



## The Complementary Role of the United Nations General Assembly in Peace Management

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### Abstract

*For the maintenance of international peace and security, the United Nations Charter places 'primary responsibility' upon the Security Council. This 'primary responsibility', however, does not necessarily mean 'exclusive responsibility'. Therefore, there is other responsibility - 'secondary' or 'residuary' - in the maintenance of international peace and security. The idea was also once confirmed in the Certain Expenses case. The General Assembly is the only body in which all the states of the United Nations are members. It is the only body where all the members get an equal chance to discuss all the common issues of global importance including international peace and security. Thus, 'secondary' or 'residuary' responsibility in peace maintenance rests, inter alia, on the General Assembly. In the case where the Security Council fails to discharge its 'primary responsibility' either due to the lack of unanimity or because of unwillingness, the General Assembly is the body that may legitimately come forward to take the issue up in order to maintain international peace and security. The article analyses the complementary role of the General Assembly in peace management and its increasing involvement in the maintenance of international peace and security.*

**Keywords:** *International peace and security, threat to peace, self-defence and uniting for peace.*

### INTRODUCTION

The UN Charter imposes primary responsibility for the maintenance of international peace and security upon the Security Council. Then what is left for the General Assembly is rather secondary or subsidiary in this regard. In theory, the power granted to the organs other than the Security Council in terms of the maintenance of international peace and security is narrowly interpreted, or at least they do not have the power to impose any binding obligation upon states.

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However, in practice, the General Assembly plays an important role, especially when the Security Council cannot reach a unanimous decision. In the *Certain Expenses* case, the International Court of Justice stated that the role of the Security Council in the maintenance of international peace and security is primary, but not exclusive<sup>1</sup> leaving room for the General Assembly to play a significant role. Despite the restricted power given to the General Assembly by the Charter, an extension of the power is found in the resolution adopted during the early cold war period called – Uniting for Peace. Moreover, in the event of non-action or selective actions by the Security Council for peace maintenance, the General Assembly has become the central place where world opinion is delivered. In this article, I will briefly discuss the role of the General Assembly, and its increasing involvement in the management of international peace and security.

### UNIVERSALITY OF THE GENERAL ASSEMBLY

Article 2 of the UN Charter, in stating the principles of the organization, clearly indicates in its paragraph 1 that the United Nations is based on the sovereign equality of all its members. This means that each state, be it large or small, stands equal to the others. The General Assembly is the only body in which all the states of the United Nations are members. It is the only body where all the members get an equal chance to discuss all the common issues of global importance. It is the only body that discusses 'any questions' or 'any matters within the scope of the present Charter'. In other words, it is the only body where global voices of the international community are uttered and heard.<sup>2</sup> The General Assembly has in fact been designated as the open conscience of the world.<sup>3</sup> Since all members have the right to vote in the General Assembly, resolutions on issues of global importance are adopted by a majority vote. Some of the General Assembly resolutions are so fundamental that they may arguably create general principles of law in the sense of Article 38(1)(c) of the Statute of International Court of Justice.<sup>4</sup> Thus, the General Assembly may contribute, indirectly if not directly, to the progress of law-making. The Charter allocates to the General Assembly the task of making recommendations that will contribute to progressively developing and codifying international law.<sup>5</sup>

The General Assembly's power in maintaining international peace and security was a bone of the contention between the smaller states represented at San

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<sup>1</sup> See *Certain Expenses Case*, ICJ Reports (1961) at 166.

<sup>2</sup> The formulation of 'any questions and matters' grants the General Assembly a far-reaching competence. See Hailbronner & Klein, 'Article 10', in Simma (ed.) (2002), *supra* n. 3 at 259.

<sup>3</sup> See Goodrich & Hambro, (eds.), *Charter of the United Nations* (1949) at 151.

<sup>4</sup> '... the adoption of resolutions by the GA may be seen as an acceptance of general principles of law in the sense of Art. 38(1) (c) of the ICJ Statute.' See Bruno Simma (ed.), *The Charter of the United Nations A Commentary* (2002) at 171-2; however, as far as it is relevant in the present context, General Assembly resolutions as such do not have any legislative character whatsoever: they can only form the basis for presuming the creation of general principles. Yet, general principles can only be regarded as legally binding if they are expressly recognized by the UN member states. Unfortunately, no express recognition to that end has occurred.

<sup>5</sup> Stefan Talmon, 'The Security Council as World Legislature', 99 *Am. J. Int'l L.* (2005) at 182.

Francisco and the big powers. In the Dumbarton Oaks Proposal, the big powers did not give any real power to the General Assembly. At San Francisco, the smaller states insisted that not all the power should be in the hands of the Security Council.<sup>6</sup> As a result, Chapter VI of the Charter, which contains the provisions relating to the pacific settlement of disputes, represents a compromise between the provisions granting generous powers to the General Assembly and the provisions attempting to restrict the powers and competence of the Assembly. The former are found in Articles 10 and 14, while the latter are in Articles 11 and 12. However, the Assembly's power in maintaining international peace and security is only recommendatory, not mandatory. It may only 'make recommendation to the members of the United Nations or to the Security Council or to both',<sup>7</sup> 'discuss any question relating to international peace and security',<sup>8</sup> 'call the attention of the Security Council to situations which are likely to endanger international peace and security',<sup>9</sup> and 'recommend measures for the peaceful adjustment of any situation'.<sup>10</sup> However, where 'Uniting for Peace' resolutions are concerned, the General Assembly, not having mandatory power conferred upon it by the Charter, can adopt resolutions that are binding in the sense that they are based on the principles developed within the UN system, which now arguably constitute principles of international law. The Assembly's function in this regard is the focal point for states' views on international law, not one that can be said to create a mandatory power and certainly not one that grants the Assembly a coercive power to order economic or military enforcement measures.<sup>11</sup>

The General Assembly's power to discuss and make recommendations as regards international peace and security necessarily encompasses a right to investigate. This right can be derived from the Charter: in order to discuss any matter thoroughly, the General Assembly must be in a position to carry out the necessary investigations.<sup>12</sup> For such investigations, the General Assembly may set up an investigation commission or committee. For example, in 1946 it set up a special committee to investigate the conditions in Palestine, i.e., the United Nations Special Committee on Palestine; in 1956 a Commission was formed to investigate the course of events in Hungary; in 1958 the General Assembly decided to send an observer mission – called the United Nations Observer Group in Lebanon (UNOGIL) to Lebanon in order to apprise itself of the conditions there.<sup>13</sup> All these efforts by the General Assembly helped reduce the escalation of danger or the threat to the peace.

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<sup>6</sup> See N. D. White, *Keeping the Peace The United Nations and the Maintenance of International Peace and Security* (1993) at 119.

<sup>7</sup> Art. 10, UN Charter.

<sup>8</sup> Art. 11(2), UN Charter.

<sup>9</sup> Art. 11(3), UN Charter.

<sup>10</sup> Art. 14, UN Charter.

<sup>11</sup> See White (1993), *supra* n. 6 at 122.

<sup>12</sup> See Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 259.

<sup>13</sup> See *ibid.*

The relation between the Security Council and the General Assembly is not a competitive one; rather, each organ seeks to facilitate the work of the other in its decision-making. The duty of the General Assembly is to make recommendations based upon its interpretation of a situation that may endanger international peace and security. As noted, binding decision-making power is vested in the Security Council either through forceful action or imposing other forms of sanctions under Chapter VII of the Charter. However, the Security Council may also request that the General Assembly provide a recommendation under Article 12(1). In the case of Article 2(7), which has always been strictly interpreted by states, the General Assembly concerns itself with the domestic situations of the member states to the extent that they are subject to international law. For example, the notion of human rights is embodied in international law and thus is no longer a matter falling solely within the domestic jurisdiction of a state. This position has prevailed in many of the General Assembly resolutions (see the discussions below). Articles 1, 2 and 55 of the Charter state the importance of the promotion and protection of human rights at large. The Security Council has also largely accepted this view, which has been upheld by the General Assembly. Therefore, in many Security Council resolutions gross violations of human rights have been found to threaten international peace and security within the meaning of Article 39 of the Charter.

In 1956, in the Hungarian situation, the General Assembly rejected the applicability of Article 2(7), as the threat or use of force by foreign troops was contrary to the prohibition of force in Article 2(4) of the Charter.<sup>14</sup> In a similar vein, the General Assembly adopted a clearer position with regard to decolonization, racial discrimination, apartheid, and the like, as not being within the domestic jurisdiction of a state, and thus rejected the application of Article 2(7). Racial discrimination in South Africa and its policy of apartheid had been the concern of the General Assembly since the early 1950s. The majority of the member states of the United Nations supported the view that the policy of apartheid was not a matter of internal concern only. Rather, it had global implications once human rights were at stake. The apartheid policy of South Africa was discussed, and condemned repeatedly in the General Assembly sessions. The General Assembly also repeatedly called for the attention of the Security Council in this regard. Finally, in 1977 the Security Council adopted resolutions stating that the South African apartheid policy constituted a threat to international peace and security under Article 39 of the Charter. Prior to 1977, the arms embargo imposed on South Africa was only voluntary, meaning that the embargo had been imposed under Chapter VI of the Charter, whereas with the invocation of Chapter VII in 1977, the embargo became binding upon all states. Thus, the general view of the General Assembly was that serious violations of human rights either in the form of racial discrimination or in any other form disturb the world peace. The Security Council has also interpreted the Charter in this way when taking action under Chapter VII.<sup>15</sup> The Council takes the decisions of the General As-

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<sup>14</sup> See Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 260.

<sup>15</sup> *Ibid.* at 261.

sembly into consideration in most cases because of the popular view expressed by the majority of the states favouring those decisions. While it is true that the Security Council is not bound by any recommendation of the General Assembly, the Council's actions are given wider acceptance and legitimacy in the international community at large when it endorses the General Assembly's view.

### **The 'Uniting for Peace' Resolution**

In the year 2003, when it was almost certain that the US and its allies were preparing a pre-emptive attack against Iraq, governments and civil society groups all over the world urged that an alternative be sought to war. Many states, including Russia and France, opposed the war. There had been a clear deadlock in which the Security Council was divided on the question of use of force against Iraq, with the US and the UK on one side, and France and Russia on the other; this was indeed an effective deadlock. Many voices had been raised urging an alternative to war. International civil societies such as Greenpeace International, the Global Policy Forum, and the Center for Constitutional Rights, had repeatedly appealed for an emergency session of the General Assembly.<sup>16</sup> The New York-based Center for Constitutional Rights, moving a step forward, had produced a draft resolution calling for a 'Uniting for Peace' because of the deadlock in the Security Council on the question of Iraq, the idea being that member states would submit the draft resolution to the General Assembly. It declared that military action without Security Council resolution authorization would be contrary to the UN Charter and International law.<sup>17</sup> The basis of the alternative to war was founded in General Assembly resolution 377(A), entitled 'Uniting for Peace', which resolved that should the Security Council fail to exercise its primary responsibility of maintaining international peace and security, the General Assembly would recommend the appropriate collective measures to be taken by the Members of the United Nations.

The Uniting for Peace resolution was a product of the early Cold War division between East and West. The frequent inability of the Security Council to discharge the functions assigned to it by the Charter because of the veto used by the Soviet Union brought about a change in the relative power of the Council and the Assembly. The Assembly gained the confidence to take over the role of the Security Council when the latter proved unable to perform its primary responsibility to maintain international peace and security. The 'Uniting for Peace' resolution therefore achieved broader support among the international community in general, which wanted to see the United Nations as active as it should be in restoring international peace and security. As a result it was a great achievement for the General Assembly in performing its duty to uphold the most fundamental objective of the Charter – peace.

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<sup>16</sup> See, e.g., Global Policy Forum, available at: [www.globalpolicy.org/security/issues/iraq/atack/armtwist/2003/0320unitingfor.htm](http://www.globalpolicy.org/security/issues/iraq/atack/armtwist/2003/0320unitingfor.htm), viewed on 17 Nov 2005.

<sup>17</sup> See *Uniting for Peace*, available at: [http://www.ccr-ny.org/v2/rports/docs/Draft\\_Uniting\\_For\\_Peace\\_Resolution.pdf](http://www.ccr-ny.org/v2/rports/docs/Draft_Uniting_For_Peace_Resolution.pdf), viewed on 17 Nov 2005.

In 1950, North Korea invaded South Korea in the month of June. The UN Security Council acted promptly to deploy UN troops, under US General Douglas MacArthur, to repel the North Korean forces. The Soviet Union was boycotting the UN at the time, and thus was not able to exercise its veto as a permanent member of the Security Council. However, when the boycott ended, the Soviet Union used its veto in the votes. At the same time, it constantly questioned the validity of the resolutions of the Security Council adopted in its absence. This prompted the Council to call for an emergency session of the General Assembly, which adopted a 'Uniting for Peace' resolution in early November 1950. However, by that time total UN victory seemed imminent. The resolution was actually a US proposal to make the UN more efficient in dealing with 'future threats' to the peace.<sup>18</sup> However, the General Assembly adopted a series of resolutions on the Korean issue after the 'Uniting for Peace' procedure had been established in resolution 377 (A). Resolution 498 (V), for example, adopted on 1 February 1951, which asked the members of the UN to increase their assistance to UN Force, perhaps indicates an action under the 'Uniting for Peace' resolution.<sup>19</sup> Resolution 377 (A) read:

[.].. if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to make the appropriate recommendations to Members for collective measures, including in the case of a breach of the peace, or act of aggression to use armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within 24 hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on a vote of any seven (now nine) members, or by a majority of the United Nations.<sup>20</sup>

The preconditions required for calling an emergency session of the General Assembly to invoke the 'Uniting for Peace' resolution procedure are the following:<sup>21</sup>

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<sup>18</sup> See Robert E. Riggs and Jack C. Plano, *The United Nations International Organization and World Politics* (1988) 131.

<sup>19</sup> For a detailed discussion, see Bengt Broms, *The United Nations* (1990) 323-324; but see Michael Ratner, 'A U.N. Alternative to War: "Uniting for Peace"', available at: [www.zmag.org/Sustainers/Content/2003-02/08ratner.cfm](http://www.zmag.org/Sustainers/Content/2003-02/08ratner.cfm), viewed on 15 Jun 2006, who stated that despite its adoption in 1950 during the Korean case, the first use of the Uniting for Peace procedure was seen in the Suez crisis in 1956.

<sup>20</sup> The General Assembly Res. 377A(V), 3 November (1950).

<sup>21</sup> Duncan Currie, 'Note: Convening an Emergency Session of the General Assembly Under the 'Uniting for Peace' Resolution 377(A)(V)', 25 February 2003 available at: <http://www.greenpeace.org/raw/content/international/press/reports/uniting-for-peace-resolution.pdf> viewed on 11 Nov 2005.

- There appears to be a threat to the peace, breach of the peace, or act of aggression;
- There is a lack of unanimity of the permanent members of the Security Council;
- Because of these the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security.

The 'Uniting for Peace' procedure gave rise to an intense debate between the West and the Socialist countries. The argument invoked by the Soviet Union was that Articles 10 to 14 of the Charter indicate that the Security Council and the General Assembly 'cannot be substituted for one another, they merely complement each other'.<sup>22</sup> By invoking a wider interpretation of Article 12, the pro-West countries argued that when the Council was paralysed by the veto, it was not 'functioning' in the sense of that provision.<sup>23</sup> Therefore, the 'Uniting for Peace' resolution was valid. In response, the Soviet Union replied that operation of the veto was an integral function of the Security Council. Moreover, the proposed resolution would only require a procedural vote to transfer the matter from the Security Council to the General Assembly, while the special session called for under Article 20 needed a substantive vote. What is more, the Soviet Union argued that Article 11(2) does not allow the General Assembly to take coercive action, as this action falls solely within the ambit of the Security Council.<sup>24</sup>

In the *Certain Expenses* case, the International Court of Justice explained the role of the General Assembly with regard to the maintenance of the peace. While the Court did not mention whether the General Assembly could recommend coercive action, it can be inferred from the Court's view that the General Assembly is not barred from recommending enforcement action. In fact, the basis of the 'Uniting for Peace' resolution was to uphold the purposes and objectives of the United Nations, more precisely, the maintenance of international peace and security. Thus, when the Security Council fails to perform its primary responsibility to maintain international peace and security, the General Assembly – in which all member states participate – should clearly take up the responsibility. The 'Uniting for Peace' resolution represents an interpretation of Article 11(2) and 12 that has been accepted and acted upon by the members of the United Nations, including the Soviet Union and all other members originally opposed to the resolution.<sup>25</sup> The Charter itself declares that the General Assembly can make a recommendation on any important question, such as maintenance of international peace and security, with a two-thirds majority of the members present.<sup>26</sup>

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<sup>22</sup> GA 299 plen. mtg, 5 UN GAOR 305 (1950), Poland.

<sup>23</sup> See *ibid* at 314 (1950) Bolivia.

<sup>24</sup> See *ibid.* at GA 301 plen. mtg, 5 UN GAOR 322 (1950).

<sup>25</sup> Blaine Sloane, *United Nations General Assembly Resolutions in Our Changing World* (1991) 25.

<sup>26</sup> See Art. 18 (2), UN Charter.

Yet, the legality of the 'Uniting for Peace' resolution may be questioned. The Charter under Article 2(4) explicitly prohibits any kind of threat of force or use of force against the political independence and the territorial integrity of any state. The only exceptions are action in self-defence under Article 51 and military action by the Security Council under Article 42. The question arises whether an authorization by the General Assembly to use force may lead to a violation of Article 2(4). In simplest terms, the exceptions to the ban on the use of force are those undertaken in legitimate self-defence and those authorized by the United Nations.<sup>27</sup> In the case of the 'Uniting for Peace' resolution, the General Assembly was only playing the role that should have been played by the Security Council. The inability of the Security Council to act caused this responsibility to be transferred to the General Assembly. By its authorization in the resolution the General Assembly did not, in fact, pose any threat or use of force against the territorial integrity or political independence of any state. In fact, the General Assembly tends to resist aggression that has threatened the world peace. For example, in the Korean conflict in 1950 the authorization of use of force was intended to help defend South Korea from the North Korean invasion; no offensive action was authorized. Therefore, it was only a self-defence measure. Article 51 of the Charter justifies collective self-defence.

In more recent times, the Uniting for Peace resolution procedure has been used to stop the United States from going to war in Iraq, a situation where two members of the Permanent Five had taken it upon themselves to launch unilateral use of force in disregard of the express will of the vast majority of the world community. The proposed Uniting for Peace resolution in this case was aimed, on the one hand, at stopping the war and, on the other, at protecting the force of law, which mandates that the use of force is only justified if authorized by the United Nations or in self-defence. Neither of these was present in the arguments for going to war in Iraq. The concept of pre-emptive self-defence is not found in the Charter.<sup>28</sup> According to Article 51 of the Charter, self-defence is justified only '... if an armed attack occurs against a member of the United Nations, and until the Security Council has taken measures necessary'. Therefore, until an 'armed attack' has occurred, any military action not authorized by the United Nations would lead to a war of aggression, the prevention of which is necessarily urgent to comply with the spirit of the Charter objective to 'save the succeeding generations from the scourge of war'. A Uniting for Peace resolution could have strengthened the world voice to urge the United States and its allies to respect international law. Indeed, the United States Government was afraid of a possible General Assembly emergency session that might have invoked the Uniting for Peace resolution procedure.<sup>29</sup>

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<sup>27</sup> See White (1993), *supra* n. 6 at 154.

<sup>28</sup> See Kamrul Hossain, 'The Concept of Pre-emption: The Changing Structure of International Order Concerning the Maintenance of International Peace and Security', 2 *Miskolc J. Int'l L.*, No. 2 (2005) 23-24.

<sup>29</sup> On 18 March 2003, two days before the war was launched, the United States sent a *démarche* to its embassies, with instructions on how to handle the groundswell for invoking the Uniting for Peace resolution. Several nations leaked copies of the communication to organizations support-

Ironically, the United States had played an important role in the adoption of Resolution 377. Interestingly, the first successful use of the resolution was by the United States during the Suez crisis in 1956. After Egypt nationalized the Suez Canal, Britain and France attacked and occupied parts of the canal. Cease-fire resolutions in the Security Council were quickly vetoed by Britain and France. The United States went to the General Assembly calling for a cease-fire and withdrawal of forces. An emergency session was held under the 'Uniting for Peace' resolution; the resolution proposed by the US and subsequently an even stronger resolution were passed in the General Assembly. In the face of these resolutions, it took less than a week for Britain and France to withdraw.

The 'Uniting for Peace' resolution procedure has been used ten times since its adoption in 1950. The second use of the resolution was also by the United States, to pressure the Soviet Union to cease its intervention in Hungary in 1956. The Soviet Union had used its veto to prevent the passage of anti-intervention resolutions in the Security Council. Again an emergency session of the General Assembly was called and the Soviet Union was ordered to stop its intervention in Hungary.

Michael Ratner and Jules Lobel put forward some important communications in the case of the US attack on Iraq in 2003. They urged the international community to call for an emergency session of the General Assembly to take action with regard to the threat to the peace posed by the US military action against Iraq, which had been taken without the explicit authority of the Security Council.<sup>30</sup> A Uniting for Peace resolution would clearly have operated in this case if one of the permanent members of the Security Council had exercised its veto, for such a resolution refers to the duty of the permanent members to seek unanimity as well as to exercise restraint in the use of the veto. The Uniting for Peace resolution procedure would also have applied if a permanent member had abstained, provided that the failure to seek unanimity and/or the abstention could be seen as meaning that the Security Council had failed to exercise its primary responsibility to maintain international peace and security because of a lack of unanimity of the permanent members. Whether the case of US-led invasion in Iraq fulfilled the necessary requirements for the invocation of the

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ing the Uniting for Peace effort, and Greenpeace put it on the Internet. The State Department has officially refused to deny its authenticity. Entitled 'Possible UNGA and CHR Sessions' (the Commission on Human Rights, CHR, also tried to pass a resolution condemning the war, but it was voted down), the *démarche* reads in part: 'Some members of the UN General Assembly have been discussing holding a General Assembly Emergency Session on Iraq, should the Security Council not produce an additional Chapter VII resolution on the subject. We urge you to oppose such a session, and either to vote against or abstain if the matter is brought to a vote.' It continues that the Security Council was still 'seized of the matter', and therefore 'the GA must refrain from taking up the matter.' See Mike Billington, 'A 'Uniting for Peace' Resolution Could Demand End to U.S. War On Iraq', *Executive Intelligence Review*, 11 April 2003 Issue, available at: [http://www.larouchepub.com/other/2003/3014un\\_res\\_377.html](http://www.larouchepub.com/other/2003/3014un_res_377.html), viewed on 11 Nov 2005.

<sup>30</sup> See <http://www.ccr-ny.org/v2/reports/docs/UnitingforPeaceViewpoint.pdf>, viewed on 19 Nov 2005, A UN Alternative to War: 'Uniting for Peace', which states the need for a call for resolution 377; also see [http://www.ccr-ny.org/v2/reports/docs/Draft\\_Uniting\\_For\\_Peace\\_Resolution.pdf](http://www.ccr-ny.org/v2/reports/docs/Draft_Uniting_For_Peace_Resolution.pdf), viewed on 19 Nov 2005, which states that the draft 'Uniting for Peace' proposal was produced by Michael Ratner and Professor Jules Lobel in the event of a US attack on Iraq in 2003.

Uniting for Peace resolution procedure depends on the fulfilment of the pre-conditions stated above. It does, however, appear that the conditions were present: firstly, there was no doubt that there appeared to be a threat to the peace, breach of the peace, or act of aggression whether one considers the imminent invasion of Iraq by the US-led coalition forces or Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles as recognized by the Security Council in resolution 1441 (2002); secondly, the impasse in the Security Council in which the United States, the United Kingdom and Spain, on the one hand, and France and Russia, on the other, proposed different solutions and in which it was clear that France would veto any resolution to use force in Iraq at the time meant there was a lack of unanimity among the permanent members; thirdly, the absence of any further resolution of the Security Council following resolution 1441 (2002), in light of the declared intentions of the United States and United Kingdom to be prepared to proceed with the use of force without a further resolution, meant that the Security Council had failed to exercise its primary responsibility of maintaining international peace and security.<sup>31</sup>

Even after the US had attacked Iraq, the initiative for the use of a Uniting for Peace resolution remained active. Both the twenty-two-member Arab Group at the United Nations, and the fifty-seven-member Organization of Islamic Conference (OIC), decided to introduce a resolution to convoke an emergency meeting of the General Assembly of the United Nations demanding an immediate end to the US invasion of Iraq. Their intention was to demonstrate the overwhelming international opposition to US unilateral warfare and to discuss the means to bring about a withdrawal of all foreign troops from Iraq. The Non-Aligned Movement of 115 nations, as well as several national governments, including Russia, China, Indonesia, and Jamaica, had also expressed their support for an emergency UN General Assembly session under the 1950 UN resolution 377.<sup>32</sup> The General Assembly could have achieved a number of purposes by adopting such a resolution. Specifically, it could have:<sup>33</sup>

- supported the intentions and strategies approved by the Security Council in resolution 1441 (2002);

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<sup>31</sup> Duncan Currie, 'Note: Convening an Emergency Session of the General Assembly Under the 'Uniting for Peace' Resolution 377 (A)(V)', 25 February 2003, available at: <http://www.greenpeace.org/raw/content/international/press/reports/uniting-for-peace-resolution.pdf> viewed on 11 Nov 2005.

<sup>32</sup> Mike Billington, 'A 'Uniting for Peace' Resolution Could Demand End to U.S. War on Iraq', *Executive Intelligence Review*, available at: [http://www.larouchepub.com/other/2003/3014un\\_res\\_377.html](http://www.larouchepub.com/other/2003/3014un_res_377.html), viewed on 11 Nov 2005; he noted that the Arab Group and the OIC had also published drafts of the resolutions they wished to introduce at the emergency UN General Assembly session. The Arab Group resolution reflected the Arab League resolution passed at its Cairo meeting on March 24, calling for an immediate end to the war, reaffirmation of Iraq's sovereignty, and the return of UN inspectors and staff to run the oil-for-food programme. That resolution was passed unanimously, with Kuwait abstaining.

<sup>33</sup> See Currie, *supra* n. 31 available at: <http://www.greenpeace.org/raw/content/international/press/reports/uniting-for-peace-resolution.pdf>, viewed on 11 Nov 2005.

- endorsed an increase in the seizure of UNMOVIC weapons inspectors and their equipment and facilities;
- set timelines for UNMOVIC inspectors to report progress;
- called upon Iraq to comply fully with the UNMOVIC weapons inspections regime;
- urged all member states to refrain from the threat or use of force against the territorial integrity or political independence of any state;
- declared that the use of force against Iraq was a violation of Article 2(4) of the United Nations Charter;
- condemned the use of force by any state against Iraq;
- called upon all states to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control; and
- requested the Secretary-General to keep member states informed as to the progress of the implementation of the resolution.

These steps could certainly have put pressure on the United States and the coalition led by it not to use force against Iraq in disregard of, on the one hand, the rules of international law and, on the other, the popular view expressed in the most representative international body, i.e., the General Assembly of the United Nations. A resolution endorsed in the General Assembly by means of the Uniting for Peace procedure and authorizing, for example, resistance to an aggression provides moral and political weight when the question of legality or legitimacy is concerned.<sup>34</sup> Unfortunately, despite all the attempts, the clear statement made by the United States that 'if you are not with us you are against us', left hardly any options for the states that were willing to back a Uniting for Peace resolution.<sup>35</sup>

### **The General Assembly in Peacekeeping**

Another, more significant innovation of the General Assembly was to establish the UN Peacekeeping Force. Peacekeeping forces – at least in the way in which they have developed – were not envisaged in the Charter.<sup>36</sup> However, the Charter provisions do not bar the United Nations from establishing such forces. In-

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<sup>34</sup> See Thomas G. Weiss, 'The Illusion of UN Security Council Reform', *The Washington Quarterly* (2003) 155, where he claims that the 'backing in the General Assembly might have a moral and political weight sufficient to categorize the use of forces as "legal" even without the Security Council's endorsement. In that case action would certainly be regarded as legitimate.'

<sup>35</sup> See Justin Morris, 'United Nations Security Council: Prospects for Reform', *McCoubrey Memorial Lecture 2003*, University of Hull, 28 May (2003), available at: <http://hull.ac.uk/law/docs/mccoubreylecture03.doc>, viewed on 30 Jan 2006.

<sup>36</sup> Adam Roberts and Benedict Kingsbury (eds), 'Introduction: The UN's Role in A Divided World', in *United Nations, Divided World The UN's Roles in International Relations*, (1988) 23.

deed, they are directed towards a Charter objective – peace. Peacekeeping forces were first deployed in 1956, when Israel, and later the United Kingdom and France, invaded Egypt due to its nationalization of the Suez Canal and the General Assembly authorized a peacekeeping force in order to restore peace in the region. Furthermore, the General Assembly did so when the vetoes of the United Kingdom and France had paralysed the Security Council. This course of events sparked a debate over whether the General Assembly may authorize enforcement measures or whether the authorization of a peacekeeping mission is necessarily intended as an enforcement measure.

In its advisory opinion in the *Certain Expenses* case, the ICJ clearly stated that Article 24 of the Charter gives the Security Council the primary responsibility for ensuring prompt and effective action for the maintenance of international peace and security. However, the General Assembly must also concern itself with international peace and security. Article 14 of the Charter authorizes the General Assembly to recommend measures for the peaceful adjustment of any situation. The word 'measures' implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Security Council requests the Assembly to do so.<sup>37</sup> Accordingly, the advisory opinion continues:

... whenever the General Assembly proceeds under Article 11 or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity – action – in connection with the maintenance of international peace and security. Such implementation is a normal feature of functioning of the United Nations. Such committees, commissions or other bodies or individuals, constitute, in some cases, subsidiary organs established under the authority of Article 22 of the Charter. The functions of the General Assembly for which it may establish such subsidiary organs include, for example, investigation, observation and supervision, but the way in which such subsidiary organs are utilized depends on the consent of the state or states concerned.<sup>38</sup>

The fundamental question is therefore the division of functions between the Security Council and the General Assembly. The function of the General Assembly under Article 14 may lead to an 'action' once committees or commissions are set up for the implementation of its resolution.<sup>39</sup> This action may not, how-

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<sup>37</sup> See *Certain Expenses of the United Nations* (Advisory Opinion) ICJ Reports (1962) at 163.

<sup>38</sup> *Ibid.* at 164-5.

<sup>39</sup> Many, however, disagree that there is decisive difference between the recommendation of enforcement actions, and the actual taking of such measures. This is illustrated by the formal definition of the term 'enforcement', according to which the existence of an 'enforcement action' is not determined by the character of the action itself but by the binding nature of the measure

ever, be a forceful one, unlike the ones the Security Council may initiate under Chapter VII of the Charter. For the implementation of an investigation, supervision or observation, the General Assembly must reach an agreement with the host state or states. Thus, 'action' taken by the General Assembly is still a recommendatory measure leaving final acceptance of the measure upon the willingness of the state or states to which it is addressed. For example, according to the General Assembly resolution 39(I) (12 December 1946), the member states of the UN recalled their ambassadors from Madrid, a measure which came close to breaking off diplomatic relations with Spain and which approached a coercive measure under Article 41 of the Charter.<sup>40</sup> The implementation of a measure recommended by the General Assembly depends upon whether the state or states are willing to comply with the relevant resolution; that is, it is an absolutely voluntary measure. The General Assembly may play an important role, however, through the authorization of peacekeeping forces in separating adversaries, maintaining cease-fires, delivering humanitarian relief, helping refugees and displaced persons return to their homes, demobilizing combatants, and creating conditions that, for example, promote democracy and allow for free elections to be held. All these require 'action' in a sense, perhaps not similar to the forceful measures envisaged in Chapter VII but certainly ones that help reduce the threat to international peace.

The Soviet Union opposed the idea of establishing the peacekeeping force known as the UN Emergency Force after the Suez crisis, even though it obviously wanted the United Kingdom and France out of the Suez. The invading forces and Egypt all welcomed the idea of such a force. The argument of the Soviet Union and its allies was that the Charter has very specific provisions for the use of force by the United Nations. They cited the agreements on UN forces required under Article 43 of the Charter. As the requirement of Article 43 was not followed in forming the UN Emergency Force, and as alternatives were not provided in the Charter, it was necessarily unlawful.<sup>41</sup> Yet the supporters of the UN peacekeeping forces argued that it was not only the Security Council that could mobilize the UN police; where the use of veto in the Security Council makes the initiative unsuccessful, the General Assembly can form such a body to maintain the peace. The idea of such peacekeeping forces was then supported by the majority in voting in the UN bodies. In the *Certain Expenses* case, the International Court of Justice decided all the relevant questions concerning the legality of the establishment of peacekeeping forces. In response to the argument made by the Soviet Union and France that only the Security Council could authorize and supervise peacekeeping activities, the Court stated that the Council's responsibility for maintaining international peace and security is primary, not exclusive. It noted that the General Assembly is also concerned with such matters. The Assembly does not have to defer to the Security Council under Article 11(2) of the Charter unless enforce-

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taken. Therefore, a non-binding recommendation is not to be considered 'action'. See Hailbronner & Klein in Simma (ed.) (2002), *supra* n. 4 at 264-5.

<sup>40</sup> See *ibid.* at 265.

<sup>41</sup> For more detail, see Rosalyn Higgins, *Problem and Process International Law and How We Use it* (1994) at 157.

ment action is necessary.<sup>42</sup> The Court also pointed out that the function of peacekeeping forces is not similar to that of the enforcement measures for which Article 43 conditions are to be met. The key point was that the forces (UNEF and ONUC)<sup>43</sup> were not authorized to take action against a state. Instead, they were sent with the consent of the states concerned. They were not authorized to act against the host state but, rather, were co-operating with it. In sum, the General Assembly may play an important role by establishing peacekeeping forces to mitigate escalation of a situation that could cause a serious threat to the peace if no such measure is taken.

### **Law-making in the General Assembly**

The acts of the General Assembly are issued in the form of resolutions, declarations, or decisions. The terms 'resolution' and 'declaration' do not appear in the Charter although they are often used to express the opinions upheld by the General Assembly. As for their legal effect, they are all non-binding yet they carry special weight in the law-making process. For example, in its eighth preambular paragraph, the General Assembly resolution concerning the Review of the Role of International Court of Justice<sup>44</sup> states that the development of international law may be reflected, *inter alia*, in declarations and resolutions of the General Assembly, which may be taken into consideration by the International Court of Justice. It is General Assembly declarations that most often embrace legal principles of particular importance that may eventually be incorporated into binding legal documents through further action. For example, the Universal Declaration of Human Rights of 10 December 1948 is one of the fundamental declarations of the General Assembly that has since been transformed into a series of legally binding conventions, e.g., the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Thus, some General Assembly declarations<sup>45</sup> embody fundamental principles of law that cannot simply be ignored when a legal decision is being made.

The Charter does not, however, prescribe any formula whereby General Assembly resolutions can be regarded as anything more than recommendations. In general international usage, a recommendation may describe a legal act

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<sup>42</sup> *Certain Expenses*, ICJ Reports (1962) at 166; see also Frederic L. Kirgis, 'The Security Council's First Fifty Years', 89 *Am. J. Int'l L.* (1995) 533-34.

<sup>43</sup> Here the Court is referring to UNEF and ONUC.

<sup>44</sup> GA Res. 3232 (XXIX) of 12 November (1974).

<sup>45</sup> For example, the Declaration on the Granting of Independence to Colonial Countries and Peoples of December 14 (1960), Res. 1514 (XV); the Declaration on Permanent Sovereignty over Natural Resources of December 14 (1962), Res. 1803 (XVII); the Declaration of Legal Principles Governing the Activities of States in Exploration and Use of Outer Space of December 13 (1963), Res. 1962 (XVIII); the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of October 24 (1970), Res. 2625 (XXV); The Charter of Economic Rights and Duties of States, passed on December 12 (1974), Res. 3281 (XXIX); and the Manila Declaration of the Peaceful Settlement of International Disputes of November 15 (1982), Res. 37/10.

which expresses a desire, but which is not binding on the addressees.<sup>46</sup> The legislative history of the Charter also confirms that the attempt to grant the General Assembly a law-making function was rejected.<sup>47</sup> Furthermore, the ICJ in the *South-West Africa* case decided that 'Resolutions of the United Nations General Assembly ... are not binding, but only recommendatory in character'.<sup>48</sup>

Nonetheless, it is not uncommon to argue that a General Assembly resolution is of fundamental importance as evidence of customary international law.<sup>49</sup> However, a resolution itself does not constitute customary rules of international law, nor does it create an international agreement despite the affirmative views expressed in favour of it by the members of the United Nations. A resolution may at best help to crystallize emerging customary international law or contribute to the formation of new customary international law. Indeed, as the *Final ILA Report on Formation of Customary General International Law* notes, General Assembly resolutions do not *ipso facto* create new rules of international law.<sup>50</sup> Similarly, the resolutions cannot be interpreted as the conclusion of an agreement under international law, because the provisions of the Charter state that states' consent does not express an intention to enter into a legally binding obligation. In addition, the voting procedure in the General Assembly does not suggest any effect similar to that of Article 11 of the Vienna Convention on the Law of Treaties, which is a general rule of public international law.<sup>51</sup>

According to Brownlie, resolutions relating to legal questions in the General Assembly may, however, constitute material sources of custom.<sup>52</sup> Moreover, a number of other scholars often consider General Assembly declarations, such as the Universal Declaration of Human Rights, to be customary international law.<sup>53</sup> A first test in determining whether General Assembly resolutions or declarations constitute customary rules of international law is to establish the existence of uniform and consistent state practice. Such practice has to be recognized by states as 'obligatory';<sup>54</sup> that is, an established *opinio juris* has to be found. In the *North Sea Continental Shelf* case, the International Court of Justice ruled on the strict requirement of proving an established *opinio juris*.<sup>55</sup> The focal question was: where the text of a General Assembly resolution expressly points out that the states are expressing an *opinio juris* with their vote, or where it is evident from the circumstances that the vote in the Assembly constitutes an

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<sup>46</sup> See Hailbronner & Klein, in Simma, (ed.) (2002), *supra* n. 4 at 269 n. 78.

<sup>47</sup> For a detailed discussion, see *ibid.* at 269.

<sup>48</sup> *South-West Africa* case (Second Phase), ICJ Reports (1966) at 50.

<sup>49</sup> See in general Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 269-272.

<sup>50</sup> *Ibid.*

<sup>51</sup> Article 11 of the Vienna Convention on the Law of Treaties states that 'the consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.'

<sup>52</sup> See Brownlie *Principles of Public International Law* (2003) 6.

<sup>53</sup> See Bizina Savaneli, 'Necessity of Transformation of International Law Into Universal Human Rights Law In the Framework of Pure Theory of Law After September 11', available at: [http://www.iatp.org.ge/downloads/publications/savaneli\\_transform.pdf](http://www.iatp.org.ge/downloads/publications/savaneli_transform.pdf), viewed on 3 Nov 2005.

<sup>54</sup> Brierly, *The Law of Nations*, 6<sup>th</sup> ed. (1963) 61.

<sup>55</sup> See ICJ Reports (1969) at 3.

*opinio juris*, does the resolution then necessarily constitute a rule of customary international law? Simma has argued that to a certain extent contemporary international communication and interaction expressed through the General Assembly resolution in the form of statements rather than actions qualify as evidence of *opinio juris*. However, voting behaviour alone is not sufficient to establish 'state practice' and would therefore remain outside the ambit of this extended understanding of the term. According to Simma, states must confirm their legal conviction through actual behaviour outside the UN.<sup>56</sup>

In sum, General Assembly resolutions do not constitute rules of international law in accordance with Article 38(1)(a) or Article 38(1)(b) of the Statute of International Court of Justice. The next consideration is whether the General Assembly resolutions represent general principles of law in the sense of Article 38(1)(c) of the Statute. The legislative history of the Statute contemplates that these general principles originate in harmony with national laws, which by way of analogy and comparison become a component of international law. However, General Assembly resolutions as such do not have any legislative character whatsoever: they can only form the basis for presuming the creation of general principles. Moreover, general principles as stated in Article 38(1)(c) of the Statute are only legally binding if they are expressly recognized by the UN member states.<sup>57</sup>

On balance, General Assembly resolutions have provided strong evidence in law-making in general, as well as in the decision-making in the World Court. The resolutions have contributed to international treaty law by developing principles which are later often incorporated into international agreements. In addition to the two Covenants of 1966 mentioned above, one may cite the Outer Space Treaty of 1967, which is based on a declaration of the General Assembly dating from 1963 on the activities of states in the exploration and exploitation of outer space.<sup>58</sup> Similarly, the extension of the scope of humanitarian law to wars of national liberation by Article 2(4) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, has codified the substantive content of resolution 3103 (XXVIII).<sup>59</sup> General Assembly resolutions represent evidence of customary international law and also play an important role in the development of customary law. General Assembly resolutions form the basis upon which states may act properly and can accelerate the generation of norms of customary international law by promptly articulating new problems. Moreover, individual General Assembly resolutions have had significance in the judgments of the ICJ in determining customary international law.<sup>60</sup> For example, in its advisory opinions in the *Namibia* and *Western Sahara* cases, the ICJ referred to the Declaration on the Granting of Independence to Colonial Countries and

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<sup>56</sup> Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 270.

<sup>57</sup> See *ibid.* at 271.

<sup>58</sup> GA Res. 1962(XVIII). Dec. 12 (1963).

<sup>59</sup> Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 270.

<sup>60</sup> See *ibid.* at 271.

People<sup>61</sup> as the basis for the process of decolonization. In its decision in the *Nicaragua* case, the ICJ referred to the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations<sup>62</sup> as regards the principles of non-intervention.<sup>63</sup> Thus, the importance of at least some of the General Assembly resolutions is beyond any doubt. Some go a step further to argue that such special resolutions at some point may constitute a peremptory norm – *jus cogens*.<sup>64</sup>

## **CONCLUSION**

The power and function of the General Assembly do not in anyway indicate that the competence of the Security Council is controlled by the Assembly. The Security Council enjoys a prerogative in the maintenance of international peace and security. However, the decision-making and the action of the Security Council are influenced to a large extent by the opinion expressed in the General Assembly. The Security Council relies on the General Assembly for the fulfilment of its primary function of maintaining the peace. Of course, implementing sanctions or military measures by the Security Council is not an easy choice unless an overwhelming majority expresses its support. In sum, although the General Assembly does not have the power to provide binding mechanism for peace enforcement, the indirect influence of the organ in practice is very much apparent, which ensures complementary role of the General Assembly in peace management.

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<sup>61</sup> GA Res. 1514 (XV), Dec. 14 (1960).

<sup>62</sup> GA Res. 2625 (XXV), Oct. 24 (1970).

<sup>63</sup> See Hailbronner & Klein, in Simma (ed.) (2002), *supra* n. 4 at 270-273.

<sup>64</sup> See Gennady M. Danilenko, 'International Jus Cogens: Issues of Law-Making', 2 *Eur. J. Int'l L.* (1991) 42, 44, who provides the example that during the Third United Nations Conference on the Law of the Sea a large majority of states, particularly developing countries, claimed that the principle of the common heritage of mankind, as proclaimed by the 1970 United Nations General Assembly resolution on the sea-bed, was a principle of *jus cogens*.