

This prohibition is subject to two universally-recognized exceptions: force authorized by the United Nations; or, individual or collective self-defence. The Security Council is granted wide discretionary powers under Chapter VII of the UN Charter to define and take measures to address threats to international peace and security, including the imposition of arms embargoes [as discussed *supra*] and authorizing states to use armed force. Article 51 permits states to defend themselves against armed attacks, without requiring the prior authorization of the Security Council.

The UN Charter prohibition on the use of force applies to arms transfers and other assistance to opposition armed forces. The 1986 decision of the International Court of Justice [ICJ] in *Armed Activities in and Against Nicaragua* held that the transfer of weapons in such circumstances could be considered a use of force in violation of Article 2(4).¹² It should be noted that, as a result of reservations to ICJ jurisdiction by the United States with respect to disputes concerning the UN Charter, the Court was confined to the application of customary international law. However, the Court found the content of the customary legal obligation to be *identical* to that outlined directly in Article 2(4), and its decision must be taken to reflect its view of the conventional as well as customary international legal obligations of states in this regard.¹³

2.4. Customary International Law Principle of Non-Intervention

The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference. The ICJ in *Nicaragua* noted that expressions of *opinio juris* of States regarding the existence of this principle are numerous and that it had been reflected in many declarations and resolutions adopted by international organizations and conferences in which the United States and Nicaragua have participated. Indeed both the United States and Nicaragua had testified to its acceptance as a customary principle with universal application. As to the content of the principle in customary law, the Court found that the prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely (for example the choice of a political, economic, social and cultural system, and formulation of foreign policy). Intervention is wrongful when it uses, in regard to such choices, methods of coercion, particularly force, either in the direct form of military action or in the indirect form of support for subversive activities in another State.¹⁴

In 1970 the UN General Assembly adopted by consensus the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*,¹⁵ which *inter alia* states that:

No State has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

... Also no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

Arms transfers to government forces would likely not constitute a violation of sovereignty in most circumstances, given the almost certain prior government request for such assistance, or at least its subsequent acceptance or adoption. There is no international legal prohibition on providing support to a government facing isolated unrest (*e.g.* riots). Some support may be found for legal limitations on intervention in support of governments involved in a full-scale civil war, viewing such conflicts as a legitimate exercise of internal self-determination (with a resulting clear threat to international security in the event of intervention on both sides), though this principle would not apply where outside military assistance was being provided to opposition forces.

¹² (*Nicaragua v. United States of America*), *Merits, Judgement of 27 June 1986*, 1986 I.C.J. Rep. 14 [*Nicaragua*], paras. 227 to 238.

¹³ Paras. 187-201.

¹⁴ Paras 202 – 209.

¹⁵ Resolution 2625 (XXV), adopted by consensus 24 October 1970 [Friendly Relations Declaration].