



General Assembly

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Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

21 February–1 March 2023

Identification of new subjects

Discussion on the application of Article 51, in the light of its interrelation with Article 2 (4), of the Charter of the United Nations

Further revised version of the working paper submitted by Mexico

I. Objectives

- Create a space for a legal discussion by all States Members of the United Nations of Article 51 of the Charter of the United Nations, in the light of its interrelation with Article 2 (4), and enable an exchange that will provide a clearer understanding of the positions of Member States with regard to the operation, scope and limits of the right to self-defence, with a view to creating a space within the formal structure of the United Nations that can serve as a repository for the views of all Members in this regard.
- To have this legal discussion taking into consideration recent practice with regard to the submission of reports under Article 51 of the Charter, in particular concerning non-State actors, without examining specific cases, including responses to such reports, or lack thereof, and the precedents such actions may set for future situations.
- To discuss also substantive, procedural, and transparency and publicity issues related to reports submitted under Article 51 with a view to providing greater clarity on the implementation of the Article and to contributing to strengthening the relationship between the General Assembly and the Security Council.

II. Background

1. As noted in reports [A/73/33](#) (paras. 83 and 84) and [A/74/33](#) (paras. 85–87), at the seventy-third and seventy-fourth sessions of the General Assembly, Mexico brought to the attention of the Committee a recent increase in the number of communications submitted to the Security Council under Article 51 of the Charter, in particular in connection with counter-terrorism operations. In that context, it



expressed concern regarding recent interpretations of the right to self-defence in response to armed attacks perpetrated by non-State actors and proposed, *inter alia*, that the Special Committee “consider the substantive and procedural aspects of the issue, in order to clarify the interpretation and application of Article 51 and avoid possible abuse of the right to self-defence”.

2. The above-mentioned reports indicate that various delegations expressed interest in the proposal and encouraged the representative of Mexico to present a written proposal for consideration.

3. It is worth noting that the members of the Community of Latin American and Caribbean States (CELAC), in its joint statement to the Sixth Committee on 3 October 2018, during the seventy-third session of the General Assembly, stated the following:

“We take note with concern of the increase in the number of letters to the Security Council under Article 51 of the Charter submitted by some States in order to have recourse to the use of force in the context of counter-terrorism, most of the time *ex post facto*. We reiterate that any use of force which is not in compliance with the Charter of the United Nations is not only illegal but is also unjustifiable and unacceptable. Furthermore, consideration should be given to the possibility of convening an open and transparent debate on the topic.”

4. Similarly, at the fourth informal meeting of Latin American legal advisors (AJL) on international public law, held on 26 October 2018, it was made clear, following a presentation entitled “Reflections on recent invocations of Article 51 of the Charter of the United Nations”, that there was agreement with regard to the scope of self-defence under the Charter; the importance of transparency; and the need for the international community to address terrorism, a serious threat to international peace and security, through strong action firmly grounded in international law and carried out with respect for international human rights law, international humanitarian law and refugee law. At that meeting, there was general consensus on the particular relevance of the topic and on the advisability of taking measures to ensure that it was adequately considered within the United Nations.

5. As a next step in the process, and with a view to establishing a space for open and transparent discussion among the States Members of the United Nations, the delegation of Mexico submitted a working paper, entitled “Analysis of the application of Articles 2 (4) and 51 of the Charter of the United Nations”, for the consideration of the Special Committee at its 2020 session.

6. The Special Committee fully acknowledges that the Security Council is the competent United Nations organ to take at any time such action as it deems necessary in order to maintain or restore international peace and security in accordance with Article 51 of the Charter.

6 bis. Moreover, as a result of the Arria-formula meeting, convened by Mexico on 24 February 2021 on the theme “Upholding the collective security system of the Charter of the United Nations: the use of force in international law, non-State actors and legitimate self-defence”,¹ in general, delegations stressed the importance of holding a dialogue on the interpretation of Article 51 of the Charter, as well as its direct impact on the individual and collective security systems. The discussions and the number of participations in this informal meeting, which had time-limit constraints, reinforced the need to have an appropriate forum for a universal, dedicated and focalized discussion on these issues in an open and transparent manner.

¹ See Chair’s summary of the Arria-formula meeting of the Security Council ([A/75/993-S/2021/247](#), annex).

7. Therefore, this discussion will be aimed exclusively at providing a clearer understanding of the legal positions of Member States with regard to the operation, scope and limits of the right to self-defence, focusing on recent practice and on other situations involving non-State actors that may arise in the future, without examining specific cases, while recognizing at all times the gravity of terrorist acts, their high humanitarian, political and social cost and the threat they pose to international peace and security.

8. This approach would enhance the relationship between the General Assembly and the Security Council, strengthening the role of the Organization, in accordance with its mandate established in resolution 3499 (XXX) of 15 December 1975 and reaffirmed in resolution 76/115 of 9 December 2021.

III. Issues for consideration

9. Article 1 (1) of the Charter states that one of the purposes of the United Nations is to maintain international peace and security. To that end, in Article 2 (4) of the Charter, the principle is established that Members of the Organization “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”.

10. Under the legal framework of the Charter, there are two exceptions to the prohibition of the use of force between States: (a) when it is authorized by the Security Council, on the basis of Article 42; and (b) in the exercise of the inherent right of individual or collective self-defence provided for in Article 51.

11. Article 51 of the Charter reads as follows:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

12. The following have been identified as elements of self-defence: (a) there has been a prior armed attack; (b) the response to the armed attack is necessary and proportional; and (c) the Security Council is notified immediately of measures taken in self-defence, and such measures are halted when the Security Council takes the necessary action, if any.

13. Recently there have been some cases where the right to self-defence enshrined in Article 51 of the Charter has been invoked to justify the use of force in the territory of another State, allegedly in response to – or in the most extreme cases, to prevent – armed attacks by non-State actors, in particular terrorist groups.

14. The aim is therefore to discuss the legal scope of the above-mentioned obligations in all instances in which Article 51 of the Charter is invoked and to identify elements for discussion among Member States, taking into consideration the interpretation that has been given to these provisions of the Charter, both broadly and in the context of counter-terrorism, and the precedents that the aforementioned actions could set for other cases in the future. In that context, it would be useful for the Special Committee to consider, inter alia, the following issues:

(a) **Substantive issues:** Given that, under Article 51, the right to self-defence may only be invoked if there has been an armed attack:

- (i) What information should be included in reports submitted to the Security Council under Article 51?
- (ii) What level of detail would be expected to be included in such reports under Article 51?
- (iii) How should Article 51 be interpreted with regard to attacks perpetrated by non-State actors, in particular, but not exclusively, terrorist attacks?
- (iv) Under Article 51 of the Charter, can self-defence be invoked in respect of another State when that State is considered to lack the capacity or the will to address an armed attack?

(b) **Procedural issues:** Given that the inherent right to self-defence may be exercised, under Article 51, “until the Security Council has taken measures necessary to maintain international peace and security”, and that “measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council”:

- (i) What is a reasonable time frame for the submission of a report under Article 51 following an armed attack?
- (ii) Must a report under Article 51 be submitted before the use of force in self-defence, or can it be submitted afterwards?
- (iii) Given the gravity of the use of force and the importance that these instances have for all Member States, would it be desirable and necessary for the Security Council to discuss, examine and consider reports submitted to it under Article 51 on a regular basis?
- (iv) If the Security Council does not take action following receipt of a report under Article 51, how could this decision or silence be interpreted?

(c) **Transparency and publicity issues:** Since reporting under Article 51 is an obligation under the Charter and is directly related to issues of international peace and security, it serves the interests of all Member States. In this regard:

- (i) How can the transparency and publicity of reports submitted under Article 51 be improved?
- (ii) What can be done to facilitate the access of Member States to these reports?
- (iii) What can be done to facilitate the access of Member States to any responses and reactions to these reports?
- (iv) What can be done to improve access to information, taking into account the delay in the publication of the Repertoire of the Practice of the Security Council?
- (v) How can the lack of responses from Member States to reports submitted under Article 51 be interpreted, taking into account the current lack of transparency and publicity?

15. The Secretariat would be requested to keep a record of all the views expressed by Member States in the discussions of the Special Committee in order to consolidate a repository in this regard.

15 bis. Once included in the substantive agenda of the Special Committee, the topic would be examined by the Committee on a two-year cycle.

16. Once this proposal has been fully considered in its substantive agenda, the Special Committee could decide to conclude its consideration and to revisit it if and when it is deemed appropriate by the Special Committee.
