within the domestic jurisdiction of a State only so long as it is not subject to a norm of customary or conventional international law.<sup>98</sup>

Thus, a distinction can only be drawn between matters that are already regulated by public or private international law and those not yet governed by it, which for this reason still fall within the domestic jurisdiction of the State.

67. It is sometimes noted that:

Matters of domestic jurisdiction are not those which are unregulated by international law, but are those which are left by international law for regulation by states. There are, therefore, no matters which are domestic by their “nature”. All are susceptible of international legal regulation, and may become the subjects of new rules of customary law or of treaty obligations.<sup>99</sup>

68. An overview of the practice of United Nations organs in relation to Article 2 (7) of the Charter shows that the international law criterion determines both the scope of the reserved domain and the competence of such organs to deal with a conflict on this issue in each instance.<sup>100</sup>

69. The Institute of International Law has recognized that the domain reserved to the domestic jurisdiction of States depends on international law and varies according to the development of international relations. It is of an evolving nature and cannot be defined in a general, abstract way.<sup>101</sup> This limitation of the extent of the domain reserved to the domestic jurisdiction of States also applies in particular when States conclude international agreements on matters that fall within this domain, thereby necessarily removing from such jurisdiction “any question relating to the interpretation or application of such agreement”.<sup>102</sup> This approach is not universally supported, however; a different trend can also be discerned. It considers that the realm of international law and that of national jurisdiction coexist without being mutually exclusive,<sup>103</sup> given that the international commitments of States should be understood as exceptions that can never encompass the entire sphere of a State’s autonomy.<sup>104</sup>

<sup>96</sup> International Court of Justice, *Interhandel Case*, *op. cit.*, p. 23.

<sup>97</sup> International Court of Justice, *Case of Certain Norwegian Loans (France v. Norway)*, *Judgment of 6 July 1957*, pp. 21 and 27.

<sup>98</sup> H. Kelsen, *Peace Through Law*, Chapel Hill, The University of North Carolina Press, 1944, p. 33.

<sup>99</sup> L. Preuss, “Article 2, paragraph 7 of the Charter of the United Nations and matters of domestic jurisdiction”, in *Collected Courses of the Hague Academy of International Law*, 1949, vol. 74, p. 568.

<sup>100</sup> G. Arangio-Ruiz, “Le domaine réservé. L’organisation internationale et le rapport entre droit international et droit interne”, in *Collected Courses of the Hague Academy of International Law*, vol. 225, 1990, p. 9, at p. 33. See also *Repertory of Practice of United Nations Organs*, vol. 1 (1945–1954); vol. 1, *Supplement No. 1* (1954–1955); vol. 1, *Supplement No. 2* (1955–1959); vol. 1, *Supplement No. 3* (1959–1966); vol. 1, *Supplement No. 4* (1966–1969); vol. 1, *Supplement No. 5* (1970–1978); vol. 1, *Supplement No. 6* (1979–1984); vol. 1, *Supplement No. 7* (1985–1988); vol. 1, *Supplement No. 8* (1989–1994); vol. 1, *Supplement No. 9* (1995–1999); vol. 1, *Supplement No. 10* (2000–2009).

<sup>101</sup> Report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, art. 2, p. 162 [English text of final resolution available in *American Journal of International Law*, vol. 49 (1955), p. 82].

<sup>102</sup> Report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, art. 3, p. 163 [English text of final resolution available in *American Journal of International Law*, vol. 49 (1955), p. 82].

<sup>103</sup> E. Hambro, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, point 3, pp. 166 and 167.

<sup>104</sup> A. Verdross, comments on the report and draft final resolutions on the determination of matters which are essentially within the domestic jurisdiction of States, *op. cit.*, p. 177.

### C. Coercion against a State subjected to intervention

70. The question of coercion raises almost the same concerns as those relating to the concept of “intervention”. The considerations described above are thus recalled in this connection.

71. The Commission did not clearly define the concept of coercion referred to in article 18 of its 2001 draft articles on responsibility of States for internationally wrongful acts. It should nevertheless be noted that, according to the Commission, most cases of coercion will be unlawful, e.g.

because they involve a threat or use of force contrary to the Charter of the United Nations, or because they involve intervention, i.e. coercive interference, in the affairs of another State. ... However, coercion could possibly take other forms, e.g. serious economic pressure, provided that it is such as to deprive the coerced State of any possibility of conforming with the obligation breached.<sup>105</sup>

72. The Commission may wish to examine the international practice outlined above to define the nature and forms of expression of the term “coercion”. There is no longer any doubt that certain activities, albeit of a non-coercive nature, may have the effect or the avowed or unavowed aim of coercing another State to do or refrain from doing a particular act. Where the intervention does not *prima facie* consist in obliging the targeted State to act or refrain from acting in a certain way, a breach of the principle of non-intervention may be difficult to establish.

73. The Commission could thus determine to what extent an activity’s influence on State action would or would not constitute a breach of the principle of non-intervention. The Commission could also seek to identify factors that can shed light on the issue and help to fill the gap left by the absence of substantive rules in this area.

### D. State consent to intervention

74. Consent is generally invoked, in particular, to refute the argument that the principle of non-intervention has been violated in a given situation, whether the intervention has been carried out by the United Nations or by States. For example, “[i]n the debates in case No. 52, on the Korean question, some representatives opposed the contention that the United Nations was debarred by Article 2 (7) from intervening in Korea by observing that the United Nations was doing so at the invitation of the Korean Government”.<sup>106</sup> Similar situations can be seen in the cases of Southern Rhodesia<sup>107</sup> and the Republic of the Congo.<sup>108</sup> In some cases, intervention in a State has been deemed legitimate because it took place “at the express request of that State, in accordance with special treaty provisions”.<sup>109,110</sup>

<sup>105</sup> Draft articles on responsibility of States for internationally wrongful acts, in *Yearbook of the International Law Commission, 2001*, vol. II (Part Two), p. 70, para. (3).

<sup>106</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 4* (1966–1969), para. 102.

<sup>107</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 4* (1966–1969), para. 103.

<sup>108</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 3* (1959–1966), para. 280.

<sup>109</sup> *Case No. 60*: S C (34), 2108th mtg.: para. 126. *Case No. 61*: G A (34), Plen., 62nd mtg.: Viet Nam, paras. 53–55; G A (36), Plen., 37th mtg.: Viet Nam, para. 27. *Case No. 63*: S C (35), 2185th mtg.: USSR, paras. 16–17; 2186th mtg.: Poland, para. 120; 2187th mtg.: Hungary, para. 142; 2188th mtg.: German Democratic Republic, para. 11; and Viet Nam, para. 79; 2189th mtg.: Mongolia, para. 33; and Lao People’s Democratic Republic, para. 110; 2190th mtg.: Afghanistan, para. 89; and USSR, para. 110. *Case No. 64*: G A (ES-6), Plen., 1st mtg.: Afghanistan, paras. 19 and 50; Mongolia, para. 28; 2nd mtg.: USSR, paras. 75–78; German Democratic Republic, para. 109; 4th mtg.: Lao People’s Democratic Republic, para. 62; 5th mtg.: Ukrainian SSR, para. 16; G A (35), Plen., 65th mtg.: USSR, para. 151; G A (36), Plen., Afghanistan, 19th penultimate para.; G A (37), Plen., 80th mtg.: Ukrainian SSR, para. 124.

<sup>110</sup> *Repertory of Practice of United Nations Organs*, vol. 1, *Supplement No. 6* (1979–1984), para. 78.

75. The Commission will examine the question of consent<sup>111</sup> to determine the conditions of its validity, in particular when it is given by a State that might, for example, find itself in conditions that are such as to give it no choice but to act in the manner desired by the intervening State. Furthermore, under international law as interpreted by the Institute of International Law,<sup>112</sup> intervention by third States in internal armed conflicts is prohibited whether it is in support of the rebels or in support of the Government.<sup>113</sup>

## V. Consistency of the proposed topic with the criteria for selecting new topics

### A. The topic reflects the needs of States

76. The proposed topic reflects the needs of States in respect of the codification and/or progressive development of international law. The likelihood that a State could find itself the victim of unlawful intervention is no longer merely theoretical. Moreover, this is no longer a practice that only so-called weak States need fear, while so-called powerful States remain indifferent. The deliberate or inadvertent misinterpretation of the principle of non-intervention creates distortions and tensions in international relations that often lead to international crises with sometimes tragic consequences. International cooperation is no less affected in such situations of interpretative cacophony. Disregard for the obligations arising from the principle of non-intervention has given rise to calamities ranging from humanitarian disasters to civil or international wars, resulting in massive and serious violations of international humanitarian law and international human rights law. The question of responsibility, and therefore of reparation, also arises in this context.

77. The purpose of providing a clear and precise definition of the content and scope of this principle at the present time is to establish or specify a unified, predictable legal framework both for recourse to it and for the reactions of States that might feel aggrieved in one way or another by the sometimes unwarranted invocation of this principle by other States. This outcome will facilitate the analysis of the justiciable nature of the victim State's action before international courts and the work of the courts themselves in terms of both the invocability of the international responsibility of the State having committed the wrongful act and the provision of reparation to the victim State.

78. Lastly, the Commission may wish to consider the normative strength of the practice analysed, depending on whether the outcome of the work consists of codification or the progressive development of international law.

### B. The topic is sufficiently advanced in terms of State and judicial practice

79. As noted above, the practice in respect of characteristic situations of unlawful intervention is abundant and flourishing, both over time and across regions. The Commission can draw on the practice reflected in the *Repertory of Practice of United Nations Organs*. There is also practice of regional international organizations in the management of crises linked to the interpretation and application of the principle of non-intervention in

<sup>111</sup> D. Kritsiotis, "Intervention and the Problematisation of Consent", in D. Kritsiotis, O. Corten and G.H. Fox (eds.), *Armed Intervention and Consent*, Cambridge, Cambridge University Press, 2023, pp. 26–100; in the same volume: O. Corten, "Intervention by Invitation: The Expanding Role of the UN Security Council", pp. 101–178; G.H. Fox, "Invitations to Intervene after the Cold War: Towards a New Collective Model", pp. 179–318.

<sup>112</sup> Institute of International Law, resolution on the principle of non-intervention in civil wars, Eighth Commission, Session of Wiesbaden, 14 August 1975. See also L. Doswald-Beck, "The Legal Validity of Military Intervention by Invitation of the Government", *British Yearbook of International Law*, 1985, p. 251; O. Corten, *Le droit contre la guerre*, 2nd ed., Paris, Pedone, 2014, pp. 472–512; K. Bannelier and T. Christakis, "Volenti non fit injuria? Les effets du consentement à l'intervention militaire", *Annuaire français de droit international*, 2004, pp. 113 ff.

<sup>113</sup> O. Corten and A. Verdebout, "Les interventions militaires récentes en territoire étranger...", *op. cit.*, p. 142.

international law. The Commission could also focus on conventional and unilateral practice, as well as the national practice of States, and on the work of legal scholars<sup>114</sup> and learned societies<sup>115</sup> in this field.

80. In the area of judicial practice, the International Court of Justice has issued more than one decision in which it has established the meaning of this principle and applied it to the case in question. The principle of non-intervention runs through the Court's case law, from its first judgment in the *Corfu Channel* case<sup>116</sup> to its more recent judgments on the use of force, including the judgments on the merits in the *Armed Activities on the Territory of the Congo* cases brought by the Democratic Republic of the Congo against Rwanda<sup>117</sup> and Uganda,<sup>118</sup> in addition to the landmark 1986 case concerning *Military and Paramilitary Activities in and against Nicaragua*.<sup>119</sup>

81. An analysis of this abundant practice would undoubtedly enable the Commission to define the legal meaning of this principle more precisely and to systematize the norms it comprises or includes.

### C. The topic is concrete and feasible for consideration and development

82. The proposed topic is concrete and lends itself to analysis by the Commission. The abundant practice of States, international organizations and international courts and tribunals, as well as the relevance of its content, would enable the Commission to carry out an in-depth analysis of the precise legal meaning of this principle and of best practices and applications resulting from its rational implementation in international law. The proposed topic is undoubtedly a delicate, sensitive and laborious one, particularly in view of the eminently political character of the issues addressed and the abundance of relevant practice. The fact remains, however, that the Commission, as a panel of experts and a technical body of the General Assembly, seems particularly well suited and equipped to transcend these political obstacles and produce a useful outcome in international law on this issue.

83. The corpus of international practice on which the Commission can draw is such as to facilitate its exploration of this topic and its achievement of the goals it may set in this regard.

### D. Originality of the proposed topic

84. Various episodes in current international relations have highlighted the need to determine specifically and systematically the extent and significance of the principle of non-intervention. It is important to define precisely the legal rule embodying this principle strictly from the point of view of international law, so as to systematize the rules derived from the practice of States and of international courts and tribunals in this field. The need is felt in particular because unlawful interventions in the internal affairs of States are currently taking various forms that no longer fit the traditional understanding of this concept.

<sup>114</sup> J. Noël, *Le principe de non-intervention : théorie et pratique dans les relations inter-américaines*, Brussels, Éditions de l'Université de Bruxelles – Éditions Émile Bruylant, 1981, 253 pp.; O. Corten and P. Klein, *Droit d'ingérence ou obligation de réaction? – Les possibilités d'action visant à assurer le respect des droits de la personne face au principe de non-intervention*, 2nd ed., Brussels, Bruylant, 2004, 309 pp.; M. Roscini, *International Law and the Principle of Non-Intervention ...*, *op. cit.*

<sup>115</sup> Institute of International Law, resolution on the principle of non-intervention in civil wars, *op. cit.*

<sup>116</sup> International Court of Justice, *Corfu Channel case (United Kingdom v. Albania), Merits, Judgment of 9 April 1949, I.C.J. Reports 1949*.

<sup>117</sup> International Court of Justice, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*.

<sup>118</sup> International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*.

<sup>119</sup> International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua, op. cit.*

## VI. Past work of the Commission on the issue of non-intervention

85. It seems that the Commission has not yet had the opportunity to examine in depth the legal framework and the issues of international law pertaining to the invocation of the principle of non-intervention, which has been analysed as an incidental question in the context of its work on other topics. For example, the question was raised incidentally during the analysis of the topic “Protection of persons in the event of disasters”. In particular, reference is made to the principle of non-intervention in the commentaries to draft articles 9 and 10.<sup>120</sup>

86. The working paper prepared by the Secretariat entitled “Long-term programme of work: Review of the list of topics established in 1996 in the light of subsequent developments” (A/CN.4/679) refers to the principle of non-intervention on two occasions.<sup>121</sup> The section “Subjects of international law” includes, as a possible future topic, “Non-intervention and human rights”, proposed in 1998.<sup>122</sup> Under the heading “Law of armed conflicts/disarmament”, it is noted that one Member State proposed, among others, the topics “The legal consequences arising out of the involvement of multilateral corporations in internal conflicts” and “The legal consequences arising out of the involvement of security agencies in internal conflicts”.<sup>123</sup>

87. Needless to say, reflection and discussion on the relevance of this topic have not been expressly included in the Commission’s agenda. The Commission would thus be well advised to consider the matter.

## VII. Possible form of the Commission’s work on the proposed topic

88. Given the non-binding nature of the Commission’s work on this topic, draft guidelines would seem to be an appropriate outcome. However, the Commission could always recommend a different type of outcome that it deems more appropriate in the light of States’ expectations, just as States themselves may decide otherwise during the debates in the Sixth Committee.

<sup>120</sup> *Yearbook of the International Law Commission*, report of the Commission to the General Assembly on the work of its sixty-eighth session (A/CN.4/SER.A/2016/Add.1 (Part 2)), 2016, vol. II (Part Two), chap. IV: Protection of persons in the event of disasters, para. (4) of the commentary to draft article 9, p. 41, and para. (2) of the commentary to draft article 10, p. 45. See also the reports of the Special Rapporteur for this topic: *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598 (preliminary report); *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615 and Corr.1 (second report); *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/629 (third report); *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/643 and Corr.1 (fourth report); *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652 (fifth report); *Yearbook ... 2013*, vol. II (Part One), document A/CN.4/662 (sixth report); and *Yearbook ... 2014*, vol. II (Part One), document A/CN.4/668 and Corr.1 and Add.1 (seventh report).

<sup>121</sup> International Law Commission, sixty-seventh session, Geneva, 4 May–5 June and 6 July–7 August 2015, “Long-term programme of work: Review of the list of topics established in 1996 in the light of subsequent developments. Working paper prepared by the Secretariat” (A/CN.4/679), 5 March 2015.

<sup>122</sup> International Law Commission, sixty-seventh session, Geneva, 4 May–5 June and 6 July–7 August 2015, *op. cit.*, pp. 8 and 9, sect. B (2), para. 20.

<sup>123</sup> International Law Commission, sixty-seventh session, Geneva, 4 May–5 June and 6 July–7 August 2015, *op. cit.*, p. 23, sect. L (1), para. 52. The Commission’s document refers to two Sixth Committee records: the summary record of the 19th meeting of the Sixth Committee, held on 3 November 2006, on the report of the International Law Commission on the work of its fifty-eighth session (*continued*) (A/C.6/61/SR.19), 17 November 2006, p. 13, para. 72; and the summary record of the 24th meeting of the Sixth Committee, held on 2 November 2007, on the report of the International Law Commission on the work of its fifty-ninth session (*continued*) (A/C.6/62/SR.24), 13 December 2007, p. 17, para. 100.

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Rapport de la Commission pour le développement progressif du droit international et sa codification, *Documents officiels de l'Assemblée générale*, deuxième session, Sixième Commission, Annexe 1.

*Rapport du Groupe d'experts gouvernementaux chargé d'examiner les progrès de l'informatique et des télécommunications dans le contexte de la sécurité internationale*, A/70/174, 22 juillet 2015.

*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2<sup>nd</sup> ed., Cambridge, Cambridge University Press, 2017.