ARTICLE 1(2)

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ARTICLE 1(2)

TEXT OF ARTICLE 1(2)
The Purposes of the United Nations are:

... 

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

INTRODUCTORY NOTE

1. The general structure of this study follows that of Supplement No. 8. As in previous Supplements, the present study covers only the deliberations of the main United Nations organs, in dealing with the general question of the implementation of Article 1(2) and the bearing of the Article on specific political questions during the period under review. Other questions relating to self-determination are treated, where appropriate, under Articles 55 and 73.

2. The practice of the General Assembly concerning the interpretation and application of the concept of the right to self-determination, which was formulated by the General Assembly in its resolution 1514(XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, is dealt with under Article 73 of the Charter.

3. The general survey reviews the decisions of the General Assembly and the Security Council containing explicit and implicit references to Article 1(2).

4. The analytical summary of practice includes, under the heading, retained from previous Supplements, entitled “The question of the relationship between the principle of equal rights and self-determination of peoples and ‘permanent sovereignty’ of peoples
‘over their natural wealth and resources’”, a discussion of a relevant judgment of the International Court of Justice.

5. No material was found for treatment under the other headings of the analytical summary of practice included in previous Supplements.

6. Like the previous study in Supplement No. 8, the present study does not include an annex containing relevant paragraphs of pertinent documents. Instead, those paragraphs which are directly relevant to and may be considered as having a bearing on Article 1(2) are reproduced in the main text of the study.

I. GENERAL SURVEY

(i) In the General Assembly

7. During the period under review, none of the resolutions of the General Assembly contained an explicit reference to Article 1(2) of the Charter.

8. No constitutional discussion on Article 1 (2) took place in the adoption by the General Assembly of the following resolutions, which implicitly referred to Article 1 (2):

(a) **Resolutions adopted without reference to a main Committee:** Declaration on the Occasion of the Fiftieth Anniversary of the United Nations;¹ co-operation between the United Nations and the League of Arab States;² co-operation between the United Nations and the Organization of the Islamic Conference;³ implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;⁴ dissemination of

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¹ G A resolution 50/6 (preamb. and para. 1).
² G A resolutions 50/16 (para. 5); 51/20 (para. 4); 52/5 (para. 5); 53/8 (para. 4); and 54/9 (para. 4).
³ G A resolutions 50/17 (preamb. and para. 4); 51/18 (preamb. and para. 4); 52/4 (preamb. and para. 3); 53/16 (preamb. and para. 4); and 54/7 (preamb. and para. 3).
⁴ G A resolutions 50/39 (preamb. and paras. 1, 4, 7, 11 and 14); 51/146 (preamb. and paras. 1, 4, 7, 11 and 14); 52/78 (paras. 1, 4, 7, 11 and 14); 53/68 (preamb. and paras. 1, 4, 7, 11 and 14); and 54/91 (preamb. and paras. 1, 5, 8, 10, 12 and 16).
information on decolonization;\textsuperscript{5} question of Palestine;\textsuperscript{6} peaceful settlement of the question of Palestine;\textsuperscript{7} the situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development;\textsuperscript{8} support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies;\textsuperscript{9} agenda for Development;\textsuperscript{10} Fiftieth anniversary of the Universal Declaration of Human Rights;\textsuperscript{11} Declaration and Programme of Action on a Culture of Peace;\textsuperscript{12}

\textit{(b) Resolutions adopted on the reports of the First Committee:} general and complete disarmament;\textsuperscript{13} strengthening of security and cooperation in the Mediterranean region;\textsuperscript{14}

\textit{(c) Resolutions adopted on the reports of the Third Committee:} use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination;\textsuperscript{15} universal realization of the right of peoples to self-determination;\textsuperscript{16} the right of the Palestinian people to self-determination;\textsuperscript{17} respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes;\textsuperscript{18} strengthening of United Nations action in the human rights field through the promotion of international cooperation and the importance of non-selectivity, impartiality

\textsuperscript{5} G.A. resolutions 50/40 (preamb. and paras. 2 and 3); 51/147 (preamb. and paras. 2 and 3); 52/79 (preamb. and paras. 2 and 3); 53/69 (preamb. and paras. 2 and 3); and 54/92 (preamb. and paras. 2 and 3).

\textsuperscript{6} G.A. resolution 50/84 [D: Peaceful settlement of the question of Palestine] (preamb. and para. 4 (a)).

\textsuperscript{7} G.A. resolutions 51/26 (preamb. and para. 5 (a)); 52/52 (preamb. and para. 5 (a)); 53/42 (preamb. and para. 5 (a)); and 54/42 (preamb. and para. 5 (a)).

\textsuperscript{8} G.A. resolutions 50/132 (preamb.); and 51/197 (preamb.).

\textsuperscript{9} G.A. resolutions 50/133 (preamb.); 51/31 (preamb.); 52/18 (preamb.); 53/31 (preamb.); and 54/36 (preamb.).

\textsuperscript{10} G.A. resolution 51/240, Annex (paras. 32 and 232).

\textsuperscript{11} G.A. resolution 53/168 (preamb.).

\textsuperscript{12} G.A. resolution 53/243 [A] (article 3 (n)), [B] (B. para.10 (j)).

\textsuperscript{13} G.A. resolutions 50/70 [B] (preamb.); 52/38 [J] (preamb.); 53/77 [E] (preamb.); and 54/54 [V] (preamb.).

\textsuperscript{14} G.A. resolutions 50/75 (para. 2); 51/50 (para. 2); 52/43 (para. 2); 53/82 (para. 2); and 54/59 (para. 2).

\textsuperscript{15} G.A. resolutions 50/138 (preamb. and paras. 1, 6 and 7); 51/83 (preamb. and paras. 1, 6 and 7); 52/112 (preamb. and paras. 1, 6, 8 and 9); 53/135 (preamb. and paras. 1, 9, 11 and 12); and 54/151 (preamb. and paras. 1, 11, 13 and 14).

\textsuperscript{16} G.A. resolutions 50/139 (preamb. and paras. 1, 2, 5 and 6); 51/84 (preamb. and paras. 1, 2, 5 and 6); 52/113 (preamb. and paras. 1, 2, 5 and 6); 53/134 (preamb. and paras. 1, 2, 5 and 6); and 54/155 (preamb. and paras. 1, 2, 5 and 6).

\textsuperscript{17} G.A. resolutions 50/140; 51/82; 52/114; 53/136; and 54/152.

\textsuperscript{18} G.A. resolutions 50/172 (preamb. and paras. 1 and 7); 52/119 (preamb. and paras. 1 and 7); and 54/168 (preamb. and paras. 1 and 7).
and objectivity;\textsuperscript{19} situation of human rights in Afghanistan;\textsuperscript{20} question of human rights in Afghanistan;\textsuperscript{21} human rights and unilateral coercive measures;\textsuperscript{22} Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and protect Universally Recognized Human Rights and Fundamental Freedoms;\textsuperscript{23}

\textit{(d) Resolutions adopted on the reports of the Special Political and Decolonization Committee (Fourth Committee):} activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination;\textsuperscript{24} economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories;\textsuperscript{25} implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations;\textsuperscript{26} question of Western Sahara;\textsuperscript{27} question of New Caledonia;\textsuperscript{28} questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, the Turks and Caicos Islands and the United States Virgin Islands;\textsuperscript{29} question of Tokelau;\textsuperscript{30} questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands;\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{19} G A resolutions 50/174 (preamb. and para. 1); 51/105 (preamb. and para. 1); 52/131 (preamb. and para. 1); 53/149 (preamb. and para. 1); and 54/174 (preamb. and para. 1).
\item \textsuperscript{20} G A resolutions 50/189 (para. 2); 51/108 (para. 7); 52/145 (para. 7); and 53/165 (para. 10).
\item \textsuperscript{21} G A resolution 54/185 (para. 8).
\item \textsuperscript{22} G A resolutions 51/103 (para. 4); 52/120 (para. 4); 53/141 (para. 4); and 54/172 (para. 4).
\item \textsuperscript{23} G A resolution 53/144 , Annex (preamb.).
\item \textsuperscript{24} G A resolutions 50/33 (preamb. and paras. 1, 4 and 13); and 51/140 (preamb. and paras. 1, 4 and 13).
\item \textsuperscript{25} G A resolutions 52/72 (preamb. and paras. 1 and 11); 53/61 (preamb. and paras. 1 and 11); and 54/84 (preamb. and paras. 1 and 11).
\item \textsuperscript{26} G A resolutions 50/34 (para. 4); 51/141 (para. 4); 52/73 (para. 5); 53/62 (para. 5); and 54/85 (para. 4).
\item \textsuperscript{27} G A resolutions 50/36 (preamb. and para. 3); 51/143 (preamb. and paras. 2 and 6); 52/75 (preamb. and para. 6); 53/64 (preamb. and para. 7); and 54/87 (preamb. and para. 8).
\item \textsuperscript{28} G A resolutions 50/37 (preamb. and para. 2); 51/144 (preamb. and para. 2); 52/76 (preamb. and para. 2); 53/65 (preamb. and para. 8); and 54/88 (preamb. and para. 8).
\item \textsuperscript{29} G A resolution 50/38; and 52/77.
\item \textsuperscript{30} G A resolution 51/145 (preamb. and paras. 1, 2 and 5); 53/66 (preamb. and paras. 1, 2 and 7); and 54/89 (preamb. and paras. 1, 2 and 8).
\item \textsuperscript{31} G A resolutions 51/224; 53/67; and 54/90.
\end{itemize}
(ii) In the Security Council

9. During the period under review, none of the resolutions adopted by the Security Council contained an explicit reference to Article 1 (2) of the Charter.

10. The Security Council, however, adopted sixteen resolutions on the situation concerning Western Sahara, which referred to the principle of self-determination without giving rise to a constitutional discussion.32

II. ANALYTICAL SUMMARY OF PRACTICE

** A. The question of the effect of the reference in Article 1 (2) to respect for the principle of equal rights and self-determination of peoples

** B. The question of the appropriate means of implementing the principle of equal rights and self-determination of peoples

** C. The question of the scope of application of the principle of equal rights and self-determination of peoples

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In the international Court of Justice

Case concerning East Timor

11. On 22 February 1991, the Portuguese Republic (hereinafter, Portugal) filed an Application instituting proceedings against the Commonwealth of Australia (hereinafter, Australia) concerning “certain activities of Australia with respect to East Timor.” According to the Application, Australia had “failed to observe … the obligation to respect the duties and powers of [Portugal as] the administering Power [of East Timor] … and … the right of the people of East Timor to self-determination and the related rights”. As a consequence, according to the Application, Australia had “incurred international responsibility vis-à-vis both the people of East Timor and Portugal”.  

12. Portugal maintained that Australia, by negotiating and concluding with Indonesia, on 11 December 1989, an agreement relating to the joint exploitation and exploration of the resources of an undelimited area of the continental shelf – which had been called “Timor Gap” – situated between the south coast of East Timor and the north coast of Australia, by initiating performance of that agreement, by taking internal legislative measures for its application, by continuing to negotiate with Indonesia the delimitation of the continental shelf in the area of the “Timor Gap” and by excluding any negotiation with Portugal with respect to the exploration and exploitation of the continental shelf in the same area, had acted unlawfully, in that it had, amongst other things, infringed the rights of the people of East Timor to self-determination and to permanent sovereignty over its natural resources, as well as the rights of Portugal as the administering Power of East Timor.

34 Ibid., p. 92, para. 1.
13. Australia raised objections to the jurisdiction of the Court and to the admissibility of the Application. Australia’s principal objection was that Portugal’s application “would require the Court to rule on the rights and obligations of a State which is not a party to the proceedings, namely Indonesia”.36

14. In spite of Portugal’s attempts to separate Australia’s conduct from that of Indonesia, the Court considered that it was not possible to assess Australia’s behaviour “without first entering into the question why it was that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so”.37 Applying the principle formulated in the case concerning *Monetary Gold Removed from Rome in 1943*,38 the Court considered that “the very subject-matter of the Court’s decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of its continental shelf”.39 Therefore, the Court held that “it could not make such a determination in the absence of the consent of Indonesia.”40

15. In order to convince the Court of the inapplicability in the present case of the principle formulated in the *Monetary Gold* case, Portugal had put forward an argument based on the legal nature of the right to self-determination. According to that argument, “the rights which Australia allegedly breached were rights *erga omnes* and […] accordingly Portugal could require it, individually, to respect them regardless of whether or not another State had conducted itself in a similarly unlawful manner”.41 While recognizing the *erga omnes* character of the right to self-determination, the Court rejected Portugal’s argument by stating:

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36 Ibid., p. 99, para. 20, and pp. 100 ff., paras. 23 ff.
37 Ibid., p. 102, para. 28.
40 Ibid. See also paras. 34-36.
41 Ibid, p. 102, para. 29.
“In the Court’s view, Portugal’s assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irrefutable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion, I.C.J. Reports 1971*, pp. 31-32, paras. 52-53; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law. However, the Court considers that the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not party to the case. Where this is so, the Court cannot act, even if the right in question is a right *erga omnes*.“\(^42\)

16. Portugal had also claimed that the Court was able to decide the case without examining the lawfulness of Indonesia’s conduct, by merely applying the relevant resolutions adopted by the General Assembly and, in particular, by the Security Council, which in Portugal’s opinion imposed “an obligation on States not to recognize any authority on the part of Indonesia over the Territory [of East Timor] and, where the latter is concerned, to deal only with Portugal”.\(^{43}\) The Court rejected Portugal’s argument by stating:

“[…] The Court is not persuaded […] that the relevant resolutions went so far. For the two Parties, the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination. Moreover, the General Assembly, which reserves to itself the right to determine the territories which

\(^{42}\) Ibid.
\(^{43}\) Ibid., p. 103, para. 31.
have to be regarded as non-self-governing for the purposes of the application of Chapter XI of the Charter, has treated East Timor as such a territory. The competent subsidiary organs of the General Assembly have continued to treat East Timor as such to this day. Furthermore, the Security Council, in its resolutions 384 (1975) and 389 (1976) has expressly called for respect for ‘the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV)’. Nor is it at issue between the Parties that the General Assembly has expressly referred to Portugal as the ‘administering Power’ of East Timor in a number of the resolutions it adopted on the subject of East Timor between 1975 and 1982, and that the Security Council has done so in its resolution 384 (1975). The Parties do not agree, however, on the legal implications that flow from the reference to Portugal as the administering Power in those texts.”

“The Court finds that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States to treat exclusively with Portugal as regards the continental shelf of East Timor. The Court notes, furthermore, that several States have concluded with Indonesia treaties capable of application to East Timor but which do not include any reservation in regard to that Territory. Finally, the Court observes that, by a letter of 15 December 1989, the Permanent Representative of Portugal to the United Nations transmitted to the Secretary-General the text of a note of protest addressed by the Portuguese Embassy in Canberra to the Australian Department of Foreign Affairs and Trade on the occasion of the conclusion of the Treaty on 11 December 1989; that the letter of the Permanent Representative was circulated, at his request, as an official document of the forty-fifth session of the General Assembly, under the item entitled ‘Question of East Timor’, and of the Security Council; and that no responsive action was taken either by the General Assembly or the Security Council.

44 Ibid., pp. 103-104, para. 31.
Without prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considers as a result that they cannot be regarded as ‘givens’ which constitute a sufficient basis for determining the dispute between the Parties.\[45\]

17. The Court thus reached the conclusion that it could not exercise its jurisdiction in the present case.\[46\]

\[45\] Ibid., p. 104, para. 32.
\[46\] Ibid., p. 106, para. 38.