

Part III

Purposes and principles of the Charter of the United Nations

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Introductory note

Part III covers the consideration by the Security Council of Articles contained in Chapter I of the Charter of the United Nations pertaining to the purposes and principles of the United Nations, namely Articles 1 (2), 2 (4), 2 (5) and 2 (7), and consists accordingly of four sections. In section I, material relating to the principle of self-determination of peoples under Article 1 (2) is considered; section II covers material relevant to the prohibition of the threat or use of force as enshrined in Article 2 (4); section III deals with the obligation of States to refrain from assisting a target of the Council's enforcement action as stipulated in Article 2 (5); and section IV concerns the Council's consideration of the principle of non-intervention by the United Nations in the internal affairs of States, as regulated in Article 2 (7).

In 2010 and 2011, the Council discussed the application and interpretation of Articles 1 (2), 2 (4), 2 (5) and 2 (7) in discharging its function of the maintenance of international peace and security. For instance, the Council discussed the advisory opinion issued on 22 July 2010 by the International Court of Justice concerning the unilateral declaration of independence of Kosovo, with a particular focus on the principle of self-determination. The Council also monitored the preparation and outcome of the referendum for self-determination of the Republic of South Sudan, which became the 193rd Member of the United Nations on 14 July 2011. The Council remained active in addressing security concerns in the disputed area of Abyei. Finally, in the midst of developments in North Africa and the Arab world, the situations in Libya¹ and the Syrian Arab Republic² triggered debates on the principles of self-determination and non-interference in the internal affairs of States.

¹ In February 2011, the Council considered issues pertaining to the Libyan Arab Jamahiriya at its 6486th, 6490th and 6491st meetings, under the item entitled "Peace and security in Africa". Pursuant to a note by the President of the Security Council dated 16 March 2011 (S/2011/141), as from that date the earlier consideration by the Council of issues pertaining to the Libyan Arab Jamahiriya was subsumed under the item entitled "The situation in Libya".

² The Council considered developments in the Syrian Arab Republic under various items, including "The situation in the Middle East" and "Protection of civilians in armed conflict".

I. The principle of equal rights and self-determination of peoples under Article 1, paragraph 2

Article 1, paragraph 2

[The Purposes of the United Nations are:]

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.

Note

Section I concerns the practice of the Security Council with regard to the principle of equal rights and self-determination of peoples as enshrined in Article 1 (2) of the Charter of the United Nations. Subsection A features decisions relevant to the principle enshrined in Article 1 (2). Subsection B provides an overview of discussions relating to Article 1 (2), including three case studies. Subsection C sets out instances in which

the principle of self-determination was invoked in the official correspondence of the Council.

A. Decisions relating to Article 1 (2)

During the period under review, the Security Council did not explicitly invoke Article 1 (2) in its decisions. However, several references found in decisions could be considered as having an implicit bearing on Article 1 (2), as reflected in table 1. Those implicit references were made in connection with the holding of referendums on self-determination in Southern Sudan and Western Sahara, respectively. For instance, in the period leading up to the Southern Sudan referendum held on 9 January 2011, the Council stressed the importance of respecting the right to self-determination of the people of Southern Sudan in determining their future status.

Table 1

Decisions containing implicit references to Article 1 (2)

Decision and date

Provision

Reports of the Secretary-General on the Sudan

Resolution [1919 \(2010\)](#)
29 April 2010

Stressing the importance of the full implementation of the Comprehensive Peace Agreement of 9 January 2005, including, in particular, the importance of pursuing further efforts to make unity attractive and respecting the right to self-determination of the people of Southern Sudan, to be exercised through a referendum to determine their future status (fifth preambular paragraph)

Resolution [1945 \(2010\)](#)
14 October 2010

Reaffirming its commitment to the cause of peace throughout the Sudan, to the sovereignty, independence, unity and territorial integrity of the Sudan, to the full and timely implementation of the final phase of the Comprehensive Peace Agreement, including efforts to make unity attractive and a referendum to determine the future status of the people of Southern Sudan in exercise of their right to self-determination, ... (second preambular paragraph)

[S/PRST/2010/24](#)
16 November 2010

The Council reaffirms its strong commitment to the sovereignty, independence, peace and stability of the Sudan and to a peaceful and prosperous future for all Sudanese people, and underlines its support for the full and timely implementation by the Sudanese parties of the Comprehensive Peace Agreement, including the holding of the referendums on the self-determination of the people of Southern Sudan and on the status of Abyei and of the popular consultations in Southern Kordofan and Blue Nile, and for a peaceful, comprehensive and inclusive resolution of the situation in Darfur (second paragraph)

Decision and date

Provision

The Council urges the parties to the Comprehensive Peace Agreement, while working to make unity attractive and recognizing the right to self-determination of the people of Southern Sudan, to take urgent action to implement their commitment, reaffirmed at the high-level meeting on the Sudan, held in New York on 24 September 2010, to ensure peaceful, credible, timely and free referendums that reflect the will of the people of Southern Sudan and Abyei, as provided for in the Agreement. In this regard, the Council welcomes the start of registration for the Southern Sudan referendum on 15 November 2010 and encourages further efforts to ensure that the referendums are held on 9 January 2011 in accordance with the Agreement and as scheduled in the timeline published for the Southern Sudan referendum by the Southern Sudan Referendum Commission. The Council is concerned by the continued delays in releasing to the Commission the full funding needed for preparations to continue to move forward. The Council calls upon the parties and all Member States to respect the outcome of credible referendums, held in accordance with the Agreement, that reflect the will of the people of Southern Sudan and Abyei. It requests all parties to refrain from unilateral action and to implement the Agreement (fourth paragraph)

[S/PRST/2010/28](#)
16 December 2010

... The Council welcomes the conclusion of a peaceful registration process for the Southern Sudan referendum in the Sudan, and encourages the parties to continue this forward momentum towards peaceful and credible referendums on 9 January 2011 that reflect the will of the people. ... (first paragraph)

[S/PRST/2011/3](#)
9 February 2011

The Security Council welcomes the announcement on 7 February 2011 by the Southern Sudan Referendum Commission of the final results of the referendum on self-determination for the people of Southern Sudan, which showed that 98.83 per cent of voters chose independence. The Council calls upon the international community to lend its full support to all Sudanese people as they build a peaceful and prosperous future (first paragraph)

The situation concerning Western Sahara

Resolution [1920 \(2010\)](#)
30 April 2010

Reaffirming its commitment to assist the parties to achieve a just, lasting and mutually acceptable political solution which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations, and noting the role and responsibilities of the parties in this respect (third preambular paragraph)

Same provision in resolution [1979 \(2011\)](#), third preambular paragraph

Also calls upon the parties to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith, taking into account the efforts made since 2006 and subsequent developments, with a view to achieving a just, lasting and mutually acceptable political solution which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations, and notes the role and responsibilities of the parties in this respect (para. 4)

Same provision in resolution [1979 \(2011\)](#), para. 6

B. Constitutional discussion relating to Article 1 (2)

During the period under review, Article 1 (2) was explicitly invoked once in the deliberations of the Security Council in the context of the gaining of independence by South Sudan through the exercise of its right to self-determination.³ While the principle of self-determination was mentioned quite frequently, such references seldom gave rise to a constitutional discussion.⁴ For instance, in connection with the Central African region, the representative of Lebanon stated that the adoption of a binding international instrument to regulate the production and sale of small arms and light weapons would not infringe, among others, the right of peoples to resist occupation and to achieve self-determination.⁵

Two of the case studies below provide highlights of debates during which speakers touched upon the principle of self-determination when discussing the outcome of the referendum of self-determination for the people of Southern Sudan (case 1) and the situation in Kosovo, following the issuance of the advisory opinion on 22 July 2011 by the International Court of Justice on the question of the unilateral declaration of independence of Kosovo (case 2). In addition, the principle of self-determination was invoked in the deliberations of the Council on the situation in the Middle East, with regard to events in the Syrian Arab Republic (case 3).

Case 1 Reports of the Secretary-General on the Sudan

At its 6478th meeting, on 9 February 2011, concerning the reports of the Secretary-General on the Sudan, the Council adopted a presidential statement by which it welcomed the announcement by the Southern

Sudan Referendum Commission of the final results of the referendum on self-determination for the people of Southern Sudan, held on 8 January 2011, which had shown that 98.83 per cent of the voters had chosen independence.⁶

At that meeting, the Chair of the Panel of the Secretary-General on the Referenda in the Sudan reported the conclusion of the Panel that the outcome of the referendum reflected the will of the people of Southern Sudan and that the referendum process had been free, fair and credible.⁷ The representative of the Sudan, recalling that the referendum had been one of the most important elements of the Comprehensive Peace Agreement, affirmed that the unity of his country had been sacrificed for peace and stability and out of respect for the desire of the people in Southern Sudan to exercise their right to self-determination, in consonance with the Agreement. He added that his Government had ratified the outcome of the referendum and was committed to maintaining good-neighbourly relations with the South, including through assisting in the establishment of the nascent country.⁸

Calling the results of the referendum a reflection of “the true democratic will of the people of Southern Sudan”, the Minister of Regional Cooperation of the Government of Southern Sudan underlined that the peaceful conduct of the referendum had shown the maturity and commitment of all citizens to exercise their right to self-determination. He stressed that South Sudan, the world’s “newest democracy”, was committed to a Government that reflected the will of the people.⁹

Council members unanimously welcomed the results of the referendum, many acknowledging the outcome as the expression of the will of the people of Southern Sudan.¹⁰ The representative of South Africa, recalling the decision in 2005 by the Sudanese leaders to “grant the right of self-determination” to the people of Southern Sudan, opined that the outcome of the referendum bore testimony to the collective desire of the people of Southern Sudan to exercise their

³ S/PV.6583, p. 22 (Lebanon).

⁴ See, for example, in connection with the situation in the Middle East, including the Palestinian question, S/PV.6265, p. 10 (Palestine) and S/PV.6265 (Resumption 1), p. 7 (Cuba), p. 17 (Argentina) and pp. 21-22 (South Africa); S/PV.6363, p. 8 (Palestine), p. 17 (Gabon) and S/PV.6363 (Resumption 1), p. 10 (Islamic Republic of Iran), p. 12 (Cuba), p. 15 (Bangladesh) and pp. 17-18 (Bolivarian Republic of Venezuela); and in connection with the situation concerning Western Sahara, S/PV.6305, p. 3 (Nigeria), p. 5 (France, Mexico) and p. 6 (Austria, United Kingdom); and S/PV.6523, pp. 2-3 (South Africa).

⁵ S/PV.6288, p. 15.

⁶ S/PRST/2011/3.

⁷ S/PV.6478, p. 2.

⁸ Ibid., p. 8.

⁹ Ibid., pp. 10-11.

¹⁰ Ibid., p. 12 (United States); p. 14 (United Kingdom); p. 15 (Russian Federation); p. 16 (South Africa); p. 17 (Lebanon); p. 18 (Colombia); p. 19 (Portugal); p. 23 (Nigeria); and p. 24 (China).

inalienable right to self-determination, in accordance with the Comprehensive Peace Agreement.¹¹

Case 2
Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)

In his report dated 29 July 2010, the Secretary-General noted that the International Court of Justice had delivered on 22 July 2010 its advisory opinion on the question “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”, which had been requested by the General Assembly in its resolution 63/3 of 8 October 2008. The Court had concluded that the adoption of the declaration of independence had not violated any applicable rule of international law.¹²

Having the above-mentioned report before it, the Council held its 6367th meeting on 3 August 2010 under the item entitled “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)”. The representative of Serbia argued that the advisory opinion did not alter the fundamental parameters set forth in resolution 1244 (1999) and that therefore the centrality and leading role of the Security Council remained paramount in the final settlement of the Kosovo issue. He said that the Court had neither endorsed the view that Kosovo’s unilateral declaration of independence was a unique case, nor supported the claim that Kosovo was a State. He further noted that the Court had not approved Kosovo’s “right of secession from Serbia” or any purported right to self-determination for Kosovo’s ethnic Albanians. The Court, he stated, had rather narrowly examined the language of the unilateral declaration of independence, adopting a strictly technical approach. Such an approach, in his opinion, had unfortunately left room for a misinterpretation that the Court had legalized the ethnic Albanians’ attempt at unilateral secession. Such a misinterpretation, he warned, could enable other groups around the world “to write their own declarations of independence according to Kosovo’s textual template”. Taking the floor again at the end of the meeting, the representative of Serbia recalled that never in the history of the United Nations had a

territory achieved statehood by seceding from a parent State that did not give its consent.¹³

Several Council members called on all Member States to respect the sovereignty and territorial integrity of Serbia¹⁴ and emphasized that resolution 1244 (1999) provided an international legal framework for achieving a settlement of the issue.¹⁵ The representative of China stated that negotiating a mutually acceptable solution was the best way to resolve the Kosovo issue, and that unilateral action could in no way contribute to achieving that objective.¹⁶ The representative of the Russian Federation reaffirmed his country’s non-recognition of the unilateral declaration of independence of Kosovo and said that the Court had not considered the broader issue of the right of Kosovo to unilaterally secede from Serbia or the consequences of the adoption of that declaration, including whether the recognition of Kosovo by other States was lawful.¹⁷ Similarly, the representative of Mexico pointed out that the advisory opinion limited itself to the formal aspects of the declaration of independence as an act of promulgation, without addressing underlying issues. He encouraged the parties to opt for peaceful means and dialogue to reach a political settlement on Kosovo’s definitive status and achieve a solution that promoted respect for the rights of all communities.¹⁸

On the other hand, Mr. Skender Hyseni stated that by affirming that the declaration of independence of his country had not violated international law, the Court had ruled in favour of Kosovo on all points. He added that nothing in the opinion issued by the Court cast any doubt on the statehood of the Republic of Kosovo, and he called on States that had delayed recognition pending the opinion of the Court to move forward and recognize Kosovo. He argued that the correct interpretation of the advisory opinion of the Court was that the independence of Kosovo represented the accomplishment of resolution 1244 (1999). Recalling that Kosovo’s ultimate objective was membership in the United Nations, he said the time

¹¹ Ibid., p. 16.

¹² S/2010/401, para. 55.

¹³ S/PV.6367, p. 7 and p. 24.

¹⁴ Ibid., p. 15 (China); p. 21 (Gabon); and p. 23 (Russian Federation).

¹⁵ Ibid., p. 15 (China); p. 17 (Brazil); p. 21 (Gabon); p. 22 (Mexico); and p. 23 (Russian Federation).

¹⁶ Ibid., p. 15.

¹⁷ Ibid., p. 23.

¹⁸ Ibid., p. 22.

had come to replace resolution 1244 (1999) with a new resolution reflecting the realities created by the independence of Kosovo and the ruling of the Court in its favour. While reaffirming the willingness of his country to cooperate with Serbia, he stressed that such cooperation must take place on an equal footing and “on a State-to-State basis only”.¹⁹

A number of speakers welcomed the advisory opinion of the Court that the declaration of independence of Kosovo had not violated resolution 1244 (1999) or international law, and argued that it would open a new phase in the relations between Belgrade and Pristina.²⁰ The representative of the United Kingdom refuted the idea that the advisory opinion of the Court would allow the case of Kosovo to provide a template for secession elsewhere. Rather, it should end the debate on the status of Kosovo, which he recalled, had been functioning as an independent State for over two and a half years.²¹ The representative of the United States stated that the advisory opinion had decisively affirmed the view of her country as well as others that Kosovo’s declaration of independence was in accordance with international law, and the United States believed that the opinion of the Court would encourage countries that had not done so to recognize Kosovo. She also affirmed that Kosovo was a special case and did not constitute a precedent for other conflicts, stressing that the Court had recognized that the declaration of independence had to be considered, *inter alia*, within the framework established by resolution 1244 (1999) and the developments in the final status process brokered by the United Nations.²²

Case 3 The situation in the Middle East

At the 6627th meeting, on 4 October 2011, concerning the Middle East, while discussing events in the Syrian Arab Republic, a number of speakers stressed that the fundamental rights of the Syrian people should be respected and their aspirations

addressed through an inclusive political process.²³ The representative of Germany commended the courage of the people in the Arab world who had expressed their legitimate aspiration for self-determination in a peaceful manner. He said that the aspirations of the Syrian people could not be answered by tanks, bullets and torture and that the only viable option for the future of the Syrian Arab Republic was a meaningful, Syrian-led political process. He stressed that Germany, its partners and all those who cherished the values of freedom, dignity and self-determination would not relent in their efforts to stand by them.²⁴ The representative of South Africa hoped that the situation in the Syrian Arab Republic would be resolved in accordance with the will of the Syrian people and urged the Syrian authorities to initiate an all-inclusive political process with the people to address their grievances, in order to guarantee their fundamental political rights and freedoms.²⁵

In response, the representative of the Syrian Arab Republic argued that his country’s leadership had responded to the legitimate demands of its population by enacting reforms. He denounced the activities of armed terrorist groups supported by certain States, and the misuse of the legitimate demands of the people to provoke sectarian unrest and pave the way for external intervention. He added that the economic sanctions imposed unilaterally on his country were intended to push the population to replace the political regime, and hence constituted a violation of the people’s right of self-determination and to choose its political system without outside pressure.²⁶ While condemning the repression of peaceful protests, the representative of the Russian Federation argued that the Syrian opposition showed an extremist bent, relied on terrorist tactics and acted outside the law. He said the Council must bear in mind the fact that a significant number of Syrians did not agree with the demand for a quick regime change and would rather see gradual changes implemented while maintaining civil peace and harmony.²⁷ The representative of India recalled that States had the responsibility both to respect the

¹⁹ *Ibid.*, pp. 8-9 and p. 24.

²⁰ *Ibid.*, p. 12 (France); p. 14 (Turkey); pp. 15-16 (United Kingdom); p. 18 (Austria); and p. 19 (United States).

²¹ *Ibid.*, p. 16.

²² *Ibid.*, p. 19.

²³ S/PV.6627, p. 3 (France); p. 6 (Portugal, India); p. 7 (United Kingdom); p. 8 (Colombia, United States); p. 9 (Bosnia and Herzegovina); p. 10 (Germany); and p. 11 (South Africa, Brazil).

²⁴ *Ibid.*, p. 10.

²⁵ *Ibid.*, p. 11.

²⁶ *Ibid.*, p. 13.

²⁷ *Ibid.*, p. 4.

fundamental rights of their people and to protect their citizens from armed groups that resorted to violence against State authority and infrastructure. In the Syrian context, therefore, the violence perpetrated by the opposition should be condemned and its grievances addressed through a peaceful political process.²⁸

C. Invocation of the principle enshrined in Article 1 (2) in communications

During the period under review, no explicit references were made to Article 1 (2) in the communications of the Council. The principle of self-determination was however invoked in a large number of communications addressed to or brought to the attention of the Council. In a statement transmitted to the Secretary-General on 9 August 2011, the Deputy Minister for Foreign Affairs of Cuba demanded full respect for the self-determination and sovereignty of the Syrian Arab Republic, stressing the capacity of the Syrian people and Government to resolve their internal problems without any foreign interference.²⁹ In a special statement transmitted to the Secretary-General on 12 September 2011, the Ministers for Foreign Affairs of the Bolivarian Alliance for the Peoples of

Our America-People's Trade Agreement, condemning the NATO intervention in Libya and warning about the danger that similar action would be taken against the Syrian Arab Republic, reiterated their commitment to the right of self-determination of the peoples of Libya and the Syrian Arab Republic.³⁰

A few references were made to the right of self-determination in the report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations.³¹ The right of self-determination was also mentioned in the terms of reference of the Security Council mission to the Sudan conducted from 4 to 10 October 2010.³² Other instances include communications from Member States in connection with the situation in the Middle East, including the Palestinian question,³³ and Nagorny Karabakh.³⁴

²⁸ Ibid., p. 6.

²⁹ Letter dated 4 August 2011 from the representative of Cuba to the Secretary-General (S/2011/499). See also, in connection with the situation in Libya, the letter dated 26 August 2011 from the representative of the Bolivarian Republic of Venezuela to the President of the Security Council on the need to preserve the sovereignty and self-determination of that State (S/2011/544).

³⁰ Note verbale dated 12 September 2011 from the Permanent Mission of the Bolivarian Republic of Venezuela to the Secretary-General (S/2011/571).

³¹ S/2011/705, paras. 6 and 7.

³² S/2010/509, annex.

³³ See, for example, letter dated 13 January 2011 from the representative of Guyana to the Secretary-General (S/2011/51, annex); and note verbale dated 28 September 2011 from the Permanent Mission of the Bolivarian Republic of Venezuela to the Secretary-General (S/2011/611, annex).

³⁴ See, for example, letter dated 24 February 2010 from the representative of Armenia to the Secretary-General (S/2010/102); and letter dated 13 October 2010 from the representative of Azerbaijan to the Secretary-General (S/2010/531).

II. Prohibition of the threat or use of force under Article 2, paragraph 4

Article 2, paragraph 4

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

Note

Section II deals with the practice of the Security Council concerning the principle of the prohibition of

the threat or use of force under Article 2 (4) of the Charter. This section comprises three subsections: subsection A covers decisions adopted by the Council which may have an implicit bearing on Article 2 (4); subsection B covers constitutional discussion relating to the use or threat of use of force; and subsection C contains material relevant to the principle enshrined in Article 2 (4) found in the official correspondence of the Council.

A. Decisions relating to Article 2 (4)

In 2010 and 2011, the Council adopted no decisions containing an explicit reference to Article 2 (4). In a number of its decisions, however, the Council reaffirmed the principle of refraining from the threat or use of force in international relations; reiterated the importance of good-neighbourliness and non-interference by States in the internal affairs of others; called for the cessation of support by States to armed groups engaged in destabilizing peace and security; and called on parties to withdraw from a disputed area, as illustrated below.

Affirmation of the principle of refraining from the threat or use of force in international relations

In the period 2010-2011, the Council stressed the importance of the principle of refraining from the threat or use of force among States in the following instances. In resolution 1929 (2010) of 9 June 2010, by which it modified sanctions measures against the Islamic Republic of Iran in connection with non-proliferation, the Council stressed that nothing in the resolution compelled States to take measures or

actions exceeding the scope of the resolution, “including the use of force or the threat of force”.³⁵ In a presidential statement dated 1 June 2010 in connection with the situation in the Middle East, including the Palestinian question, the Council deeply regretted the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against a convoy sailing to Gaza.³⁶

Reiteration of the principles of good-neighbourliness, non-interference and regional cooperation among States

During the two-year period under review, the Council underlined the principle enshrined in Article 2 (4) by recalling the principles of good-neighbourliness, non-interference and regional cooperation in several decisions concerning the Central African Republic, Côte d’Ivoire and the Sudan, while reaffirming its commitment to the sovereignty, independence and territorial integrity of those States (see table 2).

³⁵ Resolution 1929 (2010), penultimate preambular paragraph.

³⁶ S/PRST/2010/9, first paragraph.

Table 2

Decisions reiterating the principle of non-interference by States in the internal affairs of others

<i>Decision and date</i>	<i>Provision</i>
The situation in the Central African Republic	
Resolution 2031 (2011) 21 December 2011	Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and unity of the Central African Republic, and recalling the importance of the principles of good-neighbourliness and regional cooperation (second preambular paragraph)
The situation in Côte d’Ivoire	
Resolution 1911 (2010) 28 January 2010	Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and unity of Côte d’Ivoire, and recalling the importance of the principles of good neighbourliness, non-interference and regional cooperation (second preambular paragraph)
	<i>Same provision in resolutions 1933 (2010), second preambular paragraph; 1946 (2010), second preambular paragraph; 1962 (2010), second preambular paragraph; 1975 (2011), second preambular paragraph; 1980 (2011), second preambular paragraph; and 2000 (2011), second preambular paragraph</i>

Decision and date

Provision

Reports of the Secretary-General on the Sudan

Resolution 1945 (2010) 14 October 2010	Reaffirming its commitment to the cause of peace throughout the Sudan, to the sovereignty, independence, unity and territorial integrity of the Sudan, ... and recalling the importance of the principles of good-neighbourliness, non-interference and cooperation in the relations among States in the region (second preambular paragraph)
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Calls for the cessation of support by States to armed groups engaged in destabilizing national and regional peace and security

In several decisions adopted in 2010 and 2011, the Council called upon certain Governments to cease support for illegal armed groups engaged in undermining peace and stability, including through the use of their territory (see table 3). For instance, in connection with the situation concerning the Democratic Republic of the Congo, the Council, reiterating its concern about the support received by illegal armed groups operating in the eastern part of the country from regional and international networks,³⁷ called upon all States to take effective steps to ensure that there was no support, in and from their territories, for those illegal armed groups and to take action

³⁷ See resolutions 1952 (2010), sixth preambular paragraph; and 2021 (2011), fifth preambular paragraph.

against leaders of the Forces démocratiques de libération du Rwanda and other illegal armed groups residing in their countries.³⁸ In resolution 2023 (2011) of 5 December 2011, the Council expressed grave concern at the findings of the Monitoring Group on Somalia and Eritrea³⁹ that Eritrea had continued to provide political, financial, training and logistical support to armed opposition groups, including Al-Shabaab, engaged in undermining peace, security and stability in Somalia and the region; the Council demanded that Eritrea cease all direct or indirect efforts to destabilize States, including through financial, military, intelligence and non-military assistance.⁴⁰

³⁸ Resolution 1952 (2010), para. 10.

³⁹ See S/2011/433.

⁴⁰ Resolution 2023 (2011), seventh preambular paragraph and para. 7.

Table 3

Decisions calling for the cessation of support by States to armed groups engaged in destabilizing national and regional peace and security

Decision and date

Relevant provision

Peace and security in Africa

Resolution 2023 (2011) 5 December 2011	Demands also that Eritrea cease all direct or indirect efforts to destabilize States, including through financial, military, intelligence and non-military assistance, such as the provision of training centres, camps and other similar facilities for armed groups, passports, living expenses or travel facilitation (para. 7)
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The situation concerning the Democratic Republic of the Congo

Resolution 1952 (2010) 29 November 2010	Calls upon all States, especially those in the region, to take effective steps to ensure that there is no support, in and from their territories, for the illegal armed groups in the eastern part of the Democratic Republic of the Congo, ... and calls upon all States to take action, where appropriate, against leaders of the Forces démocratiques de libération du Rwanda and other illegal armed groups residing in their countries (para. 10)
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Calls on parties to withdraw all military forces from a disputed area

During the period under review, the Council called on parties to withdraw from the disputed area of Abyei in several decisions adopted in connection with the reports of the Secretary-General on the Sudan (see table 4). In resolution [2032 \(2011\)](#) of 22 December 2011, for instance, the Council stressed that both countries would have much to gain if they showed restraint and chose the path of dialogue instead of resorting to violence or provocations, and expressed concern about the continued presence of military and

police personnel from the Sudan and South Sudan in Abyei, in violation of the Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area of 20 June 2011;⁴¹ the Council demanded that both Governments redeploy all remaining military and police personnel from the Abyei Area immediately and without preconditions.⁴²

⁴¹ [S/2011/384](#), annex.

⁴² Resolution [2032 \(2011\)](#), seventh and seventeenth preambular paragraphs, and para. 3.

Table 4

Decisions calling on parties to withdraw all military forces from a disputed area

<i>Decision and date</i>	<i>Provision</i>
Reports of the Secretary-General on the Sudan	
S/PRST/2011/8 21 April 2011	The Council reiterates its deep concern over increased tensions, violence and displacement in the Abyei Area. The Council calls upon both parties to implement and adhere to recent security agreements by withdrawing from the Abyei Area all forces other than the Joint Integrated Units and Joint Integrated Police Units allowed under those agreements and to urgently reach an agreement on Abyei's post-Comprehensive Peace Agreement status ... (second paragraph)
S/PRST/2011/12 3 June 2011	The Council strongly condemns the Government of the Sudan's taking and continued maintenance of military control over the Abyei Area and the resulting displacement of tens of thousands of residents of Abyei. The Council calls upon the Sudanese Armed Forces to ensure an immediate halt to all looting, burning and illegal resettlement ... (second paragraph) ... The Council demands that the Government of the Sudan withdraw immediately from the Abyei Area. The Council further demands the immediate withdrawal of all military elements from Abyei ... (eighth paragraph)
Resolution 2032 (2011) 22 December 2011	Demands that the Governments of the Sudan and South Sudan redeploy all remaining military and police personnel from the Abyei Area immediately and without preconditions, and urgently finalize the establishment of the Abyei Area Administration and the Abyei Police Service, in accordance with their commitments in the Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area of 20 June 2011 (para. 3)

B. Constitutional discussion relating to Article 2 (4)

During the period 2010-2011, Article 2 (4) of the Charter was explicitly invoked once at a meeting held on 31 May 2010, following the so-called flotilla incident of that same day, which involved a military operation by Israel against a convoy sailing to Gaza. Stressing that Article 2 (4) of the Charter stipulated

that States must refrain from the threat or use of force against the territorial integrity or political independence of any other State or "in any other manner inconsistent with the purposes of the United Nations", the representative of Lebanon argued that the "attack" by Israel was not consistent with those purposes.⁴³

⁴³ [S/PV.6325](#), p. 12.

During the deliberations of the Council a few implicit references were made to the principles enshrined in Article 2 (4), without those references giving rise to a constitutional discussion on the Article itself.⁴⁴ On one occasion, however, the Council extensively discussed the prohibition of the threat or use of force in the context of the promotion of the rule of law in the maintenance of international peace and security (case 4).

Case 4

The promotion and strengthening of the rule of law in the maintenance of international peace and security

At the 6347th meeting, on 29 June 2010, while considering the promotion and strengthening of the rule of law in the maintenance of international peace and security, the representatives of China and the Russian Federation emphasized that the rejection of the threat or use of force was a fundamental principle of international law, along with other principles such as the pacific settlement of disputes.⁴⁵ Rejecting the language of force, threats and militaristic rhetoric, the representative of Armenia said that the rule of law was a concept diametrically opposed to the rule by force or use of force. He added that adherence to the principle of non-use or threat of force by the parties concerned in conflict and post-conflict settings was a crucial factor in building mutual trust and achieving justice and security.⁴⁶ The representative of Azerbaijan stated that the true value of the principle of the pacific settlement of disputes as enshrined in the Charter was to commit States to respecting each other's territorial integrity and political independence and to refraining in their international relations from the threat or use of force. That principle should not however impair the inherent right of individual or collective self-defence in case of an armed attack against a Member State.⁴⁷

The representative of Lebanon recalled that the core objective of the establishment of the United Nations had been to maintain international peace and

security and to “deter and punish” any State that chose the military option except in cases involving collective security and legitimate defence. He noted that the selective application of the principle of preventing the use of force threatened to render the concept meaningless and constituted a blatant violation of the rule of law. He warned that the international community could be perceived as incapable of preventing practices which violated the principles of the United Nations and of international law, including the sovereignty and territorial integrity of States and the non-use of force.⁴⁸

C. Invocation of the principle enshrined in Article 2 (4) in communications

The official correspondence of the Security Council in 2010 and 2011 included several explicit references to Article 2 (4) of the Charter.⁴⁹ For example, concerning events on the border between Cambodia and Thailand, the representative of Cambodia, in his letter, indicated that the repeated acts of aggression by Thailand constituted a violation of, among others, Article 2 (4).⁵⁰

⁴⁸ *S/PV.6347*, pp. 19-20.

⁴⁹ See the identical letters dated 13 April 2010 from the representative of the Islamic Republic of Iran to the Secretary-General and the President of the Security Council (*S/2010/188*); letter dated 3 May 2010 from the representative of Mexico to the President of the Security Council, transmitting a letter from the Minister for Foreign Affairs of Eritrea (*S/2010/225*, enclosure II); letters dated 25 March and 20 December 2011 from the representative of Eritrea to the President of the Security Council (*S/2011/181* and *S/2011/792*, annex, respectively); identical letters dated 8 August 2010 from the representative of Cambodia to the President of the General Assembly and the President of the Security Council (*S/2010/426*, annex); letters dated 5 and 6 February 2011 from the representative of Cambodia to the President of the Security Council (*S/2011/56*, annex, and *S/2011/58*, annex, respectively); and letter dated 19 December 2010 from the representative of the United States to the Secretary-General transmitting the special report of the United Nations Command established pursuant to resolution 84 (1950) (*S/2010/648*, annex, footnote 10).

⁵⁰ Letter dated 6 February 2011 (*S/2011/58*, annex).

⁴⁴ See for instance, in connection with peace and security in Africa, *S/PV.6674*, pp. 2-3 (Djibouti); and in connection with the Sudan, *S/PV.6656*, pp. 7-9 (Sudan) and p. 9 (South Sudan).

⁴⁵ *S/PV.6347*, p. 21 (China); and p. 23 (Russian Federation).

⁴⁶ *S/PV.6347 (Resumption 1)*, p. 24.

⁴⁷ *Ibid.*, p. 22.

III. Obligation to refrain from assisting the target of enforcement action under Article 2, paragraph 5

Article 2, paragraph 5

All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

Note

Section III concerns the practice of the Security Council with regard to the principle enshrined in Article 2 (5) of the Charter, particularly regarding the obligation of Member States to refrain from giving assistance to a State against which the United Nations is taking preventive or enforcement action. There was no material for coverage in the communications and deliberations of the Council in the period under review.

Hence, this section deals only with decisions relevant to Article 2 (5).

Decisions relating to Article 2 (5)

During the period under review, there were no explicit references to Article 2 (5) of the Charter in the decisions of the Security Council. However, the Council adopted four decisions which may have an implicit bearing on the principle enshrined in Article 2 (5). Those decisions touched upon the obligation of all States, in particular those in the region, to refrain from any action in contravention of the arms embargo imposed on Somalia and Eritrea (see table 5).⁵¹

⁵¹ For more information on the arms embargo, see part VII, sect. III, with regard to measures imposed against Somalia and Eritrea.

Table 5

Decisions of the Security Council containing provisions relating to Article 2 (5)

<i>Decision and date</i>	<i>Provision</i>
The situation in Somalia	
Resolution 1916 (2010) 19 March 2010	Calling upon all Member States, in particular those in the region, to refrain from any action in contravention of the Somalia and Eritrea arms embargoes and to take all necessary steps to hold violators accountable (ninth preambular paragraph) <i>Same provision in resolution 2002 (2011), eighth preambular paragraph</i>
S/PRST/2011/6 10 March 2011	The Council calls upon all Member States, in particular those in the region, to refrain from any action in contravention of the Somalia and Eritrea arms embargoes and to take all necessary steps to hold violators accountable ... (penultimate paragraph)
Resolution 1972 (2011) 17 March 2011	Reiterating its insistence that all States, in particular those in the region, should refrain from any action in contravention of the Somalia arms embargo and take all necessary steps to hold violators accountable (fourth preambular paragraph)

IV. Non-intervention in the internal affairs of States by the United Nations under Article 2, paragraph 7

Article 2, paragraph 7

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Note

Section IV concerns the practice of the Security Council in relation to the principle of non-intervention of the United Nations in the internal affairs of States under Article 2 (7) of the Charter. In the period 2010-2011, the Council made no explicit reference to that Article in its decisions. However, Article 2 (7) was explicitly invoked, and the principle of non-intervention discussed, at meetings held in connection with the situation in the Middle East and the protection of civilians, as illustrated in subsection A. The correspondence of the Council contained one explicit reference to Article 2 (7), featured in subsection B.

A. Constitutional discussion relating to Article 2 (7)

During the period under review, Article 2 (7) was invoked twice by the representative of the Syrian Arab Republic at two meetings held in connection with the Middle East and the protection of civilians, respectively.⁵² The principle enshrined in Article 2 (7) was touched upon in the deliberations of the Council on those two items, as illustrated by cases 5 and 6.

Case 5

The situation in the Middle East

At its 6627th meeting, on 4 October 2011, concerning the situation in the Middle East, the Council had before it a draft resolution, by which it would have demanded, inter alia, that the Syrian authorities immediately cease violations of human

⁵² S/PV.6627, p. 14; and S/PV.6650 (Resumption 1), pp. 27-28.

rights and the use of force against civilians, and expressed the Council's intention to review the Syrian Arab Republic's implementation of the resolution and consider its options, including measures under Article 41 of the Charter.⁵³ The draft resolution was not adopted, owing to the negative vote of two permanent members of the Council.

The representative of the Russian Federation stated that the draft resolution proposed by his delegation and China⁵⁴ was based on respect for the national sovereignty and territorial integrity of the Syrian Arab Republic and the principle of non-intervention, including military, in Syrian affairs. The draft resolution against which his delegation had voted did not include his delegation's proposed wording on the non-acceptability of foreign military intervention.⁵⁵ The representative of China said that whether the Council took further action on the question of the Syrian Arab Republic should depend on whether such action complied with the Charter and the principle of non-interference in the internal affairs of States, which had a bearing upon the security and survival of developing countries, in particular small and medium-sized countries, as well as on world peace and stability.⁵⁶

The representative of the Syrian Arab Republic said that certain States had tried to intervene in his country's domestic affairs under the pretext of the protection of civilians. He noted that the international legal framework governing international relations was based on the principle of non-interference in the domestic affairs of States, which had been enshrined in myriad international instruments, specifically under Article 2 (7) of the Charter. He affirmed that the "intervention of the Council in Syrian internal affairs" had further aggravated the situation and sent a message to extremists and terrorists that their acts of deliberate sabotage and violence were "encouraged and supported by the Council".⁵⁷

⁵³ S/2011/612.

⁵⁴ Not issued as a document of the Security Council.

⁵⁵ S/PV.6627, pp. 3-4.

⁵⁶ Ibid., p. 5.

⁵⁷ Ibid., pp. 13-14.

The representative of South Africa, whose delegation abstained from voting on the draft resolution, expressed concern about the intention of the sponsors to impose punitive measures which he believed had been “designed as a prelude to further actions” perhaps aimed at regime change. He also expressed concern about the fact that the sponsors had rejected language that clearly excluded the possibility of military intervention in the resolution of the Syrian crisis.⁵⁸ The representative of India, who also abstained in the vote, stressed that the international community should “give time and space” to allow the Syrian Government to implement the reforms it had announced, and should facilitate a Syrian-led inclusive political process and not complicate the situation by threats of sanctions and regime change.⁵⁹

Among Council members who regretted that the draft resolution had not been adopted,⁶⁰ the representative of France noted that the international community and the Council in particular, given its mandate, could not escape its obligation to ensure an effective response to the aspirations of the people of the Syrian Arab Republic, adding that only such a response could restore stability in that country.⁶¹ The representative of Germany said that the Syrian Arab Republic would move closer to the brink of civil war if the repression did not stop, and that it was not the time or place for “a mere wait-and-see approach”.⁶² The representative of the United States expressed outrage that the Council had “utterly failed” to address an urgent moral challenge and a growing threat to regional peace and security. She believed that it was past time for the Council to assume its responsibilities and impose tough, targeted sanctions and an arms embargo on the Syrian regime.⁶³

Case 6 Protection of civilians in armed conflict

At the 6531st meeting, on 10 May 2011, in connection with the protection of civilians in armed conflict, many speakers affirmed that national

Governments had the primary responsibility to protect civilians while the international community could provide assistance to that end.⁶⁴

Positions varied however on the implementation of such assistance. A number of speakers stressed the role of the United Nations, in particular the Security Council, when national Governments were unable or unwilling to fulfil their responsibility to protect civilians.⁶⁵ Citing the situations in Côte d’Ivoire and Libya as cases in point, a few speakers stressed that, when grave violations of international humanitarian and human rights law, war crimes and crimes against humanity were committed, it was the responsibility of the Council to take action to end such violations.⁶⁶ In a similar vein, the representative of Norway stated that the Security Council had a responsibility to “authorize international protection” when States failed and betrayed their obligations, but emphasized that the decisive measures recently adopted by the Council were measures of last resort and should be implemented strictly to protect civilians and should not “go beyond that”.⁶⁷

While stressing the primary responsibility of States for the protection of civilians, the representative of the Russian Federation stated that international measures to protect civilians, in particular those involving the use of force, could be taken only with the authorization of the Security Council, in strict compliance with the Charter, and within the framework established by the relevant Council resolutions.⁶⁸

Other speakers emphasized that international action aimed at protecting civilians in armed conflict should respect the independence, sovereignty and

⁵⁸ *Ibid.*, p. 11.

⁵⁹ *Ibid.*, p. 6.

⁶⁰ *Ibid.*, p. 3 (France); p. 5 (Portugal); p. 7 (United Kingdom); p. 8 (Colombia); p. 9 (United States, Bosnia and Herzegovina); and p. 10 (Germany).

⁶¹ *Ibid.*, p. 3.

⁶² *Ibid.*, p. 10.

⁶³ *Ibid.*, p. 8.

⁶⁴ [S/PV.6531](#), p. 5 (Under-Secretary-General for Peacekeeping Operations); p. 9 (Russian Federation); pp. 10-11 (India); p. 13 (Bosnia and Herzegovina); p. 18 (Germany); p. 19 (Nigeria); p. 20 (China); p. 22 (Gabon, Lebanon); p. 31 (Sri Lanka); p. 32 (Japan); p. 33 (Liechtenstein); [S/PV.6531 \(Resumption 1\)](#), p. 9 (Chile); p. 11 (Norway); p. 12 (Turkey); p. 19 (Bolivarian Republic of Venezuela); p. 24 (Netherlands); and p. 30 (Republic of Korea).

⁶⁵ [S/PV.6531](#), p. 18 (Germany); p. 19 (Nigeria); p. 23 (France); [S/PV.6531 \(Resumption 1\)](#), p. 9 (Chile); p. 11 (Norway); p. 12 (Turkey); and p. 15 (Croatia).

⁶⁶ [S/PV.6531](#), p. 23 (France); p. 28 (Switzerland on behalf of the Human Security Network); and [S/PV.6531 \(Resumption 1\)](#), p. 17 (Austria).

⁶⁷ [S/PV.6531 \(Resumption 1\)](#), p. 11.

⁶⁸ [S/PV.6531](#), p. 9.

territorial integrity of States and comply with the provisions of the Charter.⁶⁹ Several speakers registered concern about the use of the concept of protection of civilians at the United Nations by certain States to achieve political objectives, particularly regime change.⁷⁰ The representative of Brazil argued that if the concept of the protection of civilians, which must not be confused or conflated with the responsibility to protect, was interpreted too broadly, it could lead to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that the concept was being used as a smokescreen for intervention or regime change.⁷¹ Using the situation in Libya as an example of “manipulation” of the concept for “dishonourable” political purposes, seeking to impose regime change, the representative of Nicaragua held that if the Charter did not include any reference to a “supposed right of humanitarian interference” it was because the principle clearly constituted an attempt to interfere in the internal affairs of States for political purposes. Given that respect for the sovereignty of States and non-interference and non-intervention in the

⁶⁹ Ibid., p. 10 (India); p. 16 (Colombia); p. 18 (South Africa); p. 20 (China); p. 27 (Cuba); p. 31 (Sri Lanka); and [S/PV.6531 \(Resumption 1\)](#), p. 28 (Syrian Arab Republic).

⁷⁰ [S/PV.6531](#), p. 11 (Brazil); p. 18 (South Africa); p. 20 (China); p. 34 (Nicaragua); and [S/PV.6531 \(Resumption 1\)](#), p. 19 (Bolivarian Republic of Venezuela).

⁷¹ [S/PV.6531](#), p. 11.

internal affairs of States was placed above any other consideration, he held that there was no legal justification for “poorly defined” concepts, such as the protection of civilians, to prevail over the sovereignty of States.⁷² Similarly, the representative of Cuba stated that no legal provisions existed by which to justify the legal nature of an intervention on the basis of humanitarian reasons or pretexts.⁷³

B. Invocation of the principle enshrined in Article 2 (7) in communications

In the period under review, Article 2 (7) was explicitly invoked once in the documents of the Security Council. In a report dated 28 June 2011 on the role of regional and subregional arrangements in implementing the responsibility to protect, the Secretary-General pointed out that the idea was not new. He recalled that in 1945 the drafting committee in San Francisco, referring to the domestic jurisdiction clause of Article 2 (7), had declared that if fundamental freedoms and rights were “grievously outraged so as to create conditions which threaten peace or to obstruct the application of provisions of the Charter, then they cease to be the sole concern of each State”.⁷⁴

⁷² Ibid., p. 34.

⁷³ Ibid., p. 27.

⁷⁴ [S/2011/393](#), para. 10.

