

#### Repertoire of the Practice of the Security Council

25<sup>th</sup> Supplement

2022

Department of Political and Peacebuilding Affairs - Security Council Affairs Division Security Council Practices and Charter Research Branch

### Part III

# Purposes and principles of the Charter of the United Nations

#### **Contents**

Introductory note	3
Note	5
A. Decisions relating to Article 1 (2)	5
B. Discussion relating to Article 1 (2)	6
C. Invocation of the principle enshrined in Article 1 (2) in communications	11
II. Prohibition of the threat or use of force under Article 2, paragraph 4	13
Note	13
A. Decisions relating to Article 2 (4)	13
B. Discussion relating to Article 2 (4)	18
C. Invocation of the principle enshrined in Article 2 (4) in communications	31
III. Obligation under Article 2, paragraph 5, to refrain from assisting the target of	f enforcement
action	34
Note	34
A. Decisions relating to Article 2 (5)	34
B. Constitutional discussion relating to Article 2 (5)	35
IV. Non-intervention in the internal affairs of States by the United Nations under	Article 2,
paragraph 7	38
Note	38
A. Decisions relating to Article 2 (7)	38
B. Discussion relating to Article 2 (7)	42
C. Invocations of the principle enshrined in Article 2 (7) in communications	46

#### **Introductory note**

Part III covers the consideration by the Security Council of Articles contained in Chapter I of the Charter of the United Nations relating to the purposes and principles of the United Nations, namely Articles 1 (2), 2 (4), 2 (5) and 2 (7). Part III consists of four sections. Section I features material relating to the principle of self-determination of peoples under Article 1 (2) of the Charter. Section II covers material relevant to the prohibition of the use of force or the threat of the 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). Section IV highlights the Council's consideration of the principle of non-intervention by the United Nations in the internal affairs of States, as regulated by Article 2 (7).

In 2022, Council members and other participants in Council discussions deliberated on the principle of self-determination in the context of the Palestinian question, the situation concerning Western Sahara and the referendums held in the occupied regions of Ukraine. Council members addressed the application and interpretation of Article 2 (4) concerning the prohibition of the use or threat of use of force and non-interference in the internal affairs of other States at meetings held in connection with the escalation of hostilities on the Armenia-Azerbaijan border, and the situations in Iraq, the Golan Heights, Libya, Syria and Ukraine, as well as in the context of promoting common security through dialogue and cooperation. Council members also discussed the obligation of States to refrain from giving assistance to any State or non-State actor against which the United Nations was taking preventive or enforcement action pursuant to Article 2 (5) in connection with the situations in the Democratic Republic of the Congo, Libya, Ukraine, and Yemen. Furthermore, Council members reflected on the principles enshrined in Article 2 (7) of the Charter during discussions concerning the renewals of the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali and the sanctions regime on the Democratic Republic of the Congo, as well as during a high-level open debate focused on strengthening accountability and justice for serious violations of international law.

During the period under review, the Council did not adopt any decisions containing explicit references to Articles 1 (2), 2 (4), 2 (5) or 2 (7). Nonetheless, Part III includes Council decisions featuring language relating to the principles enshrined in those Articles. In addition, it

includes explicit invocations of Articles 1(2), 2 (4) and 2 (7) found in the correspondence addressed to the Council during the period under review.

# I. 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 Council regarding 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 describes the references made to the principle of self-determination in Council discussions during the reporting period. Subsection C sets out instances in which the principle of self-determination was invoked in communications addressed to the Council.

#### A. Decisions relating to Article 1 (2)

During the period under review, the Council did not explicitly invoke Article 1 (2) of the Charter in its decisions. However, language found in one Council decision, adopted in connection with the envisaged referendum in Western Sahara, is of relevance for the interpretation and application of Article 1 (2) (see table 1).

Table 1 **Decisions containing implicit references to Article 1 (2)** Decision and data

Decision and date	Provision
The situation concer	ning Western Sahara
Resolution <u>2654</u> (2022) 27 October 2022	Reaffirming its commitment to assist the parties to achieve a just, lasting, and mutually acceptable political solution, based on compromise, 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 (sixth preambular paragraph)
	Calls upon the parties to resume 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 noting the role and responsibilities of the parties in this respect (para. 4)

#### **B.** Discussion relating to Article 1 (2)

During the period under review, Article 1 (2) of the Charter was not explicitly invoked in deliberations at meetings of the Council. Nevertheless, the principle of self-determination was addressed by Council members in the context of both thematic and country-specific discussions, as elaborated upon below.

In 2022, Council members and other Member States and entities continued to express support for the right of the Palestinian people to self-determination at meetings held under the item entitled "The situation in the Middle East, including the Palestinian question". 1 At one of those meetings, the representative of Kenya stated that the right of self-determination for Palestinians was closely linked to the right of freedom for the exercise of religion.<sup>2</sup> That

<sup>&</sup>lt;sup>1</sup> See S/PV.8950, Vice-Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Cuba, Indonesia, Malaysia, Argentina, Mexico and Egypt (on behalf of the Group of Arab States), and S/2022/39 (record of written statements submitted in connection with the 8950th meeting), Azerbaijan (on behalf of the Non-Aligned Movement), Organization of Islamic Cooperation, and Qatar; S/PV.9021, Kenya, Ireland, Jordan, Lebanon and Algeria; and S/PV.9021 (Resumption 1), Malaysia, Pakistan, Venezuela, Vice Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and Cuba; S/PV.9099, Algeria and Jordan, and S/PV.9099 (Resumption 1), Pakistan, Venezuela, Cuba, Malaysia, Vice-Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, Oatar, Indonesia, Azerbaijan (on behalf of the Non-Aligned Movement), Argentina, and Organization of Islamic Cooperation, and S/PV.9174, China, Lebanon, Egypt, Jordan, and Algeria, and S/PV.9174 (Resumption 1), Islamic Republic of Iran, Malaysia, Indonesia, Venezuela, South Africa, Iraq (on behalf of the Group of Arab States), Vice-Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People), Cuba, and Azerbaijan (on behalf of the Non-Aligned Movement). <sup>2</sup> See <u>S/PV.9021</u>.

interlinkage, he added, inevitably had to form part of the underpinnings of lasting peace between Israelis and Palestinians.

In relation to the question concerning Western Sahara, at a meeting held on 27 October, at which the Council adopted resolution 2654 (2022) extending the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO), the representative of Kenya, who abstained from the vote on the resolution, regretted that progress in returning MINURSO to its core objective of implementing a referendum for the self-determination of the people of Western Sahara had been limited.<sup>3</sup> He noted that resolution 2654 (2022) continued a gradual but noticeable shift away from that mandate and would not assist the parties in achieving a just, lasting and mutually acceptable political solution. He also explained that unfortunately the proposals made by the Kenyan delegation during the negotiations had not been taken on board leading to their abstention in the vote. He was concerned that the resolution did not substantively reflect the Council's commitment, as had been the case in previous resolutions, to "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". He also emphasized that underlying the United Nations recognition of the right to self-determination through a properly implemented referendum was the Charter of the United Nations, which held that all peoples shall have the unquestionable and inalienable right to self-determination. The representative of the Russian Federation, who also abstained from voting, stressed that the formula for a final settlement should be based on mutually acceptable outcomes that would contribute to a fair political resolution of the situation in Western Sahara for both Morocco and the Frente POLISARIO and provide for the self-determination of the people of Western Sahara in the framework of procedures that were consistent with the purposes and principles of the Charter.<sup>4</sup>

With respect to the situation in Ukraine, on 27 September, at a meeting held under the item entitled "Maintenance of peace and security in Ukraine", Council members deliberated on the right to self-determination in the context of the referendums carried out by the Russian authorities in the occupied regions of Donetsk, Luhansk, Kherson, and Zaporizhzhya (case 1).

<sup>&</sup>lt;sup>3</sup> See S/PV.9168.

<sup>&</sup>lt;sup>4</sup> Ibid.

#### Case 1

#### Maintenance of peace and security of Ukraine

On 27 September, the Council held a meeting under the item entitled "Maintenance of peace and security of Ukraine". Council members heard a briefing by the Under-Secretary-General for Political and Peacebuilding Affairs, who informed that the de facto authorities in the regions of Donetsk, Luhansk, Kherson, and Zaporizhzhya had conducted so-called referendums in which Ukrainians had been asked whether they approved their regions joining the Russian Federation. She added that voting had taken place in polling centres while the de-facto authorities accompanied by soldiers had also gone door to door with ballot boxes. She emphasized that those exercises, which had been held during active armed conflict in areas under Russian control and outside Ukraine's legal and constitutional framework, could not be called a genuine expression of the popular will.

During the ensuing discussion, several Council members considered the referendums carried out by the Russian Federation in regions of Ukraine to be a "sham", "illegal" or "illegitimate". A number of Council members emphasized that the referendums had no legal effect or impact on the status of the regions in question and on Ukraine's sovereignty within its internationally recognized borders, 8 nor did they reflect the will of the Ukrainian people. 9

Some Council members referred to the right to self-determination in the context of those referendums. In that regard, the representative of Brazil, expressing concern about the holding of the referendums, underscored that the Charter and other international treaties recognized the inalienable right of all peoples to self-determination and to freely decide their political status, and stated that the right to self-determination was a fundamental principle of international law, which was the very basis of the legitimacy of States. <sup>10</sup> He further elaborated that while many times in the past, especially in the context of decolonization, the holding of referendums had been the means chosen for peoples to express their free will and Council resolutions had

<sup>&</sup>lt;sup>5</sup> See S/PV.9138.

<sup>&</sup>lt;sup>6</sup> Ibid.

<sup>&</sup>lt;sup>7</sup> Ibid., United States, Albania, Ireland, United Kingdom and France.

<sup>&</sup>lt;sup>8</sup> Ibid., Ireland, Norway, and France.

<sup>&</sup>lt;sup>9</sup> Ibid., United States, Albania, Ireland, Ghana and France.

<sup>&</sup>lt;sup>10</sup> Ibid.

established the use of that instrument as a legitimate practice to decide on issues of sovereignty and territorial integrity, its validity depended on certain conditions. On that note, he explained that it was unreasonable to assume that populations in areas in conflict were able to freely express their will, and recalled that international practice recommended that referendums on questions of sovereignty be conducted in a transparent manner, without restrictions on the freedom of expression and with the possibility of monitoring by independent observers, which did not seem to have been the case for the regions of Donetsk, Luhansk, Kherson and Zaporizhzhya in Ukraine. The representative of Mexico expressed support for the right to self-determination of peoples as stated in General Assembly resolution 2625 (XXV), which also stipulated, in its annex, that the enjoyment and exercise of that right shall not be construed "as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity ... of sovereign and independent States". Given the gravity of the context in which those so-called referendums had taken place, he further reiterated Mexico's call for urgent dialogue between the parties, as well as the strengthening of diplomatic channels to promote confidence-building measures.

By contrast, the representative of the Russian Federation underscored that the referendums had been held under exceptionally transparent conditions, with all electoral norms being fully observed, and stated that soldiers were protecting the participants of the referendums from likely provocations on the Ukrainian side. He maintained that self-determination was considered a democratic choice only if the West approved of it, and added that when denying the people of Donbas and the liberated territories of Ukraine their right to self-determination, Western delegations were demonstrating egregious double standards given that those criticizing the referendum in the Donbas, Kherson and Zaporizhzhya regions had supported Kosovo's independence, arguing that the territory of Kosovo had the right to "remedial secession" from Serbia in case of a real threat to the rights of Kosovar Albanians. He pointed out that while the Charter stipulated the principle of respect for territorial integrity, such respect under international law was not unconditional. In that regard, he recalled the interpretation of the principle of territorial integrity provided by the General Assembly in its Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, according to which all States should respect the sovereignty and territorial integrity of any State whose

Government respected the principle of self-determination of peoples and represented all peoples within its territory.

On 30 September, at a meeting held under the same item, following the announcement by the Russian Federation of the results of the referendums in support of the integration of Donetsk, Luhansk, Kherson, and Zaporizhzhya regions into Russia, Council members voted on a draft resolution submitted by Albania and the United States that would have condemned "the illegal so-called referendums in regions within Ukraine's internationally recognized borders". <sup>11</sup> The draft resolution failed to be adopted owing to the negative vote of the Russian Federation. 12 Prior to the vote, the representative of the Russian Federation informed that treaties had been signed on the accession of those regions into the Russian Federation, adding that there would be no turning back, as the draft resolution tried to impose. 13 He further recalled that Russia had constructively proposed amendments that many Council members would have supported concerning the fact that it was necessary to respect both the territorial integrity of all Member States and the principle of the self-determination of peoples, in accordance with the Charter. The representative of the Russian Federation also indicated that members of the Council had different assessments of the outcome of the referendums, adding that no one could argue with the fact that the free expression of the will of the people was an essential element of a democratic society. The representative of the United Arab Emirates, who voted in favour of the draft resolution, underscored that the referendums held and the announcement regarding the incorporation of the four regions into the Russian Federation were serious developments in the conflict, which made finding a peaceful resolution more difficult and implicated the territorial integrity, sovereignty and independence of a United Nations State Member. 14 While noting that those were core principles of the Charter central to peaceful, cooperative and productive relations between States and essential for the security and stability of all, she emphasized that the principle of selfdetermination was also a fundamental principle enshrined in the Charter, and any tensions between that principle and the principles of territorial integrity, sovereignty and independence needed not amount to a zero-sum game.

<sup>&</sup>lt;sup>11</sup> See <u>S/PV.9143</u>. See also <u>S/2022/720</u>, para. 2.

<sup>&</sup>lt;sup>12</sup> For more information, see part I, sect 19.

<sup>&</sup>lt;sup>13</sup> See S/PV.9143.

<sup>&</sup>lt;sup>14</sup> Ibid.

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

During the period under review, two explicit references to Article 1 of the Charter were made in letters from the representative of the Russian Federation addressed to the President of the Council or circulated as a Security Council document, referring to the principle of self-determination enshrined in Article 1 (2).

In the letter dated 24 February, the representative of the Russian Federation transmitted an address by the President of the Russian Federation made on 24 February in which the President emphasized that while the outcomes of the Second World War were sacred, they did not override the right of nations to self-determination as enshrined in Article 1 of the Charter of the United Nations. <sup>15</sup> He added that neither at the founding of the Soviet Union, nor after the Second World War, had the people living in any of the territories that made up present-day Ukraine been asked how they themselves wanted to build their lives, and underscored that Russia's policy was based on freedom of choice for all to determine their own future and that of their children.

In the letter dated 3 October, the representative of the Russian Federation transmitted another address by the President of the Russian Federation made on 30 September, on the occasion of the signing of treaties on accession of Donetsk, Lugansk, Kherson and Zaporizhzhya regions to the Russian Federation. <sup>16</sup> In the address, he informed that referendums had been held, ballots counted and results announced. He also stated that the people had made their unequivocal choice. As a result of and further to the signing of the treaties, the Federal Assembly would support the constitutional laws on the accession to Russia and the establishment of four new regions, as new constituent entities of the Russian Federation, because that was the will of millions of people. According to the President, this was undoubtedly their right, an inherent right sealed in Article 1 of the Charter, which directly stated the principle of equal rights and self-determination of peoples.

During the period under review, the principle of self-determination was invoked in numerous communications addressed to or brought to the attention of the Council, including

<sup>&</sup>lt;sup>15</sup> See <u>S/2022/154</u>, annex.

<sup>&</sup>lt;sup>16</sup> See S/2022/738, annex.

communications from Member States relating to Cyprus, <sup>17</sup> the India-Pakistani question, <sup>18</sup> the Middle East, including the Palestinian question, <sup>19</sup> Nagorno-Karabakh, <sup>20</sup> Ukraine <sup>21</sup> and Western Sahara. <sup>22</sup> In addition, in communications addressed to the President of the Council or brought to the attention of the Council, Member States made reference to referendums which were of relevance to the right of self-determination. For example, such references were found in letters from Georgia, concerning "the so-called referendum on unification with Russia recently announced by the Tskhinvali occupation regime", <sup>23</sup> and Ukraine, concerning the preparations for the holding of "pseudo-referendums by the occupying administrations of the Russian Federation in the temporarily occupied territories of Ukraine". <sup>24</sup>

Moreover, in his reports to the Council regarding the situation in Mali, <sup>25</sup> Palestine, <sup>26</sup> the situation concerning Western Sahara, <sup>27</sup> the situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, <sup>28</sup> the Secretary-General made reference to the principle of self-determination. In addition, references to the right to self-determination were made in a letter from the Permanent Representatives of China and the Russian Federation, transmitting a joint statement dated 4 February 2022 by the Russian Federation and the People's Republic of China on international relations entering a new era and global sustainable development, <sup>29</sup> a letter from the Permanent Representative of the Russian Federation, transmitting a report of the Republika Srpska on recent political developments in Bosnia and Herzegovina, <sup>30</sup> and a note verbale from the Permanent Mission of the Bolivarian Republic of Venezuela, transmitting a statement of the Group of Friends in Defence of the

<sup>&</sup>lt;sup>17</sup> See S/2022/599, p. 1.

 $<sup>^{18}</sup>$  See  $\frac{S/2022/90}{9}$ , annex;  $\frac{S/2022/295}{9}$ , annex;  $\frac{S/2022/296}{9}$ , annex;  $\frac{S/2022/600}{9}$ , annex;  $\frac{S/2022/600}{9}$ , annex;  $\frac{S/2022/600}{9}$ , annex; and  $\frac{S/2022/807}{9}$ , annex.

<sup>&</sup>lt;sup>19</sup> See <u>S/2022/25; S/2022/114; S/2022/236; S/2022/283; S/2022/364</u>, annex; <u>S/2022/372</u>, Enclosure; <u>S/2022/377; S/2022/466</u>; <u>S/2022/589</u>; <u>S/2022/628</u>; <u>S/2022/662</u>; <u>S/2022/719</u>; <u>S/2022/879</u>; <u>S/2022/905</u>; and <u>S/2022/1035</u>.

<sup>&</sup>lt;sup>20</sup> See <u>S/2022/37</u>; <u>S/2022/168</u>, annex; and <u>S/2022/988</u>, annex.

<sup>&</sup>lt;sup>21</sup> See <u>S/2022/337</u>, annex.

<sup>&</sup>lt;sup>22</sup> See S/2022/339, annex; S/2022/414, annex; S/2022/473; S/2022/555; and S/2022/797, annex.

 $<sup>^{23}</sup>$  See  $\frac{\text{S}/2022/308}{\text{s}}$ , annex.

<sup>&</sup>lt;sup>24</sup> See S/2022/604, annex.

<sup>&</sup>lt;sup>25</sup> See S/2022/446.

<sup>&</sup>lt;sup>26</sup> See S/2022/504 and S/2022/945.

<sup>&</sup>lt;sup>27</sup> See <u>S/2022/733</u>.

<sup>&</sup>lt;sup>28</sup> See S/2022/898.

<sup>&</sup>lt;sup>29</sup> See  $\frac{S/2022/212}{}$ , annex.

<sup>&</sup>lt;sup>30</sup> See S/2022/823, annex.

Charter of the United Nations for the Arria-formula meeting on the theme "Ongoing protests In Iran" held on 2 November 2022.<sup>31</sup>

#### 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 covers the practice of the Council concerning the principle of the prohibition of the threat or use of force under Article 2 (4) of the Charter of the United Nations. Subsection A includes implicit references to Article 2 (4) in decisions adopted by the Council. Subsection B highlights discussions relating to the threat or use of force. Subsection C features explicit references to Article 2 (4) in communications to the Council.

#### A. Decisions relating to Article 2 (4)

During the period under review, the Council did not adopt any decision containing explicit references to Article 2 (4) of the Charter. In a number of its decisions, however, the Council underlined the principles of Article 2 (4) by: (a) reaffirming the prohibition of the threat or use of force in international relations; (b) reiterating the importance of good-neighbourliness and non-interference by States in the internal affairs of others; (c) calling for the cessation of support by States to armed groups engaged in destabilizing national and regional peace and security; and (d) calling upon parties to withdraw all military forces from a disputed area or occupied territories. The four themes are covered below.

Part III – Purposes and principles of the Charter of the United Nations *Repertoire website:* http://www.un.org/en/securitycouncil/repertoire

<sup>&</sup>lt;sup>31</sup> See S/2022/830, annex.

In addition, two draft resolutions in relation to the conflict in Ukraine that were put to a vote and failed to be adopted, contained references to Article 2 (4)<sup>32</sup> and Article 2<sup>33</sup> of the Charter.

#### Affirmation of the prohibition of the threat or use of force in international relations

In 2022, the Council stressed the prohibition of the threat or use of force against other Member States through a few of its decisions, in particular concerning the future status of Abyei and the situation in the Middle East (see table 2).

Table 2 **Decisions affirming the prohibition of the threat or use of force in international relations** 

Decision and date	Provision		
The situation in the I	The situation in the Middle East		
Resolution <u>2639</u> (2022) 27 June 2022	Stressing that both parties must abide by the terms of the 1974 Disengagement of Forces Agreement between Israel and the Syrian Arab Republic and scrupulously observe the ceasefire (third preambular paragraph)		
	See also resolution <u>2671 (2022)</u> , third preambular paragraph		
	Stresses the obligation on both parties to scrupulously and fully respect the terms of the 1974 Disengagement of Forces Agreement, calls on the parties to exercise maximum restraint and prevent any breaches of the ceasefire and the area of separation, encourages the parties to take full advantage of UNDOF's liaison function regularly to address issues of mutual concern, as appropriate, and to maintain their liaison with UNDOF to prevent any escalation of the situation across the ceasefire line, as well as to support the enhancement of the UNDOF liaison function, and underscores that there should be no military activity of any kind in the area of separation, including military operations by the Syrian Arab Armed Forces (para. 2)		
	See also resolution <u>2671 (2022)</u> , para. 2		
Reports of the Secret	tary-General on the Sudan and South Sudan		
Resolution 2630 (2022) Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022 Reiterating that the territorial boundaries of States shall not be altered by force, and that any territorial May 2022			

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

<sup>&</sup>lt;sup>32</sup> See <u>S/2022/155</u>, para. 2.

<sup>&</sup>lt;sup>33</sup> See <u>S/2022/155</u>, first preambular paragraph; and <u>S/2022/720</u>, first preambular paragraph.

During the period under review, the Council reiterated in several of its decisions the principles enshrined in Article 2 (4) of good neighbourliness, non-interference and regional cooperation with regard to the situations in the Central African Republic, the Democratic Republic of the Congo, Libya, South Sudan and the Sudan as well as to more broadly the item entitled "Peace and security in Africa" (see table 3). Furthermore, the Council consistently reaffirmed, in many of its decisions concerning country-specific situations, its respect for or commitment to the sovereignty, unity, independence and territorial integrity of States.

Table 3

Decisions affirming the principle of good-neighbourliness, non-interference and regional cooperation among States

Decision and date	Provision	
Peace and security in A	Africa	
S/PRST/2022/6 31 August 2022	The Security Council reaffirms its commitment to sovereignty, territorial integrity, political independence of all States in accordance with the Charter of the United Nations and the principle of good neighbourliness, non-interference and regional cooperation (first paragraph)	
The situation in the Ce	ntral African Republic	
Resolution <u>2659</u> (2022) 14 November 2022	Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Central African Republic, and recalling the importance of the principles of non-interference, goodneighbourliness and regional cooperation (second preambular paragraph)	
The situation concerning the Democratic Republic of the Congo		
Resolution <u>2641</u> ( <u>2022)</u> 30 June 2022	Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Democratic Republic of the Congo as well as all States in the region and emphasizing the need to respect fully the principles of non-interference, good-neighbourliness and regional cooperation (second preambular paragraph)	
	See also resolution 2666 (2022), third preambular paragraph	
The situation in Libya		
Resolution <u>2644</u> (2022) 13 July 2022	Expresses serious concern over continued violations of the arms embargo, demands full compliance by all Member States with the arms embargo, calls on all Member States not to intervene in the conflict or take measures that exacerbate the conflict and reiterates that individuals and entities determined by the Committee to have violated the provisions of resolution 1970 (2011), including the arms embargo, or assisted others in doing so, are subject to designation (para. 5)	

#### Reports of the Secretary-General for the Sudan and South Sudan

Resolution <u>2625</u> (2022) 15 March 2022

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity, and national unity of the Republic of South Sudan, and recalling the importance of the principles of non-interference, good-neighbourliness and regional cooperation (second preambular paragraph)

Decision and date	Provision
Resolution <u>2630</u> ( <u>2022</u> ) 12 May 2022	Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of Sudan and South Sudan, and to the purposes and the principles of the Charter of the United Nations, and recalling the importance of the principles of good neighbourliness, non-interference and regional cooperation (second preambular paragraph)

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

During the period under review, the Council adopted decisions calling upon States to refrain from or prevent the provision of any form of support or assistance to armed groups, including through the financing of their activities, in relation to the situations in the Democratic Republic of the Congo and Libya (see table 4).

Table 4

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

Decision and date	Provision	
The situation concerning	ng the Democratic Republic of the Congo	
Resolution <u>2666</u> (2022) 20 December 2022	Recalls that the elimination of the threat posed by armed groups requires an integrated regional approach and strong political engagement by the Government of the DRC, the African Union (AU), the East African Community (EAC), the ICGLR, the Southern African Development Community (SADC), reaffirms its support to national and regional efforts to promote peace and stability in the DRC and the Region, building on the commitments made by the countries of the region under the Peace, Security and Cooperation (PSC) Framework for the DRC and the region, which remains an essential mechanism to achieve durable peace and stability, stresses the commitments undertaken by the region under the PSC Framework not to tolerate nor provide assistance or support of any kind to armed groups, strongly condemns all external support to non-state armed actors, including the M23, and calls for an immediate end to such support (para. 15)	
The situation in Libya		
Resolution <u>2644</u> ( <u>2022)</u> 13 July 2022	Recalling that providing support for armed groups or criminal networks through the illicit exploitation of crude oil or any other natural resources in Libya may constitute acts that threaten the peace, stability and security of Libya (ninth preambular paragraph)	
	Further reiterating its concern about activities which could damage the integrity and unity of Libyan State financial institutions and the National Oil Corporation, and stressing the need for the unification of Libya's institutions, and, in this regard, calling on Member States to cease support to and official contact with parallel institutions outside of the authority of the Government of Libya (tenth preambular paragraph)	
	Calls on all parties to implement the 23 October 2020 ceasefire agreement ( <u>S/2020/1043</u> ) in full and urges Member States to respect and support the full implementation of the agreement, including through the withdrawal of all foreign forces and mercenaries from Libya without further delay (para. 6)	
Resolution <u>2647</u> (2022) 28 July 2022	Calls on all parties to implement the 23 October 2020 ceasefire agreement in full, including the Action Plan agreed by the 5+5 Joint Military Commission in Geneva on 8 October 2021, which is to be implemented in a synchronised, phased, gradual and balanced manner, and urges Member States to respect and support its full implementation, including through the withdrawal of all foreign forces, foreign fighters, and mercenaries from Libya without further delay (para. 8) See also resolution 2656 (2022), para. 10	

## Calls upon parties to withdraw all military forces from a disputed area or occupied territories

During the period under review and consistent with past practice, the Council urged the Government of Israel to expedite the withdrawal of its army from northern Ghajar, located on the border between Israel and Lebanon.<sup>34</sup>

<sup>&</sup>lt;sup>34</sup> Resolutions <u>2650 (2022)</u>, para. 20.

#### **B.** Discussion relating to Article 2 (4)

During the period under review, Article 2 (4) of the Charter was explicitly invoked 11 times at nine Council meetings. References to this provision were made in connection with country- and region- specific as well as thematic items, as elaborated below.

Six of the 11 explicit references to Article 2 (4) were made during meetings held under items concerning Ukraine.<sup>35</sup> Three additional explicit references were also made to Article 2 (4) relating to the conflict in Ukraine in the context of the following thematic items: "Maintenance of international peace and security".<sup>36</sup> and "Threats to international peace and security".<sup>37</sup>

The remaining two explicit references to Article 2 (4) of the Charter were made in connection with the item entitled "Protection of civilians in armed conflict", <sup>38</sup> and the newly-introduced item entitled "Letter dated 13 September 2022 from the Permanent Representative of Armenia (<u>S/2022/688</u>)" in connection with the escalation of hostilities at the Armenia-Azerbaijan border. <sup>39</sup>

In addition, reference to Article 2 of the Charter more broadly was made eight times during seven meetings held by the Council in 2022. Six of the eight references were made at meetings held in connection with items concerning Ukraine.<sup>40</sup> The remaining two references to Article 2 were made in connection with the item entitled "Maintenance of international peace and security".<sup>41</sup>

<sup>&</sup>lt;sup>35</sup> See, in connection with the item entitled "Letter dated 13 April 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/2014/264)", S/PV.9002, Mexico; in connection with the item entitled "Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136)", S/PV.8979, Mexico and Ghana; and in connection with the item entitled "Maintenance of peace and security of Ukraine", S/PV.9104, Mexico; S/PV.9115, Mexico; and S/PV.9138, Mexico.

<sup>&</sup>lt;sup>36</sup> See S/PV.9220 (Resumption 1), Austria.

<sup>&</sup>lt;sup>37</sup> See <u>S/PV.9127</u>, Ireland and Ukraine.

<sup>&</sup>lt;sup>38</sup> See S/PV.8953 (Resumption 1), Canada.

<sup>&</sup>lt;sup>39</sup> See S/PV.9132, Armenia.

<sup>&</sup>lt;sup>40</sup> See, in connection with the item entitled "Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136)", S/PV.8970, Ukraine; and S/PV.8979, Kenya and Ukraine; and in connection with the item entitled "Maintenance of peace and security of Ukraine", S/PV.9104, Albania; S/PV.9135, Mexico; and S/PV.9138, Norway.

<sup>&</sup>lt;sup>41</sup> See S/PV.9052, India; and S/PV.9112, Albania.

In addition, language that may be considered of relevance for the application and/or interpretation of Article 2 (4) of the Charter was used at various meetings held in connection with Bosnia and Herzegovina, the Golan Heights, Iraq, Libya, and the Syrian Arab Republic.<sup>42</sup>

Concerning thematic items, Council members and other delegations addressed the principles enshrined in Article 2 (4) of the Charter, specifically the need to respect the sovereignty and territorial integrity of States and the prohibition of the threat or use of force, at various meetings held during the reporting period.<sup>43</sup>

Featured below are the most relevant discussions held at the Council in 2022 on the prohibition of the threat or the use of force against the territorial integrity of other states and the inadmissibility of the acquisition of territory by force, whether by means of explicit or implicit references to Article 2 (4) of the Charter. During this period, the Council held numerous meetings to address the developments of the conflict in Ukraine under the following items "Threats to international peace and security", 44 "Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the

<sup>&</sup>lt;sup>42</sup> See, for example, in connection with the item entitled "The situation in Bosnia and Herzegovina", <u>S/PV.9029</u>, United Kingdom, Gabon, Ireland, Albania, China, United Arab Emirates, Russian Federation, Norway, United States, Bosnia and Herzegovina, European Union, Croatia, and Serbia; under the item entitled "The situation concerning Iraq", S/PV.9034, United Arab Emirates, China, Russian Federation, Ireland, India, France, Brazil, and Iraq; S/PV.9100, Iraq, Türkiye, United States, Ireland, India, Norway, Ghana, Kenya, Russian Federation, United Kingdom, China, Albania and Brazil; in connection with the item entitled "The situation in Libya", S/PV.8952, United Kingdom, United Arab Emirates, Kenya, India and Libya; and S/PV.9162, Norway, Russian Federation, Kenya, Mexico, France, China, and United Arab Emirates; in connection with the item entitled "The situation in the Middle East", S/PV.8978, United Arab Emirates, Kenya, China, Russian Federation, and Iran (Islamic Republic of); S/PV.9003, Russian Federation, France, China, Kenya, Brazil, United Arab Emirates and Iran (Islamic Republic of); S/PV.9083, Russian Federation, United States, China, Brazil, Mexico, Ghana, France, and India; and S/PV.9117. United States, Mexico, China, and Syrian Arab Republic; and in connection with the item entitled "The situation in the Middle East, including the Palestinian question", S/PV.8950, Russian Federation, China, and Iran (Islamic Republic of); and S/PV.8950 (Resumption 1), Cuba, Syrian Arab Republic, and Argentina. For more information on discussions under the item entitled "The situation in the Middle East", in the context of the right to self-defence under Article 51 of the Charter, see part VII, sect. X.B, Case 12.

<sup>&</sup>lt;sup>43</sup> See, in connection with the item entitled "Briefing by the Chairperson in Office of the Organization for Security and Cooperation in Europe", <u>S/PV.8992</u>, Norway, Ghana, United Kingdom, France, Brazil, United States, China, Ireland, and United Arab Emirates; in connection with the item entitled "Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security", <u>S/PV.9065</u>, High Representative of the European Union for Foreign Affairs and Security Policy, United States, China, Mexico, India, and United Kingdom; and in connection with the item entitled "Maintenance of international peace and security", <u>S/PV.9112</u>, Brazil, Gabon, France, United States, United Kingdom, Norway, Ghana, India, Ireland, Albania, Mexico and China; and <u>S/PV.9220</u>, Ghana, Albania, Pakistan, Armenia, and Poland; and <u>S/PV.9220</u> (Resumption 1), Egypt, Estonia, Ethiopia, Ecuador, Malta, Saint Lucia, Liechtenstein, Indonesia, Islamic Republic of Iran, Latvia, Vietnam (on behalf of the Association of Southeast Asian Nations) and Morocco.

<sup>&</sup>lt;sup>44</sup> For more information on this agenda item, see part I, sect. 34.

Security Council (S/2014/136)", 45 and "Maintenance of peace and security of Ukraine", 46 featured in cases 2 to 4 below. 47 Additionally, case 5 focuses on the escalation of hostilities at the Armenia-Azerbaijan border under the item entitled "Letter dated 13 September 2022 from the Permanent Representative of Armenia (S/2022/688)".

#### Case 2

#### Threats to international peace and security

On 31 January, at the initiative of the United States, the Council held a meeting under the item entitled "Threats to international peace and security" focused on the situation in Ukraine, to address actions of the Russian Federation on the border with Ukraine. At the outset of the meeting, the representative of the Russian Federation, requested a procedural vote on the United States' proposal to hold the meeting. The representative of the Russian Federation recalled that in explaining its proposal to convene the meeting, the United States underscored that it considered the deployment of Russian troops on Russian territory to be a threat to international peace and security, which, he said, was tantamount not only to unacceptable interference in the domestic affairs of the Russian Federation, but also an attempt to mislead the international community on the actual situation in the region and on the reason for current global tensions. At the request of the Russian Federation, the provisional agenda was put to a vote and adopted with 10 votes in favour, two votes against and three abstentions.

Following the adoption of the agenda, the Council heard a briefing by the Under-Secretary-General for Political and Peacebuilding Affairs who expressed great concern over continued tensions and the reports that more than 100,000 troops and heavy weaponry from the

<sup>&</sup>lt;sup>45</sup> For more information on this agenda item, see part I, sect. 19.A.

<sup>&</sup>lt;sup>46</sup> This item was added to the list of matters on the agenda of the Council in 2022. For more information on this agenda item, see part I, sect. 19.C. For more information on the Council's agenda, see part II, sect. II.

<sup>&</sup>lt;sup>47</sup> In addition to the meetings featured below, developments in connection with Ukraine were also discussed under the item entitled "Letter dated 13 April 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (<u>S/2014/264</u>)".

<sup>&</sup>lt;sup>48</sup> See S/PV.8960.

<sup>&</sup>lt;sup>49</sup> Ibid.

<sup>&</sup>lt;sup>50</sup> For: Albania, Brazil, France, Ghana, Ireland, Mexico, Norway, United Arab Emirates, United Kingdom, United States; *against*: China, Russian Federation; *abstentions*: Gabon, India, Kenya. For more information about the procedural vote on the provisional agenda, see part II.

Russian Federation had been positioned along the border with Ukraine.<sup>51</sup> She conveyed the Secretary-General's strong belief that there should not to be any military intervention in that context and that diplomacy had to prevail, adding that any such intervention by one country in another would be against international law and the Charter of the United Nations. The Under-Secretary-General reiterated the full commitment of the United Nations to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders.

In the ensuing discussion, Council members and other Member States expressed support for Ukraine's sovereignty and territorial integrity.<sup>52</sup> Some participants also underlined more broadly the importance of the principles enshrined in the Charter, including respect for sovereignty and territorial integrity of States and the prohibition of the use of force.<sup>53</sup>

Without explicit reference to Article 2 (4) of the Charter, many Council members deliberated on the significance of the prohibition of the use or threat of force. The representative of the United States underscored that Russia's actions where a threat not only to Ukraine, but to Europe and the international order. 54 She emphasized that Ukraine was a sovereign country and a sovereign people, entitled to determine their own future, without the threat of force, which was a right enshrined by the Charter. She added that if the Russian Federation further invaded Ukraine, the consequences would be horrific She further pointed out that if former empires had license to start reclaiming territory by force, it would set the world down a dangerous path. The representative of Albania warned that it would be wrong to consider the threat of a military attack by Russia against Ukraine as another crisis between Russia and the West as it was rather a challenge to the European security order and to the whole international security architecture based on the Charter. He further called on Russia and the Council to expressly confirm respect for the sovereignty and territorial integrity of Ukraine. The representative of the United Kingdom stressed that any Russian invasion or act of aggression against Ukraine would be a gross breach of international law and Russia's commitments under the Charter, and urged Russia to make clear in the Council that it would abide by its obligations under the Charter, that it had no plans

<sup>&</sup>lt;sup>51</sup> See <u>S/PV.8960</u>.

<sup>&</sup>lt;sup>52</sup> Ibid., Albania, United Kingdom, France, Ireland, Kenya, Mexico, Norway and Lithuania.

<sup>&</sup>lt;sup>53</sup> Ibid., Brazil, United Arab Emirates and Poland.

<sup>&</sup>lt;sup>54</sup> Ibid.

to invade Ukraine, that it would abstain from the threat or use of force against its neighbour, that it would not further undermine Ukraine's sovereignty or territorial integrity by military or any other means and that it would stand down its troops. The representative of France underscored that the accumulation of significant military capabilities on the border of a neighbouring sovereign State constituted threatening behaviour and raised legitimate questions about Russia's intentions, especially since that country had already undermined the territorial integrity of Ukraine in the past. He added that dialogue efforts to address the situation had to respect the fundamental principles on which European security was based, as set out in the Charter of the United Nations and the founding documents of the Organization for Security and Cooperation in Europe, including the sovereign equality and territorial integrity of States, the inviolability of borders, non-recourse to the threat or use of force and the freedom of States to choose or modify their own security arrangements. The representative of Mexico said that there were basic principles when addressing the issue, in accordance with the Charter of the United Nations, including the prohibition on the threat or use of force in international relations, the principle of non-intervention and the peaceful settlement of disputes. He elaborated that with regard to the first principle, the mere escalation of tensions in Eastern Europe was a potential threat to international peace and security, and therefore within the purview of the Council, pursuant to Article 39 of the Charter. 55 For that reason, he stressed the importance of trying to avoid any type of action that could be considered hostile by any of the parties, however slight it could seem. He said, however, that the remarks made by the representative of the Russian Federation had been encouraging as he had been very clear in reiterating that there was no planned invasion of Ukraine, which was a unilateral statement of non-aggression. The representative of Ukraine expressed strong rejection to any attempt to use the threat of force as an instrument of pressure to make Ukraine and its partners accept illegitimate demands and emphasized Ukraine's inherent sovereign right to choose its own security arrangements, which he added, could not be questioned by Russia. The representative of Lithuania condemned Russia's continued aggressive actions and threats against Ukraine and called on Russia to de-escalate the situation and abide by international law, immediately stop fueling the conflict by providing financial and military

<sup>&</sup>lt;sup>55</sup> For more information, see part VII, sect. I.

support to the armed formations that it backed and to withdraw Russian military troops and materiel from the eastern border of Ukraine and the Crimean peninsula.<sup>56</sup>

By contrast, the representative of the Russian Federation indicated that the deployment of Russian troops within its own territory was being interpreted by the West as a planned military action and even an act of aggression about to be launched without proof to uphold that accusation, and in turn accused the West of whipping up tensions and rhetoric and provoking escalation, the discussion about the threat of war being provocative in and on itself.<sup>57</sup>

#### Case 3

Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (\$/2014/136)

On 25 February, following the Russian invasion of Ukraine, the Council met to vote on a draft resolution submitted by 82 Member States.<sup>58</sup> The draft resolution failed to be adopted owing to the negative vote of the Russian Federation.<sup>59</sup> Under the draft resolution, the Council would have recalled the obligation of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, deplored in the strongest terms the Russian Federation's aggression against Ukraine in violation of Article 2, paragraph 4 of the United Nations Charter, and would have decided that the Russian Federation should have immediately ceased its use of force against Ukraine, refrained from any further unlawful threat or use of force and immediately, completely, and unconditionally withdrawn all of its military forces from the territory of Ukraine.<sup>60</sup> Under the draft resolution, the Council would have deplored the decision by the Russian Federation of 21 February 2022 related to the status of certain areas of Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with

<sup>&</sup>lt;sup>56</sup> See S/PV.8960.

<sup>&</sup>lt;sup>57</sup> Ibid. For more information on the discussions under this item in the context of Article 51 of the Charter, see part VII, sect. X.B. For information on all meetings held under this item concerning the conflict in Ukraine, see part I, sect. 34.

<sup>&</sup>lt;sup>58</sup> See <u>S/2022/155</u>.

<sup>&</sup>lt;sup>59</sup> *In favour*: Albania, Brazil, France, Gabon, Ghana, Ireland, Kenya, Mexico, Norway, United Kingdom and United States; *Against*: Russian Federation; *Abstaining*: China, India and United Arab Emirates. See <u>S/PV.8979</u>. <sup>60</sup> See <u>S/2022/155</u>, first preambular paragraph and paras. 1-4.

the principles of the Charter of the United Nations and would have called upon the Russian Federation to immediately and unconditionally reverse that decision. <sup>61</sup>

Against that backdrop, during the meeting, Council members discussed the prohibition of the use of force in relation to the events unfolding in Ukraine. In this connection, two Council members made two explicit references to Article 2 (4) during the discussion. Speaking before the vote, the representative of Mexico pointed out that the invasion of one sovereign country by another, which constituted a flagrant violation of Article 2, paragraph 4, of the Charter also constituted an act of aggression under the terms of General Assembly resolution 3314 (XXIX).<sup>62</sup> He added that since the establishment of the United Nations, his country had defended the prohibition of the threat or use of force in international relations and would continue to do so in this Organization and in all other forums. The representative of Mexico further condemned the acts of aggression that the Russian Federation had perpetrated against Ukraine and recognized the sovereignty, political independence and territorial integrity of Ukraine. Speaking after the vote, the representative of Ghana said that it had voted in favour of the draft resolution because that act breached Russia's obligation to respect the provisions of Article 2, paragraph 4 of the Charter. 63 He further underscored that, by not refraining from the use of force in its relations with Ukraine, the Russian Federation had chosen to violate without justification the sovereignty, political independence and territorial integrity of Ukraine. He added that the actions of the Russian Federation had assailed the purposes and principles of the Charter and threatened the global order and the balance of peace and security. The representative of Ghana also took note of the letter from the Russian Federation submitted to the Council, seeking to indicate that its use of force against Ukraine was in self-defence while dismissing its all-out military action against Ukraine. 64 In his assessment, Ukraine presented no immediate threat to the Russian Federation. The representative of Ghana also stressed that the use of force as a basis for securing international agreement had no place in the modern international order and was unacceptable. He regretted that, at a time when the world looked to the Council to send a strong message that

<sup>&</sup>lt;sup>61</sup> Ibid., paras. 5 and 6.

<sup>62</sup> See S/PV.8979.

<sup>63</sup> Ibid.

<sup>&</sup>lt;sup>64</sup> Ibid. See also <u>S/2022/154</u>.

threats and use of force against other States were unacceptable, the Council had been unable to do so.

In addition to the above, two broader references to Article 2 were made during the meeting of relevance to the prohibition of the threat or use of force. Speaking after the vote, the representative of Kenya said that his country had voted in favour of the draft resolution to affirm Article 2 of the Charter, according to which 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, and to register Kenya's opposition to the breaching of the territorial integrity of Ukraine by the Russian Federation. The representative of Ukraine recalled the content of the failed draft resolution and the obligation of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. 66

Other speakers discussed the importance of the prohibition of the use of force enshrined in Article 2 (4) without explicitly referring to that Article. Speaking before the vote, the representative of the United States, as co-penholder of the draft resolution together with Albania, pointed out that Russia had chosen to invade its neighbour, violate Ukraine's sovereignty, international law, and the Charter of the United Nations. She emphasized that Council members should vote in favour of the draft resolution if they believed in upholding the Charter and supported the right of Ukraine or any State to sovereignty and territorial integrity. Conversely, she said that Council members should vote against or abstain in the voting if they did not uphold the Charter and if they aligned themselves with the aggressive and unprovoked actions of Russia. The representative of Albania, highlighting the unprovoked aggression by the Russian Federation, said that Russia was not only inflicting untold pain and causing an unprecedented humanitarian situation in Europe, but it had also "stained the Charter of the United Nations with innocent blood" and was "burying the Charter under the rubble of destruction" in Kyiv and other cities in Ukraine. He called on the members of the Council to support the draft resolution in order to say no to aggression, unprovoked war and domination of a country by a more powerful one. Expressing grave concern about the Russian military operations against targets in sovereign

<sup>65</sup> See S/PV.8979.

<sup>66</sup> Ibid.

Ukrainian territory, the representative of Brazil expressed the view that a line had been crossed and called on the Council to react swiftly to the use of force against the territorial integrity of a Member State. He recalled that during the negotiations on the draft resolution, Brazil had sought balance and to maintain a space for dialogue, while still signaling that the use of force against the territorial integrity of a Member State was not acceptable. He added that the framing of the use of force against Ukraine as an act of aggression in the draft resolution, a precedent that had seldom been used in the Council, would have signaled to the world the gravity of the situation but also downplayed other times when force was used against the territorial integrity of Member States with no equivalent reaction from the Council. No country, he said, elected or non-elected, with or without veto power, should be able to use force against the territorial integrity of another State with no Council reaction. Further, the representative of the United Kingdom dismissed Russia's claims that its invasion of Ukraine was in self-defence as absurd, and expressed her country's intention to hold Russia accountable for its aggression. The representative of Norway expressed deep regret about Russia's veto of the draft resolution and stressed that preventing and ending acts of aggression was a direct responsibility of the Council and a veto cast by the aggressor undermined the purpose of the Council and was a violation of the very foundation of the Charter. She further asserted that, in the spirit of the Charter, as a party to a dispute Russia should have abstained from voting on the draft resolution. She said that Russia's aggression not only violated the independence, sovereignty and territorial integrity of Ukraine but also constituted a serious breach of international peace and security and called on the Russian Federation to completely and unconditionally stop all fighting, withdraw all of its forces from the territory of Ukraine and respect the principles and purposes of the United Nations Charter. The representative of Ireland said that his country had voted in favour of the draft resolution in response to the Russian Federation's flagrant violation of the Charter of the United Nations, international law and the sovereignty and territorial integrity of Ukraine. He added that Russia had launched an unjustified and unprovoked attack on Ukraine and said that its use of the veto in blatant defence of its military aggression was reprehensible. The representative of Ukraine, said that Russia could not justify the offensive and emphasized instead that Russia had to show respect for the core principles enshrined in the Charter, namely, sovereign equality, non-use of force or threat of force against the territorial integrity and political independence of States.

#### Case 4

#### Maintenance of peace and security of Ukraine

At a high-level meeting held on 22 September under this item, the Secretary-General of the United Nations briefed the Council on the latest developments in relation to the conflict between the Russian Federation and Ukraine. In that regard, the Secretary-General expressed deep concern at the reports of plans to organize so-called referendums in areas of Ukraine that were not under Government control at the time, adding that any annexation of a state's territory by another state resulting from the threat or use of force was a violation of the Charter of the United Nations and international law.<sup>67</sup>

During the discussion that followed, a number of Council members emphasized that the so-called referendums were inconsistent with the principles enshrined in Article 2 (4) of the Charter. The Minister of Europe and Foreign Affairs of France asserted that the aggression that Russia had decided to launch alone against Ukraine constituted a flagrant violation of the fundamental norms of the Charter, adding that the principles of the non-use of force, the peaceful resolution of disputes and respect for the sovereignty and territorial integrity of states had each been blatantly violated. 68 The Prime Minister of Norway underlined that Russia's war of aggression against Ukraine constituted a gross violation of international law and the Charter. He condemned the planned so-called referendums in the occupied regions of Ukraine and emphasized that they would have no legal standing or legitimacy and further pointed out that the referendums would in no way affect Ukraine's sovereignty within its internationally recognized borders. The Secretary of State of the United States indicated that Russian President Putin had chosen not to work towards achieving a diplomatic solution, but instead to render such a solution impossible by seeking to annex more Ukrainian territory through sham referendums. He further emphasized that defending Ukraine's sovereignty and territorial integrity was about much more than standing up for one nation's right to choose its own path; it was also about protecting an international order where no nation could redraw the borders of another by force. The Minister for Europe and Foreign Affairs of Albania condemned Russia's new path of confrontation by

<sup>&</sup>lt;sup>67</sup> See S/PV.9135.

<sup>68</sup> Ibid.

supporting the organization of illegal referendums in four occupied Ukrainian territories and considered those sham referendums another blatant violation of the independence, sovereignty and territorial integrity of Ukraine and a serious violation of the Charter of the United Nations. The Minister for Foreign Affairs and Defence of Ireland pointed out that Russia's invasion of Ukraine was the antithesis of the principles of the Charter of the United Nations; a grave violation of international law; and an attempt to change internationally recognized borders by the use of force.

Other speakers recognized the importance of the principles enshrined in Article 2 (4), including the prohibition of the use of force, more broadly in the context of Russia's invasion of Ukraine. In that regard, the Minister for Foreign Affairs of Mexico reiterated his country's position on the conflict, which he stated had been based on the constitutional principles of its foreign policy, namely non-intervention, the peaceful settlement of disputes and a ban on the use or threat of use of force, all of which were in line with the purposes and principles of the Charter of the United Nations. He added that there was no room for ambiguity, that the peaceful coexistence of States depended precisely on respect for all of those principles and that there could be no exceptions. He further noted that, in the preceding few months Mexico had been clear in reiterating the importance of Article 2 of the Charter, which prohibited the use of force against the territorial integrity and political independence of any state, underlining the importance of the basic guarantee of being able to live without the threat of being invaded by another country. He stressed that any action that violated that principle was illegal and illegitimate. Recalling that the aggression on Ukraine was in disregard of the norms of international law and the principles of the Charter, the Minister for Foreign Affairs and Regional Integration of Ghana emphasized that Ghana did not, and would not, recognize any territory that was unilaterally and forcefully acquired or dismembered from a sovereign entity. She reiterated the call on the Russian Federation to immediately and unconditionally cease its operations, withdraw its troops from the internationally recognized borders of Ukraine and respect its neighbour's sovereignty and political independence. The Secretary of State for Foreign, Commonwealth and Development Affairs of the United Kingdom recalled that the members of the United Nations had agreed on the solemn principles of the Charter of the United Nations as vital to international peace and security and had undertaken to refrain from the use or threat of

use of force against the territorial integrity or political independence of any State, adding that yet President Putin had invaded Ukraine illegally and without justification. The Minister for Foreign Affairs of Ukraine underlined the principle that no country was allowed to change internationally recognized borders by force, which, he added, Russia had badly damaged. The Federal Minister for Foreign Affairs of Germany stressed the need to live up to the spirit of the Charter, which clearly stated that all members shall refrain from the threat or use of force against the territorial integrity or political independence of any state.

#### Case 5

# Letter dated 13 September 2022 from the Permanent Representative of Armenia (\$\frac{\sigma/2022/688}{\sigma})

In response to the request for an emergency meeting by Armenia,<sup>69</sup> the Council held its first meeting under the item entitled "Letter dated 13 September 2022 from the Permanent Representative of Armenia (<u>S/2022/688</u>)", on 15 September 2022.<sup>70</sup>

During the meeting, several Council members and the Member States parties to the conflict addressed the recent escalation between Armenia and Azerbaijan in the context of the principles contained in Article 2 (4) of the Charter. In that regard, the representative of Armenia underlined that acts of criminal aggression had been perpetrated by Azerbaijan against the territorial integrity of Armenia, in flagrant violation of international law and the Charter. He recalled that Armenia had repeatedly brought to the attention of the Council that Azerbaijan had engaged in the illegal practice of acquisition of territories by force. He further informed that the most recent attacks demonstrated that, in the absence of proper accountability measures, policies of aggression were likely to continue, and even increase in scope and scale. He added that, emboldened by the results of the use of force in the past, Azerbaijan sought to normalize

<sup>&</sup>lt;sup>69</sup> See the letter dated 13 September 2022 from the permanent representative of Armenia (<u>S/2022/688</u>). In the letter, the representative of Armenia transmitted a letter from the Minister for Foreign Affairs of the Republic of Armenia, with a request to convene an emergency meeting of the Council, on the basis of Article 35, paragraph 1, of the Charter, in relation to the large-scale aggression of Azerbaijan against the Republic of Armenia launched on 13 September 2022. For more information on the Council's practice under Article 35 of the Charter, see part VI, sect. I.A. For further details on the item, see part I, sect. 16.

<sup>&</sup>lt;sup>70</sup> See S/PV.9132.

<sup>&</sup>lt;sup>71</sup> Ibid.

violence and aggression to capture territories by force, and indicated that over the preceding two days Azerbaijan had intruded and occupied more than 10 square kilometres of the sovereign territory of Armenia. The representative underscored that the actions of Azerbaijan were in blatant violation of the purposes and principles of the Charter, in particular Article 2, paragraph 4, of the Charter, and indicated that Azerbaijan's military aggression went against the letter and spirit of the trilateral statements of 9 November 2020 and 26 November 2021, on the establishment of a ceasefire and cessation of hostilities and the agreement to "take steps to increase the level of stability and security on the Azerbaijani-Armenian border", respectively.

The representative of Azerbaijan recalled that the meeting was taking place in the aftermath of a serious military escalation along the undelimited State border between Armenia and Azerbaijan and stated that Armenia had recklessly provoked it with the aim of torpedoing the fragile post-conflict normalization process being pursued with the active engagement of relevant international actors, including the members of the Council. He categorically rejected the allegations made by the representative of Armenia and added that Armenia's armed forces had committed a large-scale act of military provocation in the direction of the Dashkasan, Kalbajar and Lachin districts of the Azerbaijan-Armenia State border, attempting to plant mines on the roads between the military positions of the Azerbaijani army, while taking advantage of the night-time and difficult terrain. He added that the positions of the armed forces of Azerbaijan had been subjected to intense fire and that Azerbaijan had taken adequate and proportionate measures to neutralize the threat against its sovereignty and territorial integrity that were limited and targeted at legitimate military objects. He also expressed the view that the lack of adequate attention and targeted measures to implement the demands of the Council had encouraged Armenia to consolidate the results of its unlawful use of force against Azerbaijan, and the consequences of its aggression therefore remained unaddressed and were being further aggravated.

In that context, several Council members condemned or considered unacceptable the use of force to settle international disputes.<sup>72</sup> The representative of Ghana called for the intensification of negotiations on all unresolved issues in order to move the parties closer to a conclusive resolution based on the principles of international law, with due regard to the Charter

<sup>&</sup>lt;sup>72</sup> Ibid., Gabon, Ireland and Russian Federation.

of the United Nations and its provisions relating to the mutual recognition of territorial integrity, the non-use or threat of use of force in the acquisition of territory and the pacific settlement of disputes. The representative of Ireland stressed that all forces had to urgently return to the positions they had held before the regrettable escalation in hostilities and that no forces should remain on the territory of another sovereign State. Similarly, the representative of the United Kingdom urged an immediate and sustained cessation of all military activity and the withdrawal of armed forces to their original positions before the escalation. The representative of France called on Azerbaijan to maintain its forces in their original positions, stressing that the delimitation of the border had to be decided exclusively through negotiations, and that the territorial integrity of Armenia had to be respected in view of the advance of Azerbaijani forces beyond certain segments of the border.

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

In 2022, six communications from Member States addressed to or brought to the attention of the Council included explicit references to Article 2 (4) of the Charter and are featured in table 5. In addition, communications addressed to the Secretary-General and circulated as a Security Council document made reference to Article 2 in relation to the dispute between Armenia and Azerbaijan, 73 and the situation in Cyprus 74 and the conflict in Ukraine. 75

Table 5
Letters containing explicit references to Article 2(4) of the Charter

Symbol	Title	Relevant extract
S/2022/173	Identical letters dated 2 March 2022 from the	The obligation of the occupying power arising from the
	Permanent Representative of Georgia to the	international law, to ensure the well-being of the population living
	United Nations addressed to the Secretary-	in the occupied territories is continuously violated by the Russian
	General and the President of the Security	Federation that has been exercising effective control over Abkhazia
	Council	and Tskhinvali regions of Georgia. Consequently, these regions
		suffer from the extreme deterioration of the humanitarian situation
		and increased human rights violations occurring on daily basis. In
		full disregard for international law, primarily in violation of article
		2(4) of the UN Charter - stating that "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

<sup>&</sup>lt;sup>73</sup> See <u>S/2022/688</u>, annex and <u>S/2022/729</u>, p. 2; and <u>S/2022/808</u>, p. 2.

<sup>&</sup>lt;sup>74</sup> See  $\frac{S/2022/317}{}$  and  $\frac{S/2022/944}{}$ .

<sup>&</sup>lt;sup>75</sup> See S/2022/966, annex.

S/2022/294

S/2022/483

S/2022/694

Nations" - the Russian Federation is undertaking steps towards the de-facto annexation of Georgia's two regions.

8/2022/225 Letter dated 14 March 2022 from the At that meeting, the Israeli regime's representative misused the

2/225 Letter dated 14 March 2022 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council

> Letter dated 6 April 2022 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council

S/2022/432 Letter dated 25 May 2022 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General

Identical letters dated 13 June 2022 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

Letter dated 13 September 2022 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General At that meeting, the Israeli regime's representative misused the Security Council forum, deviated from the Council's main agenda item and, in flagrant violation of international law and the Charter of the United Nations, specifically its Article 2.4, explicitly threatened to use force against Iran and its peaceful nuclear programme.

Reaffirming the need for strict observation by all states of those principles and their international obligations in the conduct of their international relations, including Article 2(4) of the United Nations Charter

(Second preambular paragraph of resolution No. 60/48-POL of the Council of Foreign Ministers of the Organization of Islamic Cooperation entitled "Peace and security in South Asia") In light of the above, Greece solemnly calls upon Turkey to stop questioning Greece's sovereignty over its Aegean islands, in particular through legally baseless and historically false assertions, to abstain from threatening Greece with war in case it extends its territorial waters beyond the present width of 6 nautical miles, in full contravention of Article 2, paragraph 4, of the Charter of the United Nations, and to refrain from illegal activities in violation of Greece's sovereignty and sovereign rights in the Aegean and the Eastern Mediterranean, Such practices by Turkey, in additi on to betraying adherence to a revisionist mentality totally disconnected from the basic principles governing relations between States, as reflected in the Charter, pose a serious threat to peace and stability in the broader region.

I should also like to inform you that the Civil Aviation Authority of the Syrian Arab Republic will be filing a formal complaint with the International Civil Aviation Organization (ICAO) for the necessary measures to be taken in accordance with its regulations and obligations. The request filed by the Syrian Arab Republic with ICAO is based on well-established legal principles and provisions that criminalize the targeting of civilian airports and aviation rights under international instruments, notably the Charter of the United Nations, the Convention on International Civil Aviation (Chicago Convention) and annexes thereto, and international humanitarian law. These include the following: I. Article 2, paragraph 4 of the Charter of the United Nations. That Article states that 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.

The actions of Azerbaijan are in blatant violation of the purposes and principles of the Charter of the United Nations, in particular Article 2.4 of the Charter, in violation of the Helsinki Final Act and in violation of international humanitarian law. Moreover, the military aggression of Azerbaijan goes against the letter and spirit of the trilateral statements signed by the leaders of Azerbaijan, Armenia and the Russian Federation on 9 November 2020, 11 January 2021 and 26 November 2021. The statement of 26 November 2021 in particular stipulates that the sides agreed to "take steps to increase the level of stability and security on the Azerbaijani-Armenian border...". It is obvious that Azerbaijan attempts to undermine the agreements reached in the trilateral statements.

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

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 covers the practice of the Council with regard to the principle enshrined in Article 2 (5) of the Charter, in particular, the obligation of Member States to refrain from providing assistance to a State against which the United Nations has taken preventive or enforcement action. <sup>76</sup> Subsection A features implicit references made to Article 2 (5) in the decisions of the Council, and subsection B features discussions held by the Council which may be considered relevant for the interpretation of Article 2 (5). Communications addressed to the Council in 2022 did not contain any references to Article 2 (5).

#### A. Decisions relating to Article 2 (5)

In 2022, the Council did not explicitly invoke Article 2 (5) in its decisions. The Council, however, included language that may be considered of relevance for the interpretation of Article 2 (5) in decisions concerning the situations in the Central African Republic,<sup>77</sup> Libya,<sup>78</sup> Somalia, 79 South Sudan, 80 and Yemen. 81

<sup>&</sup>lt;sup>76</sup> For the practice of the Council relating to assistance by Member States to United Nations action in accordance with the Charter, see part V, sect. II (Article 25) and part VII, sects. V and VI (Articles 43, 45 and 48).

<sup>&</sup>lt;sup>77</sup> Resolution 2648 (2022), para. 1.

<sup>&</sup>lt;sup>78</sup> Resolution 2644 (2022), tenth preambular paragraph and para. 9.

<sup>&</sup>lt;sup>79</sup> Resolutions <u>2628 (2022)</u>, para. 21, and <u>2662 (2022)</u>, paras. 10 and 37.

<sup>&</sup>lt;sup>80</sup> Resolutions <u>2625 (2022)</u>, para. 18, and <u>2633 (2022)</u>, para. 8.

<sup>81</sup> Resolution <u>2624 (2022)</u>, para. 21.

#### B. Constitutional discussion relating to Article 2 (5)

In 2022, Article 2 (5) was not explicitly invoked in any of the Council's meetings. However, implicit references that may be considered of relevance for the interpretation of Article 2 (5) were made at several meetings of the Council during the period under review in connection with the Democratic Republic of the Congo, Libya, Ukraine, and Yemen, as elaborated below.

At a meeting held on 29 June under the item entitled "The situation concerning the Democratic Republic of the Congo", the representative of Rwanda pointed out that the Armed Forces of the Democratic Republic of the Congo were fighting the M-23 alongside the Democratic Forces for the Liberation of Rwanda, which was sanctioned by the Council pursuant to resolution 2078 (2012). <sup>82</sup> He called on the Council to condemn that alliance and urged the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, through its due diligence, to avoid any military cooperation with the Armed Forces of the Democratic Republic of the Congo, as long as the latter were allied with negative forces.

In 2022, at meetings of the Council held under the item entitled "The situation in Libya", Council members continued to express concern about, or stress the need to cease or refrain from, all actions in violation of the arms embargo, including the provision of military support inconsistent with the embargo. Rouncil members also expressed concerns regarding the continued presence of mercenaries in the territory of Libya in contravention with relevant resolutions of the Council. In that regard, at meetings held under this item, the representative of India, who at the time served as Chair of the Committee established pursuant to resolution 1970 (2011), expressed serious concern about the repeated violations of the arms embargo and cited the report of the Panel of Experts that noted the continuous presence of Turkish-backed Syrian fighters in Government of National Unity Affiliated Forces military camps in Tripoli, and indicated that some of the training provided by Türkiye to the Government of

<sup>82</sup> See S/PV.9081.

<sup>&</sup>lt;sup>83</sup> See, for example, <u>S/PV.8952</u>, Kenya and Mexico; <u>S/PV.9120</u>, United States and Mexico.

<sup>&</sup>lt;sup>84</sup> See, for example, <u>S/PV.9192</u>, Norway, United States, France, India, United Arab Emirates, China and Ghana (on behalf of Gabon and Kenya).

<sup>&</sup>lt;sup>85</sup> See <u>S/PV.9098</u>, p. 5; and <u>S/PV.9120</u>, p. 10.

<sup>&</sup>lt;sup>86</sup> See <u>S/2022/427</u>, paras. 30 and 77.

National Unity Affiliated Forces had been military or naval in nature and thus a violation of paragraph 9 of resolution 1970 (2011).

In connection with the conflict in Ukraine, at meetings held under the item entitled "Threats to international peace and security", Council members expressed concerns regarding the use by the Russian Federation of military equipment originating from the Islamic Republic of Iran and the Democratic People's Republic of Korea, in contravention of Security Council resolutions. In that regard, at a meeting held on 7 September under this item, the representative of the United Kingdom said that, as Russia was struggling to maintain stocks of equipment, exacerbated by component shortages resulting from the international sanctions aimed at ending the war in Ukraine and that it was now turning to Iran to supply unmanned aerial vehicles, and, in a clear violation of United Nations sanctions, to North Korea to supply ammunition.<sup>87</sup> In a similar vein, the representative of the United States accused Moscow of purchasing millions of rockets and artillery shells from the Democratic People's Republic of Korea for use on the battlefield in Ukraine, which would have been a clear and unequivocal violation of Security Council resolutions. 88 At a meeting held on 27 October, the representative of the United Kingdom pointed out again that Russia was perpetrating the war on Ukraine with weapons sourced from Iran, in violation of resolution 2231 (2015), and was almost certainly seeking to source weaponry from other United Nations-sanctioned States, such as North Korea.<sup>89</sup> The representative of France expressed a similar view that Russia sought to obtain supplies by any means, including in violation of Security Council resolutions by using combat drones supplied by the Islamic Republic of Iran as part of its strategy to systematically target the Ukrainian civilian population and its infrastructure. 90 He called on the United Nations Secretariat to investigate those transfers as it was mandated to do, as they constituted a violation of resolution 2231 (2015), and to report back to the Council. During the same meeting, the representatives of Albania and the United States also brought to the attention of the Council the issue of the transfer of unmanned aerial vehicles to Russia by the Islamic Republic of Iran, in violation of the same resolution.91

<sup>87</sup> See S/PV.9127.

<sup>88</sup> Ibid.

<sup>89</sup> See S/PV.9216.

<sup>&</sup>lt;sup>90</sup> Ibid.

<sup>&</sup>lt;sup>91</sup> Ibid., Albania, United States and Ireland.

In connection with Yemen, at meetings held under the item entitled "The situation in the Middle East", speakers continued to express concern or condemn the illicit transfer of weapons of Iranian origin to the Houthis in violation of the arms embargo. 92

<sup>&</sup>lt;sup>92</sup> See, for example, <u>S/PV.8946</u>, United Arab Emirates, United States, Mexico and Yemen.

# 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 Council in relation to the principle of non-intervention by the United Nations in the internal affairs of States enshrined in Article 2 (7) of the Charter of the United Nations. Subsection A features references to that Article in the decisions of the Council. Subsection B covers the deliberations of the Council touching upon the principle enshrined in Article 2 (7). Subsection C features references to Article 2 (7) in communications brought to the attention of the Council.

#### A. Decisions relating to Article 2 (7)

In 2022, the Council did not explicitly refer to Article 2 (7) in its decisions. Nonetheless, language used in some Council decisions under country- and region- specific as well as thematic items may be considered of relevance for the interpretation and application of Article 2 (7) and are featured in table 6.

#### Table 6

#### Decisions containing implicit references to Article 2 (7), by region and country

Decision and date

Provision

#### The situation in Afghanistan

Resolution <u>2626</u> (2022)

17 March 2022

Decides further that UNAMA and the Special Representative of the Secretary-General will continue to carry out their mandate in close consultations with all relevant Afghan political actors and stakeholders, including relevant authorities as needed, in support of the people of Afghanistan in a manner consistent with Afghan sovereignty, leadership and ownership, with a particular focus on the priorities laid out below (para. 5)

#### Peace and security in Africa

Resolution <u>2634 (2022)</u> 31 May 2022 Stresses the primary responsibility of the States of the Gulf of Guinea to counter piracy and armed robbery at sea in the Gulf of Guinea and address their underlying causes, in close cooperation with regional and subregional organizations and their international partners (para. 2)

S/PRST/2022/6 31 August 2022 The Security Council reiterates its support for the work of the Peacebuilding Commission, acknowledges the importance of strong coordination, coherence and cooperation with the Peacebuilding Commission and commends the Peacebuilding Commission continued engagement with the countries and regions in Africa in enhancing capacity in the areas of inclusive peacebuilding, socio-economic development, DDR; Security Sector Reform (SSR) and institutions of justice and national reconciliation in line with national peacebuilding priorities, emphasizes such engagement should continue to be guided by the principles of national ownership and meaningful partnerships with sub-regional and regional organizations, and all effort must be put to ensure these projects, while complementing Peacebuilding Fund activities, are appropriately financed and judiciously utilized to ensure sustainability and optimal benefit to the local communities (seventh paragraph)

#### The situation in the Central African Republic

Resolution <u>2659 (2022)</u> 14 November 2022 Reaffirming the basic principles of peacekeeping, such as consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate, recognising that the mandate of each peacekeeping mission is specific to the need and situation of the country concerned, underlining that the mandates that it authorises are consistent with the basic principles, reiterating that the Security Council expects full delivery of the mandates it authorises, and recalling in this regard its resolution 2436 (2018) (third preambular paragraph)

Recalling that the CAR authorities have the primary responsibility to protect all populations in the CAR, including from international crimes, recognising the persistent security challenge threatening civilians, also underlining the importance of national efforts to restore State authority in all parts of the country to overcome the threats posed by armed groups (fourth preambular paragraph)

#### The situation concerning the Democratic Republic of the Congo

Resolution <u>2666 (2022)</u> 20 December 2022 Reaffirming the basic principles of peacekeeping, including consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate (second preambular paragraph)

Recalling that the Government of the DRC bears the primary responsibility to protect civilians within its territory and subject to its jurisdiction, including from international crimes, recognising the persistent security challenge threatening civilians, also underlining the importance of national efforts to restore State (fourth preambular paragraph)

#### The question concerning Haiti

Resolution <u>2645 (2022)</u> 15 July 2022 Stressing the primary responsibility of the Government of Haiti to address longstanding drivers of instability and inequality, and to engage with other stakeholders, including civil society, youth, and the private sector,

Decision and date	Provision	
	and the full, equal, and meaningful participation of women, to deliver durable solutions to Haiti's immediate and long-term challenges (eighteenth preambular paragraph)	
Resolution <u>2653 (2022)</u> 21 October 2022	Stressing the primary responsibility of the Government of Haiti to address longstanding drivers of instability and inequality (fifth preambular paragraph)	
The situation concerning	g Iraq	
Resolution <u>2631 (2022)</u> 26 May 2022	Requests that the Special Representative of the Secretary-General and UNAMI, at the request of the Government of Iraq, shall: (d) promote accountability and the protection of human rights, and judicial and legal reform, with full respect for the sovereignty of Iraq, in order to strengthen the rule of law and improve governance in Iraq, in addition to supporting the work of the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) established in resolution 2379 (2017) (para. 2 (d))	
The situation in Libys	a	
Resolution <u>2644 (2022)</u> 13 July 2022	Reaffirming its strong commitment to a Libyan-led and Libyan-owned political process, facilitated by the United Nations, to create a path to hold free, fair and inclusive national Presidential and Parliamentary elections in Libya as soon as possible, and, in this regard, expressing support for the ongoing facilitation of intra-Libyan consultations to create the conditions and circumstances for elections on a constitutional and legal basis (third preambular paragraph)	
The situation in Mali		
Resolution <u>2640 (2022)</u> 29 June 2022		
	Reaffirming the basic principles of peacekeeping, including consent of the parties, impartiality and non-use of force, except in self-defence and defence of the mandate, recognizing that the mandate of each peacekeeping mission is specific to the need and situation of the country concerned, and recalling its Presidential Statement of 14 May 2018 (S/PRST/2018/10) (third preambular paragraph)	
	Reiterates that the Malian authorities have primary responsibility to protect civilians in Mali, urges these authorities to take expedited action to protect civilians throughout the country, and to prevent, minimize and address civilian harm that might result from operations undertaken by the MDSF (para. 2)	
Resolution <u>2649 (2022)</u> 30 August 2022	Reaffirming its strong commitment to the sovereignty, unity and territorial integrity of Mali, emphasizing that the Malian authorities have primary responsibility for the provision of stability and security throughout the territory of Mali, and underscoring the importance of achieving national ownership of peace- and security-related initiatives (second preambular paragraph)	

#### The situation in the Middle East

Resolution <u>2650 (2022)</u> 31 August 2022 Further requests UNIFIL, in line with resolution 1701 and following the letter of the Government of Lebanon of 15 March 2022 addressed to the Presidency of the Security Council as well as per the recommendations of the Secretary-General (\$\frac{\strack{S}/2022/556}{2022/556}\$), to exceptionally extend temporary and special measures, that should not be considered as a precedent in the future nor a long term solution, to support and assist the Lebanese Armed Forces with the provision of relevant additional non-lethal material (fuel, food and medicine) and logistical support for a period of six months and no longer than 28 February 2023, within

Decision and date

Provision

the existing resources and without implications to the increase of the budget level, for the LAF-UNIFIL joint activities and in compliance with the United Nations Human Rights Due Diligence Policy, and without prejudice to the mandate and its implementation, the concept of operations and rules of engagement of UNIFIL, while fully respecting Lebanese sovereignty and at the request of the Lebanese authorities, and that such support be subject to appropriate and immediate oversight and scrutiny (para. 11)

Urges all parties to cooperate fully with the Head of Mission and UNIFIL in the implementation of resolution 1701, as well as to ensure that the freedom of movement of UNIFIL in all its operations and UNIFIL's access to the Blue Line in all its parts is fully respected and unimpeded, in conformity with its mandate and its rules of engagement, including by avoiding any course of action which endangers United Nations personnel, reaffirms that, pursuant to the Agreement on the Status of the United Nations Interim Forces in Lebanon (SOFA) between the Government of Lebanon and the United Nations, UNIFIL does not require prior authorization or permission to undertake its mandated tasks and that UNIFIL is authorized to conduct its operation independently, condemns in the strongest terms all attempts to deny access or restrict the freedom of movement of UNIFIL's personnel and all attacks on UNIFIL personnel and equipment as well as acts of harassment and intimidation of UNIFIL personnel and disinformation campaigns against UNIFIL; calls on the Government of Lebanon to facilitate UNIFIL's prompt and full access to sites requested by UNIFIL for the purpose of swift investigation, including all relevant locations north of the Blue Line related to the discovery of tunnels crossing the Blue Line which UNIFIL reported as a violation of resolution 1701 (2006), in line with resolution 1701, while respecting the Lebanese sovereignty (para. 16)

#### The situation in Somalia

Resolution <u>2628 (2022)</u> 31 March 2022 Recalling that the Federal Government of Somalia (FGS) has primary responsibility for ensuring security in Somalia, and recognising Somalia's request for continued international support to enable it to achieve progressively its aim of a secure, stable, peaceful, united and democratic country (second preambular paragraph)

Underscores the primary responsibility for protecting civilians of the Somali authorities, and further underscores the importance of protecting civilians in accordance with relevant provisions of international human rights law and international humanitarian law (para. 6)

Endorses the African Union Peace and Security Council's decision to reconfigure AMISOM into the African Union Transition Mission in Somalia (ATMIS), and authorises, for an initial period of 12 months, the Member States of the African Union to take all necessary measures, in full compliance with participating States' obligations under international law, including international humanitarian law and international human rights law, and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia (para. 22)

#### Reports of the Secretary-General on the Sudan and South Sudan

Resolution <u>2620 (2022)</u> 15 February 2022 Reaffirming the primary responsibility of the Government of Sudan to protect civilians across its territory, and acknowledging in this regard the Government of Sudan's National Plan for Civilian Protection (S/2020/429) and the weapons-collection programme (fifth preambular paragraph)

Resolution <u>2625 (2022)</u> 15 March 2022 Strongly condemning all human rights violations and abuses and violations of international humanitarian law by all parties, including armed groups and national security forces, as well as the incitement to commit such abuses and violations, including those in Tambura, Western Equatoria State, further condemning harassment, targeting, and censorship of civil society, humanitarian personnel and journalists, emphasizing that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that South Sudan's government bears the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and expressing concern that despite the signing of the Revitalised Agreement, violations and abuses including rape and sexual violence continue to occur which may amount to international crimes, including war crimes and crimes against humanity (fifteenth preambular paragraph)

Decision and date	Provision
	Recalls its resolution 2086 (2013), reaffirms the basic principles of peacekeeping, as set forth in Presidential Statement S/PRST/2015/22, including consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate, and recognizes that the mandate of each peacekeeping mission is specific to the need and situation of the country concerned, and that the Security Council expects full delivery of the mandates it authorizes (para. 19)
Resolution <u>2660 (2022)</u> 14 November 2022	Urges the Governments of Sudan and South Sudan to provide full support for UNISFA in the implementation of its mandate and deployment of UNISFA personnel, including to facilitate the smooth functioning of all UNISFA bases and JBVMM teams sites, in line with their primary responsibility as host states and the Status of Forces Agreements, and further reiterates that the Abyei Area shall be demilitarized from any forces, as well as armed elements of the local communities, other than UNISFA and the Abyei Police Service when it is gradually established, and urges the Governments of Sudan and South Sudan and the local communities to take all necessary steps in this regard (para. 4)

Table 7

Decisions containing implicit references to Article 2 (7), by thematic issue

Decision and date	Provision	
United Nations peaceke	eeping operations	
S/PRST/2022/5 12 July 2022	The Security Council underscores the importance of peacekeeping as one of the most effective tools available to the United Nations in the promotion and maintenance of international peace and security, and reaffirms the basic principles of peacekeeping, such as consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate (second paragraph)	

#### B. Discussion relating to Article 2 (7)

During the period under review, Article 2 (7) was explicitly invoked once in the Council's deliberations. At a meeting held on 21 December under the item entitled "The question concerning Haiti", the Editor of *Haiti Liberté* emphasized that the situation in Haiti could not be resolved through foreign intervention, military force or even sanctions, and that the Haitian people, acting with full sovereignty, had to be allowed to sort out their own problems. <sup>93</sup> He further called on the Council to respect the principles enshrined in the Charter, in particular Article 2, paragraph 7, which stated that nothing contained in the Charter should authorize the United Nations to intervene in matters which were essentially within the domestic jurisdiction of any state.

<sup>&</sup>lt;sup>93</sup> See <u>S/PV.9233</u>, p. 8.

In addition, during several meetings of the Council in 2022, its members and other speakers discussed the principle of non-intervention by the United Nations in the domestic affairs of States enshrined in Article 2 (7), without explicitly referring to that Article in connection with country- and region-specific items, as described below.

At a meeting held on 29 June under the item entitled "The situation in Mali", the representative of the Russian Federation, explaining his abstention in relation to resolution 2640 (2022) concerning the renewal of the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), said that the resolution's intrusive language on the human rights mandate of MINUSMA would not advance the Malian people's exercise of their sovereign right to protect their citizens and investigate incidents. 94 The representative of China, who also abstained, underscored that Member States bore the primary responsibility for the protection and promotion of human rights, and recalled that the Mission's main task was to assist the Government of Mali in implementing the Agreement on Peace and Reconciliation in Mali and restoring the State's authority in the north. 95 He added that, in fulfilling its human rights mandate, the Mission should communicate and cooperate closely with the Malian Government and listen carefully to its views. Elaborating on the reasons behind China's abstention, he further indicated that resolution 2640 (2022) excessively emphasized the Mission's human rights-related mandate and did not reflect full respect for the Malian Government's ownership. The representative of Gabon underscored that the resolution violated the sovereignty of Mali as it did not take into account the efforts made by the Malian defence forces in honour of their sovereign duty to defend their territory, in conditions that were very often challenging. The representative of Mali recalled that his country had always cooperated in good faith with MINUSMA since its establishment in 2013, but stressed that in line with the principle of respect for Mali's sovereignty, as well as for coordination and security reasons, MINUSMA's movements could take place only with the agreement of the competent Malian authorities. He added that Mali was not in a position to guarantee the freedom of movement of the investigations by MINUSMA without the prior agreement of the Government. In that context, he stressed that Mali did not intend to implement the related provisions of resolution 2640 (2022), as the Government of Mali

<sup>94</sup> See S/PV.9082.

<sup>95</sup> Ibid.

believed that allegations concerning human rights violations were the primary responsibility of the Malian authorities, and MINUSMA's role was to provide them with the necessary assistance in that regard rather than replace the Government of Mali.

At a meeting held under the item "The situation concerning the Democratic Republic of the Congo", on 30 June, the Council adopted resolution 2641 (2022) renewing the sanctions measures and extending the mandate of the Group of Experts on the Democratic Republic of the Congo. 96 After the vote, the representative of Ghana, who abstained from voting, underscored that the remaining notification requirement on certain shipments of arms and related materiel for the Democratic Republic of the Congo, as expressed in resolution 2641 (2022), did not respond to the imperatives for peace in the country, nor was it reflective of its sovereignty. 97 The representative of Gabon, who also abstained from voting, expressed regret about the lack of consensus among Council members, emphasizing that it was essential that the international community recalibrated its priorities in the Democratic Republic of the Congo and focused, above all, on the interests of the people, taking into account the national sovereignty of the country. 98

Council members and other Member States also stressed the need to respect the sovereignty and national ownership of States in the context of the operations of UN peacekeeping and special political missions in Somalia, and the Sudan, at meetings held under the items "The situation in Somalia", <sup>99</sup> and "Reports of the Secretary-General on the Sudan and South Sudan", <sup>100</sup> as well as in relation to the cross-border humanitarian mechanism in Syria at meetings held under the item entitled "The situation in the Middle East". <sup>101</sup>

In 2022, also in connection with thematic items, Council members and other Member States continued to underline the importance of the principles of sovereignty, territorial integrity, political independence and consent of the host States enshrined in Article 2 (7) of the Charter, without making explicit reference to that Article, as described below.

<sup>&</sup>lt;sup>96</sup> Resolution 2641 (2022), paras. 1, 5 and 8.

<sup>97</sup> See S/PV.9084.

<sup>&</sup>lt;sup>98</sup> Ibid.

<sup>&</sup>lt;sup>99</sup> See, for example, <u>S/PV.8965</u>, Ghana (also on behalf of Gabon and Kenya), China and Russian Federation; and <u>S/PV.9177</u>, Russian Federation, and Somalia.

<sup>&</sup>lt;sup>100</sup> See, for example, <u>S/PV.9006</u>, China and United Arab Emirates; and <u>S/PV.9041</u>, United Arab Emirates.

<sup>&</sup>lt;sup>101</sup> See, for example, S/PV.8957, China and Syrian Arab Republic.

At a high-level open debate held on 2 June under the item entitled "Maintenance of international peace and security", Council members and other Member States addressed the principles enshrined in Article 2 (7) in the context of a discussion on strengthening accountability and justice for serious violations of international law. The Minister of State for External Affairs of India stated that the responsibility to protect could not be invoked to address all violations of human rights and humanitarian law, but had to rather be confined to four major crimes – genocide, war crimes, ethnic cleansing and crimes against humanity. 102 He recalled that practice had shown that the default response of the international community should not be the use of coercive measures imposed based on Chapter VII of the Charter. He also added that the responsibility to protect should not be seen as a pretext for humanitarian intervention and stressed the need to refrain from imposing universal jurisdiction on acts of atrocities alleged to have been committed on the territory of a sovereign State. Concluding, he pointed out that accountability for serious violations of international law was a noble objective that should be pursued with due respect for the sovereign equality of States. Stressing that accountability should respect the judicial sovereignty of the States concerned, the representative of China noted that States had the primary responsibility for punishing serious crimes, ending impunity and achieving justice, and that adherence to the principle of State ownership was not only an important manifestation of the principles of sovereign equality and non-interference in internal affairs, but also a crucial assurance for the smooth advancement of accountability and the achievement of the desired results. 103

In addition, these same principles were discussed at meetings held under the item entitled "Protection of civilians in armed conflict" in relation to the delivery of humanitarian assistance, <sup>104</sup> as well as under the item entitled "Peacebuilding and sustaining peace" in connection with the annual report of the Peacebuilding Commission. <sup>105</sup> Speakers also continued to address the need for the United Nations to uphold the principles of peacekeeping, including

<sup>&</sup>lt;sup>102</sup> See S/PV.9052.

<sup>103</sup> Ibid.

<sup>&</sup>lt;sup>104</sup> See <u>S/PV.8953</u>, China, India and Egypt; and <u>S/2022/54</u> (record of written statements submitted in connection with the 8953<sup>rd</sup> meeting), Azerbaijan; <u>S/PV.9042</u>, India, China, and Algeria; and <u>S/PV.9042</u> (Resumption 1), Viet Nam, Georgia and Azerbaijan.

<sup>&</sup>lt;sup>105</sup> See <u>S/PV.9101</u>, China and Russian Federation. For more information on the activities of the Peacebuilding Commission, see part IX, sect. VII.

the respect for the sovereignty and consent of the host states, at meetings held under the item entitled "United Nations peacekeeping operations". 106

#### C. Invocations of the principle enshrined in Article 2 (7) in communications

In 2022, two communications brought to the attention of the Council included explicit references to Article 2 (7) of the Charter and are featured in table 7. It should be noted, however, that Article 2 (7) of the Charter concerns the practice of the Council in relation to the principle of non-intervention by the United Nations in the internal affairs of States and not the intervention by Member States in the internal affairs of other States.<sup>107</sup>

Table 7

Letters containing explicit references to Article 2 (7) of the Charter

Symbol	Title	Relevant extract
<u>8/2022/372</u>		Request the Group of Arab States in New York to take the necessary action to transmit the present resolution to the relevant United Nations bodies and have it issued as a document of the United Nations, and to request that they include the question on their respective agendas, in accordance with the Charter of the United Nations, Article 2, paragraph 7, which prohibits interference in the internal affairs of States.
<u>S/2022/891</u>		Consequently, as long as the National Regulation Governing Landing Rights Regarding Provisions of Satellite Services in the Islamic Republic of Iran is not compiled by SpaceX as a legal person under the domestic jurisdiction of the United States Government, its satellite Internet services in the territory of the Islamic Republic of Iran are illegal and considered as intervening in the internal affairs of Iran in accordance with Article 2, paragraph 7, of the Charter of the United Nations, which must be observed by all States Members of the United Nations.

<sup>&</sup>lt;sup>106</sup> See S/PV.9090, India, Russian Federation, China, Morocco and Guatemala.

<sup>&</sup>lt;sup>107</sup> For information on the Council's practice in relation to Article 2 (4) of the Charter, see sect. II.