

CHAPTER 13

THE RELATIONSHIP BETWEEN THE UN SECURITY COUNCIL AND GENERAL ASSEMBLY IN MATTERS OF INTERNATIONAL PEACE AND SECURITY

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I. INTRODUCTION

ALTHOUGH the Security Council has the ‘primary responsibility for the maintenance of peace and security’,¹ and is granted an impressive array of powers under Chapters VI and VII of the UN Charter; the General Assembly has competence to make recommendations to the Security Council and to the Member States on ‘any questions or any matter within the scope of the present Charter’,² thereby having a secondary competence in matters of peace and security. As clearly stated by the International Court of Justice in the *Expenses* opinion delivered in 1962, the ‘responsibility conferred’ on the Security Council is ‘primary’ not ‘exclusive’, and the Charter ‘makes it abundantly clear’ that the General Assembly is ‘also to be concerned with international peace and security’.³

The purpose of this chapter will be to understand and explore this division of competence as it has evolved since the inception of the UN Charter in 1945. It also aims to explore this division within the context of the prohibition on the use of force. While it

¹ UN Charter, Article 24(1), UN Charter.

² UN Charter, Article 10, UN Charter.

³ ~~Please cite in full~~ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, 1962-ICJ Rep 1962, 151, at 163.

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is clear that the Security Council can authorize the use of force by states, as an express Charter exception to the prohibition there is disagreement as to whether the General Assembly can recommend that states take military action, for instance when the Council is deadlocked and the UN is faced with an imminent and catastrophic use of force or act of violence. To examine this conundrum, the debate over the legality of the (in)famous Uniting for Peace Resolution of 1950, will be revisited within the context of the emergence of a Responsibility to Protect (R2P).

II. PURPOSES AND POWERS OF THE UN

The primary or, more accurately, the first-listed purpose of the United Nations is:

“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”⁴

If any organization is to fulfil its purposes it must have the legal personality, competence, and powers to achieve these goals, or certain aspects of them. This could be the power to recommend that member States behave in a certain way, or it could be the legal power to bind member States to so behave, with the power to impose sanctions (expulsion, suspension, denial of certain rights and privileges, boycotts, economic

⁴ UN Charter, Article 1(1), UN Charter.

measures, and military measures) on those members that do not comply. Furthermore, those powers might be delegated to differing organs within the organization.

The recently re-emerged 'orthodoxy' that organizations should be limited to those powers, expressly delegated to it by the founding states and those that are strictly necessary to read into the text to give effect to the express powers,⁵ represents an attempt to restrict the constitutional growth of organizations. Such a view is very much in the tradition of viewing organizations as the servants of their creators (the founding states). According to this vision, states have created organizations by an act of free will and they cannot thereafter be restricted in the subsequent exercise of their free will by their creations, unless they have clearly agreed to such limitations, in the express grant of competences or by necessary implication.⁶ However, one is reminded at this point of Jean-Jacques Rousseau's memorable reflection on the human condition: 'l'homme est né libre, et partout il est dans les fers' ('man is born free but everywhere is in chains').⁷ If a condition of pure freedom between states ever existed on the international plane (and there is little evidence that this was the case), then it was restricted upon the agreement of the first treaty, more so by emergence of customary rules of international law, and significantly further by the creation of international organizations not based on unanimity. Furthermore, while a narrow approach to powers may be applicable to specialized agencies such as the World Health Organization (WHO), it has not been

⁵ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, (Advisory Opinion), 1996 ICJ Rep 1996, 66, at 78–79.

⁶ Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge: Cambridge University Press, 2009), 73.

⁷ Jean-Jacques Rousseau, *Du Contrat Social* (Paris: Garnier Flammarion, 1966), 41.

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applied to the UN itself. Thus, a contrast can be made between those liberal interpretations of the UN's powers in matters of peace and security found in judgments of the International Court of Justice, such as on the *Reparations* and *Expenses* cases,⁸ with the narrow view of the powers of the specialized agencies found in the Court's response to a request for an advisory opinion by the WHO on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*.⁹

An organization with a broad constitutional base, such as the UN, means that though states may control the creation of the organization, once created it can develop a significant separate will. Although state representatives sit in the organs, the fact of majority rule, and the interpretation of the mandates of organs by entities and individuals working within the organization, signify that it is no longer in the control of each state. The establishment of a constitutional order signifies the importance of the purposes and principles of the Charter—found in the Preamble and Articles 1 and 2. These express the object and purpose of the Charter, and delineate the maximum extent of constitutional growth. Thus, the practice of the various organs as a means of developing and protecting these purposes and principles becomes important, as does the implication of powers, though not expressly granted, to achieve the aims of the organization.¹⁰ The text

⁸ *Reparations for Injuries Suffered in the Service of the United Nations*, (Advisory Opinion), 1949 ICJ Rep 174, at 182–183; *Certain Expenses*, *Advisory Opinion*, above note 3 at 168.

⁹ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, *Advisory Opinion*, above note 5 at 78–79.

¹⁰ J-~~os~~ E. Alvarez, 'Constitutional Interpretation in International Organizations', in J-~~ean-M-arc~~ Coicaud and V-~~eijo~~ Heiskanen (eds), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press, 2001), 104, at 136–137.

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becomes less important, but there are still clear legal limits as set by the constitution. For instance, Article 2(7) states that nothing in the Charter permits the UN to intervene within the domestic affairs of states and thus represents a restriction on the competence of the UN, though its scope has been narrowed over the years.¹¹ Both the Security Council and the General Assembly have increasingly intervened in the internal affairs of states, tackling issues such as the denial of human rights and self-determination on the basis that abuse can constitute a danger or threat to the peace, when asserting competence over matters of peace and security, or on the basis that the promotion and development of human rights and self-determination is, in itself, within the purposes and competence of the UN.¹² Thus, the Charter is a living instrument—it evolves and develops—thereby enabling it to keep pace with developments in the international order.

Constitutional documents such as the UN Charter go through different stages of evolution as the surrounding politics and the underlying balance of power change. The expansion of the competence of the General Assembly during the Cold War, evidenced early on in the enactment of the Uniting for Peace Resolution in 1950,¹³ is paralleled by the expansion in competence of the Security Council after the end of the Cold War. The latter does not somehow cancel out the former, but it does mean that advances in competence made by the General Assembly during the Cold War years are unlikely to be utilized in the post-Cold War era, when the Security Council is so dominant politically.

¹¹ Gerog- Nolte, 'Article 2(7)', in Bruno Simma (ed), *The Charter of the United Nations* (Oxford: Oxford University Press, 2002), 171.

¹² UN Charter, Articles 1(2), 1(3), 55, and 56, UN Charter.

¹³ Uniting for Peace, UNGA Res 377 (1950).

III. THE PROHIBITION ON THE USE OF FORCE, THE UN, AND PEACE AND SECURITY

The prohibition on the threat or use of force is the most important principle in the UN Charter. The absence of widespread use of force by members, as well as the presence of a centralized and legitimate monopoly on the use of violence, are the basic elements for the survival of any society. Since Article 2(4) purports to control the threat or use of force by stating a norm of international law to which states must conform, and the Security Council is concerned with maintaining international peace by, *inter alia*, taking action against states using force in contravention of Article 2(4), it is plausible to examine the possibility of a correlation between Article 2(4) and the competence of the Security Council. One possible (narrow) approach is to restrict the Security Council's coercive competence under Chapter VII to threats or uses of force prohibited by Article 2(4). Following from this, Chapter VI empowers the Council to deal with potential breaches, whereas Chapter VII allows it to deal with actual breaches of Article 2(4). Indeed, further to this argument there is a direct relationship between the concept of 'threat of force' under Article 2(4) and the concept of 'threat to the peace' under Article 39, and that of 'use of force' under Article 2(4) and those of 'breach of the peace' or 'act of aggression' under Article 39. Such a thesis envisages that the Charter established a 'closed' rather than an 'open' system. The Security Council's competence would be defined, at its limits,

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by Article 2(4); and to determine that a situation was a ‘threat to the peace’ when it was not a ‘threat of force’ would be *ultra vires*.¹⁴

Nevertheless, the Charter was neither constructed with such precision in mind, nor has it been interpreted in that manner. The trigger for Chapter VI, that the situation or dispute endangers international peace found in Article 34, is not confined to potential breaches of Article 2(4). Furthermore, the triggers for Chapter VII are not to be equated with breaches of Article 2(4) since the concern of the Security Council is with world peace and security, much broader notions than the threat of armed force or the actual use of armed force. This concern for peace and security spreads to issues such as the proliferation in armaments, the spread of terrorism, the disintegration of failed and failing states, massive flows of refugees, egregious violations of human rights—all issues that might threaten international peace and security, but all matters that fall outside of Article 2(4).¹⁵

IV. BREACHES OF INTERNATIONAL LAW, THE UN, AND PEACE AND SECURITY

Very few authors have argued that the Charter is ‘closed’ to the extent that the Security Council’s ultimate competence is defined by Article 2(4).¹⁶ Others have argued that the

¹⁴ Nigel D. White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (Manchester: Manchester University Press, 1997), 33–36.

¹⁵ Rudiger Wolfrum, ‘Article 1’, in B. Simma (ed.), *The Charter of the United Nations*, 41–42.

¹⁶ But see Joachim Arntz, *Der Begriff der Friedensbedrohung in Satzung und Praxis der Vereinten Nationen* (1975), 63–64, 102–106.

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Security Council's competence is or should be triggered by breaches of international law, so that measures taken under Chapter VII are seen as sanctions for breaches of international law.¹⁷ While it is true that the Security Council has over recent decades responded to major breaches of humanitarian law for instance, and responded in ways that have led to the punishment of criminal behaviour, such as by the creation of criminal tribunals, ~~but~~ its core concern remains peace and security.¹⁸ Thus, a state possessing weapons of mass destruction may or may not be in breach of non-proliferation treaties and it may or may not represent a threat to international peace and security. The Security Council is concerned with the latter issue; so, for instance, it may decide that there is no threat even though an arms control treaty has been breached, or alternatively it may decide that there is a threat and that is evidenced in part by the breach of the treaty; or it might decide that there is a threat even though the treaty has not been breached.¹⁹

Kelsen is of the opinion that it is 'completely within the discretion of the Security Council as to what constitutes a threat to the peace'.²⁰ Both Kelsen and Higgins state that because the Council is not fettered in its powers of determination under Article 39, such a determination can create new law as to what constitutes a threat to or breach of the

¹⁷ Jost Delbrück, 'The Impact of the Allocation of International Law Enforcement Authority on the International Legal Order', in Jost Delbrück (ed), *The Allocation of Law Enforcement Authority in the International System* (Berlin: Duncker and Humblot, 1995), 135 at 158; Vera Gowlland-Debbas, 'Introduction' in Vera Gowlland-Debbas (ed), *United Nations Sanctions and International Law* (The Hague: Kluwer, 2001), 7-9.

¹⁸ *Tadić*, Case No. IT-94-1-T (1995) para 19 (ICTY Appeals Chamber).

¹⁹ See ~~eg for example~~ UNSC Res 1718 (2006) on North Korea; UNSC Res 1737 (2006) on Iran.

²⁰ Hans Kelsen, *Law of the United Nations* (London: Stevens, 1951), 727.

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peace.²¹ It can be seen from this that the Council has a lawmaking role, but it does not necessarily follow that the Council is unfettered by international and Charter law. After all, the idea that key actors in international law are both lawmakers and subjects of the law is not new. While states accept obligations on a consensual basis in a bilateral or multilateral exchange with other states, at least in the pure Westphalian model of international law, the Security Council seems to be able to impose obligations without any reciprocal obligations being imposed on it. However, this seems to disregard the fact that, according to Article 24, the Security Council acts on behalf of member states, suggesting at least some form of reciprocal relationship, and that in so doing it is required to act in accordance with the purposes and principles of the Charter, agreed to by all member states. Article 1 includes as a purpose of the UN the maintenance of peace and security by means of collective measures if necessary, but also the promotion and encouragement of respect for human rights. Thus, even within the UN Charter, hard security concerns run alongside human rights, so that when fulfilling its primary purpose, the [UNSCouncil](#) must have regard to human rights. As will be seen, the Assembly too has a concern for both peace and security, and for human rights and self-determination, and though it does not have mandatory powers in these fields, it is governed in the exercise of its powers by the purposes and principles of the Charter, as well as any express limitations.

The UN, in both the Security Council and the General Assembly has, in practice, manifested a preference for an open system. In particular, it has applied the concept of a

²¹ [Rosalyn Higgins](#), *The Development of International Law through the Political Organs of the United Nations* (Oxford: Oxford University Press, 1963), 266.

‘threat to the peace’ in Article 39 to essentially internal situations.²² Arntz argues that internal situations are not within the ambit of Article 39 because they do not constitute a ‘threat of force’ against another ~~S~~state within the meaning of Article 2(4). He argues that the text of the Charter, particularly the ~~p~~Preamble and Article 1, indicate that peace is the antithesis of war, and so the Charter only deals with threats to or breaches of inter-state or international peace, and not to intra-state or internal peace.²³ However, the evidence is that if an internal situation or conflict such as found relatively early in the life of the UN, in the Congo and Southern Rhodesia in the 1960s,²⁴ is serious enough to threaten international peace and security then the Security Council will become involved. ~~Thus~~Hence, although there may be an overlap between the competences of UN organs and the rules on the use of force, the concern of the former is so much broader—the maintenance of international peace and security.

V. THE UN AND THE RESPONSIBILITY TO PROTECT

In the broader context of international law, a strong argument can be made that the Security Council ought to act to prevent genocide, crimes against humanity, and other egregious violations of human rights, either because there is a duty on states and therefore on other actors possessing rights and duties to act within their legal

²² See ~~eg, for example, UNSC Res 418 (1977) on South Africa~~. The General Assembly had determined that the situation in South Africa constituted a threat to the peace in 1965—~~UNGA Res 2054 (1965)~~.

²³ Arntz, *Der Begriff der Friedensbedrohung in Satzung und Praxis der Vereinten Nationen* ~~above note 16 at~~, 63–64.

²⁴ ~~UNSC Res-~~ 161 (1961) re the Congo; ~~UNSC Res-~~ 232 (1966) re Southern Rhodesia.

competences to prevent such violations of international law;²⁵ or simply because such actions inherently undermine peace and security—they are antithetical to global order as well as being international crimes. However, given the Council’s primary responsibility for peace, there may be problems in placing a further responsibility upon it, especially if, in a particular instance, a military action to prevent crimes against humanity actually worsens the security situation and endangers world peace.

Nonetheless, in 2011 the Council took action to tackle crimes against humanity in the context of increasing violence within Libya. During the meeting at which Resolution 1973 (2011) on Libya was adopted,²⁶ the unanimity behind Resolution 1970 (in which the Security Council imposed non-forcible measures on Libya and Libyan leaders and referred the situation to the [International Criminal Court \(ICC\)](#)) was broken, but not to the extent of disabling the adoption of Resolution 1973 by 10 votes to 0 with 5 abstentions (Brazil, China, Germany, India, Russia). Those abstaining were not only the usual advocates of non-intervention (China and Russia) but important states, each with a strong case for permanent membership themselves.

The political change within the Council from the situation in Kosovo in 1999 when it could not agree on military action to protect the Kosovars;²⁷ to Libya in 2011 was marginal, but sufficient to give the initial ~~NATO~~ action [by the North Atlantic Treaty](#)

²⁵ See Art I of the Convention on the Prevention and Punishment of the Crime of Genocide 1948 which obligates states parties to ‘prevent and punish’ the crime of genocide.

²⁶ UNSC 6498th mtg (2011).

²⁷ See UNSC Res 1199 (1998); UNSC Res 1203 (1998) on the situation in Kosovo. Neither resolution expressly authorized ‘necessary measures’ to protect the people of Kosovo.

Organization (NATO) in Libya a sound legal basis. That marginal push may have been helped by the emergence in the early 21st century of the idea that there is a responsibility to protect (R2P) on the part of the international community, when a state has failed to protect its population from crimes against humanity or other similar egregious acts.²⁸ The UN World Summit Outcome Document of 2005 placed this responsibility on the government of the state, but then on the Security Council if the government failed to protect its population from genocide, crimes against humanity, or war crimes.²⁹ Both Council Resolutions 1970 and 1973 on Libya stated in the preamble that the Libyan authorities bore responsibility to protect the population of Libya, which could be seen as a reference to R2P, though tellingly neither Resolution went on to state that since the Libyan government had failed to protect its population, the Security Council had a responsibility to do so. Instead, the Council seemed to be exercising its primary responsibility for the maintenance of international peace and security, its traditional concern, making no reference to any other form of responsibility it might have. While there is no doubt that the Libyan crisis will be lauded as a precedent for R2P, the resolutions themselves do not support such an interpretation. At most, in the face of an imminent and brutal attack on the city of Benghazi, R2P arguments may have helped to persuade wavering permanent members not to veto the resolution authorizing necessary measures to protect civilians and civilian-populated areas.

²⁸ See International Commission on Intervention and State Sovereignty, *The Responsibility To Protect* (Ottawa: International Development Research Centre, Ottawa, 2001); Report of the High-Level Panel, *A More Secure World* (2004), recommendation 55; Report of the UNSG Secretary-General, 'In Larger Freedom: Towards Security, Development and Freedom for All' (2005), para 135.

The obvious weakness in placing a responsibility to respond to specific acts of violence on a body in which a veto can block any effective action, leads to the question of whether there are legitimate and lawful configurations of states that can fulfil the responsibility to protect on behalf of the international community. In other words, when the Security Council is deadlocked in the face of imminent and catastrophic violence can other security institutions, principally the General Assembly and regional organizations, authorize necessary measures to prevent such violence? The potential R2P role of the Assembly will be returned to after considering its competence for matters of peace and security under the Charter in the next section, which not only relates those powers but discusses the sometimes fraught relationship between the Assembly and the Council in matters of peace and security.

VI. DIVISION OF COMPETENCE UNDER THE CHARTER

Normally the constitutive treaty of an international organization provides for a division of competence between organs. Occasionally it is argued that this is or should be along the lines of the separation of powers, with one organ being given executive powers, and another judicial, another legislative.³⁰ However, this pure form of separation is rarely found at the international level. Rather, the constitutive treaties divide and arguably balance powers between organs. The division of competence between the 'primary' organ for international peace and security, the Security Council, and the General Assembly has been a constant source of contention since the Korean War in 1950.

²⁹ World Summit Outcome Document, UNGA Res- 60/1 (2005), para 139.

³⁰ M-atthew Happold, 'Security Council Resolution 1373 and the Constitution of the United Nations', (2003) 16 *Leiden Journal of International Law* 593.

The powers of the Security Council are relatively clearly delineated in Chapters VI and VII of the UN Charter, with the former containing a range of recommendatory powers in relation to the peaceful settlement of disputes or situations that might endanger the peace, including fact-finding and recommending methods of adjustment or terms of settlement.³¹ The powers contained in Chapter VII, to demand provisional measures such as cease-fires, to take a range of non-forcible measures including economic sanctions, and to take military action,³² are contingent upon the Security Council finding a 'threat to the peace', 'breach of the peace' or 'act of aggression'.³³

The Security Council has been creative in developing a range of non-forcible measures beyond general and targeted sanctions to include the creation of international criminal tribunals and international territorial administrations.³⁴ In taking military measures against aggressor states and in tackling threats to the peace, the Security Council has relied on a system of 'coalitions of the willing' acting under a broad mandate, in lieu of the express Charter scheme of special agreements by states under the control of the Military Staff Committee and ultimately the Security Council.³⁵ Thus, the Security Council has significantly developed its competence in the field of peace and security, but the majority of these developments occurred after the end of the Cold War and with it the extended pernicious use of the veto. The first coalition of the willing was put in place by the Security Council in 1950 in response to North Korea's attack on South

³¹ UN Charter, Articles 34, 36, 37, and 38-UN Charter.

³² UN Charter, Articles 40, 41, and 42-UN Charter.

³³ UN Charter, Article 39-UN Charter.

³⁴ eg For example, UNSC Res 827 (1993) re ICTY: and UNSC Res 1244 (1999) re Kosovo.

Korea.³⁶ It was dismissed as a historical aberration at the time and it remained so until the Cold War ended, Iraq invaded Kuwait in 1990,³⁷ and Operation 'Desert Storm' was authorized to take necessary measures to restore peace.³⁷ The Coalition model has been used on many occasions since to tackle threats to the peace as well as the aggressions of North Korea and Iraq.

During the Cold War, with the Security Council deadlocked most of the time, emphasis was switched to the General Assembly and its secondary responsibility for peace and security. Inevitably, there is a division of views on whether the General Assembly has wide or narrow competence. A wide view of the competence of the UN General Assembly would point to Articles 10 and 14 of the Charter. Article 10 empowers the Assembly to 'discuss any questions or any matters within the scope of the present Charter or relating to the powers or functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.' As a result Thus, Article 10 establishes a general competence for the Assembly to discuss any matter within the remit of the United Nations as determined by the Charter.³⁸ This power indeed makes the Assembly the 'town meeting place of the world', and 'the open conscience of humanity', as intended at San Francisco.³⁹ It follows that its power to adopt recommendations on any such matter must also cover the same

³⁵ UN Charter, Articles 43-7 UN Charter.

³⁶ UN SC Res 83 (1950) re Korea.

³⁷ UNSC Res 678 (1990) re Iraq.

³⁸ Hans Kelsen, *The Law of the United Nations* (London: Stevens, 1951), 198.

³⁹ Yearbook of the United Nations (UN, 1946-4-7), 51.

area as the more concrete recommendatory powers of the Security Council under Chapters VI and VII.⁴⁰

If Article 10 is insufficient to grant the Assembly the full range of recommendatory powers, Article 14 re-emphasizes its potentially wide jurisdiction with specific reference to international security by providing that ‘subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the present Charter setting forth the Purposes and Principles of the United Nations’. Article 14 with its jurisdictional threshold of a situation deemed ‘likely to impair the general welfare or friendly relations among nations’ appears to give the Assembly access to a much wider range of situations in the field of international peace and security than the Security Council. The Assembly can, under Articles 10 and 14, discuss situations covered by Articles 34 and 39, but to prevent any clash between the work of the Security Council, which is primarily concerned with such situations, and the General Assembly, Article 14, as well as Article 10, are subject to the limitation contained in Article 12. Article 12(1) provides that the ‘General Assembly shall not make any recommendations with regard to that dispute or situation’ while the Council is ‘exercising in respect of any dispute or situation the functions assigned to it in the present Charter’. In practice, the Assembly

⁴⁰ Kay Hailbronner and Eckart Klein, ‘Article 10’, in Simma (ed), *The Charter of the United Nations*, 264.

often adopts resolutions on a matter at the same time at which the Security Council is considering the question.⁴¹

It seems to have been accepted practice at least in the early life of the UN that when an item was placed on the Security Council's agenda it was deemed to be exercising its functions in accordance with Article 12(1). The theory behind the list of matters which the Secretary General submits to the General Assembly is that it tells the Assembly which issues it is not allowed to discuss because they are receiving attention in the Security Council. In effect, this approach amounted to defining 'functions' in Article 12(1) with reference to Article 12(2).

The procedure in which the list of matters seized by the Security Council was also deemed to contain those matters in relation to which it is exercising the functions assigned to it may have been accepted at a very formal level, but in practice it has been disregarded. Western ~~s~~States could use their early dominance of both organs in the first decade to remove, by procedural vote, items from the agenda of the Security Council, where the Soviet veto might have been preventing action being taken, to put the issue before the Assembly.⁴²

Whereas the Western ~~s~~States could use this method of transferring issues from the Council to the Assembly during the early Cold War period, the Non-Aligned Movement (NAM), once it became an established force in the 1960s, was not assured of winning a procedural vote in the Council and so in practice it tended to ignore procedural

⁴¹ Hailbronner and Klein, 'Article 12', in Simma (~~ed~~), *The Charter of the United Nations*, 290.

⁴² See the Greek Question (1947–8) discussed in White, *Keeping the Peace*, ~~above note 14~~, 153–154.

technicalities. In view of the importance of the ~~United Nations~~ to the NAM, it was not surprising that they took the attitude that their disregard of a technical procedure adopted during a period of Western domination was no more reprehensible than the manipulation by the West of the same procedure during the earlier period. Indeed, the Assembly's approach breaks what in many ways was an artificial link between Article 12(2) and ~~12~~(1). The approach developed during the Cold War was that the Assembly would decide for itself whether the Council was functioning within the meaning of Article 12(1), thereby instituting a crude form of political accountability in the organization. This attitude to Article 12 has been maintained despite the ending of the Cold War, and seems to have received the qualified endorsement of the International Court in 2004 in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.⁴³ Nevertheless, with the Security Council now 'functioning' more or less continuously and dealing positively with many issues brought before it, the Assembly has considerably fewer opportunities to assert its authority.

Articles 10 and 14 empower the General Assembly to discuss and make recommendations on matters which may be a danger to international peace within the meaning of Article 34, Chapter VI, or which constitute a threat to or breach of the peace within the meaning of Article 39, Chapter VII. Since these are the jurisdictional thresholds to the Security Council's competence in the field of international peace and security, there is a large area of overlap between the two organs. It is clear from Article 24(1) that the Security Council has 'primary responsibility' for peace and security, a position that Articles 11 and 12 of the UN Charter attempt to elaborate upon. Article

⁴³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian*

11(3) deals specifically with a situation which comes within Chapter VI, as defined by Article 34, by stating that the ‘General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace’. Article 11(3) seems to envisage the possibility of concurrent jurisdiction between the two organs in that it does not place an obligation on the Assembly to refer any such situation to the Council.

Article 11(2) addresses the issue of whether the Assembly can purport to exercise any powers similar to those possessed by the Council under Chapter VII by providing that the Assembly ‘may discuss any questions relating to the maintenance of international peace and security brought before it’ and ‘may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both’. However, Article 11(2) then crucially provides that ‘any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion’.

Article 11(2) accords the General Assembly a general competence in peace and security and thereby empowers it to find a ‘threat to the peace’, a ‘breach of the peace’ or an ‘act of aggression’ and to make recommendations thereon to restore international peace, a power concurrent with that of the Security Council under Article 39, and one utilized by the Assembly in practice (reviewed [in Section VIII below](#)). Though objected to by a minority of members,⁴⁴ such a power is reconcilable with the Charter. It is a recommendatory power only, any coercive measures under Chapter VII requiring a

Territory, (Advisory Opinion), 2004-ICJ Rep 2004, 136, at 150.

⁴⁴ UNGA 1395th plen- mtg, 1965 (Norway); UNGA 1671st plen- mtg, 1968 (Netherlands).

mandatory decision can only be adopted by the Security Council.⁴⁵ Support for this interpretation of Article 11(2) can be found in the *Expenses* opinion of 1962, though the Court considered the measures under review (namely peacekeeping forces in the Middle East and in the Congo) were based on the consent of the states in question and therefore did not constitute coercive measures against states. However, in its more abstract discussion of powers, the Court stated that ‘only the Security Council . . . can *require* enforcement by coercive action’, and further that ‘it is the Security Council which, exclusively, may *order* coercive action’.⁴⁶ It follows from this that the Assembly can go ~~as~~ far as to recommend action by the Security Council, or to suggest voluntary sanctions, or further to recommend military measures.⁴⁷ There is a limited amount of General Assembly practice to support this contention (reviewed in Section VIII below), although the power to recommend military measures has not been utilized in the full sense, and in the current post-Cold War climate, has become more a theoretical, rather than, a practical issue. The fact remains, however, that the General Assembly does appear, on balance, to have this power and it is not impossible to envisage a situation in which its future use may be considered.

⁴⁵ ~~J-ean-P-ierre~~ Cot and ~~A-lain~~ Pellet, *La Charte des Nations Unies* (2nd edn, Paris: Economica, ~~2nd ed.~~ 1991), 283–285.

⁴⁶ ~~Certain Expenses~~*Expenses* case, Advisory Opinion, above note 5, at 163, emphasis added.

⁴⁷ ~~R-obert~~ Y. Jennings, ‘International Court of Justice Advisory Opinion of July 20, 1962’, (1962) 11 *International and Comparative Law Quarterly* 1169, ~~at~~ 1173; ~~J-uraj~~ Andrassy, ‘Uniting for Peace’, (1956) 50 *American Journal of International Law* 563, ~~at~~ 567–568, 571–572.

Nevertheless, the power of the Assembly to recommend economic or military action is controversial in that in the original Charter scheme the only way in which the United Nations could undertake economic or military action was by a *mandatory* decision of the *Security Council* under Articles 41 or 42. It is argued that since the UN has the power to order military action, then it must have the lesser power to *recommend* military action, and once this recommendatory power is recognized there is nothing in the Charter which prohibits the Assembly as well as the Council from exercising it. This contention, however, disguises the fact that recommendatory military action allows for the potential of greater abuse by member states, but it is the model that has in effect been adopted by the UN. Though it is practice for the Security Council to ‘authorize’ military action, the difference between this power and that belonging to the General Assembly to ‘recommend’ military action may be more than semantic,⁴⁸ but does not mean that the Security Council has ‘required’ or ‘ordered’ coercive military action. The reality is that under both the ‘authorization’ and ‘recommendation’ versions of the decentralized military option developed by the Security Council, states volunteer their forces to the UN for military action, and volunteering states decide on the extent of their commitment to the cause within the terms of the mandate and subject to a duty to report to the mandating organ on measures taken.

⁴⁸ D-anesh Sarooshi, *The United Nations and the Development of Collective Security* (Oxford: Oxford University Press, 1999), 13; Jochen A. Frowein and Nico Krisch, ‘Article 42’ in Simma (ed), *The Charter of the United Nations*, 759; Niels Blokker, ‘Is the Authorization Authorized: Powers and Practice of the UN Security Council to Authorize the Use of Force by Coalitions of the Willing and Able’, (2000) 11 *European Journal of International Law* 541-563; Benedetto Conforti, *The Law and Practice of the United Nations* (The Hague: Kluwer, 2000), 204.

VII. DIVISION OF COMPETENCE IN PRACTICE

The reference in Article 14 to the purposes and principles of the ~~United Nations~~ explains the development of one of the major roles of the General Assembly—the shaping of the right to self-determination referenced in Article 1(2). While the Security Council is established to further the first-listed purpose of the UN in Article 1(1), namely the maintenance of international peace and security,⁴⁹ the Assembly's functions extend to cover the development and promotion of self-determination in Article 1(2) and human rights in Article 1(3),⁴⁹ in addition to its secondary competence in peace and security as evidenced in Articles 10 and 11. The division between peace and security on the one hand, and human rights and self-determination on the other, does not exclude the Security Council, as primary organ for peace and security, from dealing with violations of human rights and self-determination whenever the peace is threatened, nor does it prevent the General Assembly as the main UN organ for human rights and self-determination from addressing matters of peace and security, particularly where violations of human rights are occurring.

Another way of understanding the issue is to consider the purposes in Article 1 as defining the framework within which subsequent practice of the UN develops. Further limitations will be found in express prohibitions or limitations—for example, in Article 2(7). The International Court of Justice recognized that the main limitation on the practice of the UN was the purposes of the organization when it stated in the *Expenses* case that '~~W~~~~t~~~~w~~~~h~~en the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the

⁴⁹ See further UN Charter, Articles 13(1)(b) and 55 ~~of the UN Charter~~.

presumption is that such an action is not *ultra vires*,⁵⁰ but it also discussed potential limitations on the powers of the Organization in the Charter, especially Article 11(2) as regards the General Assembly.

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Issues of peace and security often involve questions of self-determination and human rights and thus frequently both the Security Council and General Assembly are involved. Arguably, if the Council is functioning in relation to the issue, then the Assembly should only become involved if it concentrates on the issues of self-determination and human rights, and it does not transgress any express limitations such as found in Article 11(2) with its limitation of 'action' to the Security Council. Confining the General Assembly in this way did not prove to be possible during the Cold War as the majority of members (excluding Western states) viewed the denial of self-determination in the colonial context as a threat to peace.⁵¹

The example of Southern Rhodesia is dealt with at this stage, though a similar story emerges from the Assembly's practice during the Cold War in relation to the Portuguese Territories, apartheid South Africa, and the question of Palestine.⁵² In the Southern Rhodesia situation, the Assembly was initially concerned with the failure to implement the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples,⁵³ and not with problems of international peace and security.⁵⁴ However, the Assembly moved beyond the issue of denial of self-determination in 1963 when it

⁵⁰ *Certain Expenses* ~~Expenses case, above note 3 at~~, *Advisory Opinion*, 168.

⁵¹ White, *Keeping the Peace*, ~~above note 14 at~~ 169.

⁵² White, *Keeping the Peace* ~~ibid.~~, 170–172. See ~~note 67 below~~.

⁵³ UNGA Res 1514 (1960).

⁵⁴ UNGA Res 1747 (1962).

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determined that the failure to extend basic political rights to the ‘vast majority of the African population’, and the ‘entrenchment of the minority regime in power’ created an ‘explosive situation’ which constituted a ‘threat to international peace and security’.⁵⁵ It is arguable that after the Council had made a similar determination of a threat to the peace,⁵⁶ and started taking measures against Southern Rhodesia following the Unilateral Declaration of Independence in 1965, the Assembly should have left the situation to be dealt with by the Council. Nonetheless, the Assembly kept up its pressure on the Council as well as the white minority regime until settlement of the situation in 1980.⁵⁷

Furthermore, the International Court of Justice confirmed the legality of Assembly practice as a means of interpreting its competence in 2004,⁵⁸ which was given in response to a General Assembly request for a Court opinion concerning the legal consequences arising from the construction of a security wall in the occupied Palestinian territory in the light of the rules and principles of international law. The resolution was adopted during the Assembly’s reconvened 10th Emergency Special Session, and expressed its awareness of the inadmissibility of the acquisition of territory by the use of force and the denial of the principle of self-determination.⁵⁹ Thus, the Assembly combined its competence in matters of peace of security with its concern with issues of human rights and self-determination. The Court accepted the Assembly’s competence to do so under Articles 10 and 11, thereby endorsing its competence to determine a threat to

⁵⁵ UNGA Res 1889 (1963).

⁵⁶ UNSC Res 221 (1966).

⁵⁷ See ~~eg for example~~ UNGA Res 2562 (1970); UNGA Res 3116 (1973).

⁵⁸ Wall/Wall opinion, Advisory Opinion, above note 43 at 136.

⁵⁹ UNGA Res ES-10/14 (2003).

international peace and security.⁶⁰ The Court stated that Assembly practice had moved towards consistently acting in ‘parallel’ with the same matter concerning international peace and security.⁶¹ Furthermore, the Court also stated that it was ‘often the case that, while the Security Council has tended to focus on aspects of such matters related to international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects’.⁶² The Court considered that this ‘accepted practice’ was consistent with the UN Charter specifically Article 12,⁶³ and in so doing dismissed Israel’s argument that such practice was *ultra vires* as it argued that the Security Council was the body entrusted with matters of peace and security.⁶⁴

The question remains whether the General Assembly can step into the shoes of the Security Council not only to determine a threat to the peace, but to tackle issues that are primarily if not exclusively issues of peace and security by recommending measures, either non-forcible or forcible. The issue of military measures was raised during the Korean War (1950–3), which will be discussed in the next section. Korea also involved one of the first instances of the Assembly recommending voluntary non-forcible

⁶⁰ *Wall* ~~Wall~~ *opinion*, ~~note 43 above~~, *Advisory Opinion*, at 145.

⁶¹ *Wall* ~~Ibid.~~, *Advisory Opinion*, 149. See White, *Keeping the Peace*, ~~note 14 above~~, 161–163, where the present author introduces the concept of the Assembly acting in a parallel fashion to the Security Council.

⁶² *Wall* ~~Wall~~ *opinion*, *Advisory Opinion*, 150. See White, *Keeping the Peace*, ~~note 14 above~~, 169–172, where the present author analyses the practice to establish the Assembly wider competence.

⁶³ *Wall* ~~Wall~~ *opinion*, ~~note 43 above~~, *Advisory Opinion*, 150.

⁶⁴ *Wall* ~~Ibid.~~, *Advisory Opinion*, 148.

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sanctions. These were instigated by the pro-Western majority and directed not only against the North Korea aggressors, but also against the Peoples' Republic of China, which had entered the war when the US-led forces approached the Chinese border in their bid to unify the country, and involved an embargo on military supplies and equipment.⁶⁵ Unsurprisingly, the Soviet Union declared that it viewed these sanctions as invalid since, it argued, they constituted 'action' within the competence of the Security Council according to Article 11(2).⁶⁶

Assembly practice during the Cold War consolidated this competence, though the instigators in this period were the NAM and Socialist majority. Voluntary sanctions were called for by the General Assembly in the cases of South Africa, the Portuguese Territories, and Southern Rhodesia.⁶⁷ The Assembly's power to recommend voluntary measures was confined to colonial or racist regimes, and the sanctions mentioned ~~above~~ previously were terminated with the end of colonial or racist domination. However, by tying zionism to racism in 1975,⁶⁸ the Assembly was able to subsequently justify recommending voluntary measures against Israel.⁶⁹ A US-led campaign led to the 'repeal' of the resolution that equated zionism to racism in 1991.⁷⁰

VIII. UNITING FOR PEACE

⁶⁵ UNGA Res 500 (1951).

⁶⁶ UNGA 330~~th~~ mtg (1951).

⁶⁷ UNGA Res 1663 (1961); UNGA Res 2107 (1965); UNGA Res 2151 (1966).

⁶⁸ UNGA Res 3379 (1975).

⁶⁹ See ~~eg for example~~ UNGA Res 39/146 (1984).

⁷⁰ UNGA Res 46/86 (1991).

Controversy over the extent of the General Assembly's competence, as well as the extent of its encroachment on the functions and powers of the Security Council, is often centred on the Uniting for Peace Resolution of 3 November 1950.⁷¹ The immediate reason for the adoption of the Resolution was the return, in August 1950, of the Soviet Union to the Security Council, leading to the discontinuation of the Council as the body able to address the Korean War. Previously, in the absence of the Soviet Union from the Council Chamber (in protest over the continued occupation of the Chinese permanent seat by the Nationalists instead of the Communists), the Council had recommended that the US-led Coalition take necessary measures to repel the attack of North Korea and to restore international peace and security to the area.⁷² In fact, the Assembly adopted an 'enforcement' resolution on Korea after the Soviets had returned to the Security Council but before the Uniting for Peace Resolution was adopted.⁷³

In reality, the reasons for Uniting for Peace went beyond Korea, in that the Western-influenced majority in the General Assembly at the time was also of the view that the frequent use of the Soviet veto during the period 1946–50 was an abuse of that right, and that the ideal of great power unanimity at San Francisco was no longer attainable. Western States wanted an alternative form of collective security, based not on permanent member agreement in the Security Council, but on the basis of the will of the majority in the Assembly. Such a concept of collective security, whilst opening up the potential for economic and military actions against transgressors, also had the potential, in theory, to allow the General Assembly to recommend military action against one of the

⁷¹ UNGA Res 377 (1950).

⁷² UNSC Res 83 (1950).

⁷³ UNGA Res. 376 (1950).

permanent members. A more likely scenario would be for the Assembly to recommend military action that would affect the interests of a permanent member. It may be because this system of collective security was so potentially dangerous in upsetting the underlying balance of power that existed in the Cold War that the Uniting for Peace Resolution restricted the Assembly's power to recommend military measures to the most flagrant violations of international peace, namely breaches of the peace or acts of aggression, and did not expressly permit the Assembly to take such measures as a response to threats to the peace.

The Soviet Union objected strongly to the Resolution, in particular it argued that it violated the Charter requirement that coercive power was granted solely to the Security Council.⁷⁴ In the *Expenses* case the Court stated that 'action', which is the preserve of the Security Council,⁷⁵ refers to coercive action but it failed to state whether this excluded the Assembly from recommending coercive measures. At some points the Court suggested that 'action' was restricted to mandatory, coercive action 'ordered' by the Security Council. Thus, the Assembly did not appear to be barred from recommending enforcement action as part of its significant responsibility for the maintenance of peace as recognized by the Court.⁷⁶ There was no provision that clearly prohibited the Assembly from adopting this resolution. Furthermore, despite the wording of the Uniting for Peace

⁷⁴ UNGA 301st plen mtg, 1950, pointing to Article 42.

⁷⁵ UN Charter, Article 11(2) ~~UN Charter~~.

⁷⁶ *Certain Expenses* ~~*Expenses case, above note 3*~~, Advisory Opinion, 162–165.

~~r~~Resolution, there appears to be no cogent argument against allowing the Assembly to recommend military measures to combat a threat to the peace.⁷⁷

There can be no doubt that Uniting for Peace was designed to enable the ~~United Nations~~ to achieve one of its primary purposes: the maintenance or restoration of international peace and security. In addition to fulfilling the UN's purposes, such a power must also be consistent with the principles of the ~~United Nations~~ contained in Article 2. Although Article 2(7), prohibiting UN intervention in domestic affairs, only expressly exempts Chapter VII measures by the Security Council, there can be little doubt that threats to or breaches of the peace are not domestic matters to which the provision applies. More problematic for Uniting for Peace is the rule prohibiting the threat or use of force in international relations contained in Article 2(4), since if the Assembly is empowered to recommend states to use force, this appears to be a ~~prima facie~~ breach. The exceptions to Article 2(4) are explicitly stated in the UN Charter to be self-defence by states under Article 51 of the UN Charter, and military action taken (in practice ~~authoriz~~ed) by the Security Council under ~~Articles~~ 42 or 53. To state that the General Assembly can recommend military action arguably creates a third exception, which would appear to be contrary to Article 2(4), unless the General Assembly's power is restricted to the endorsement of the right of individual or collective self-defence under Article 51. Such endorsement is not a legal requirement but may be sought to increase the legitimacy of any proposed military operation. Clearly the debates preceding the adoption

⁷⁷ ~~S-ydney~~ D. Bailey and ~~S-am~~ Daws, *The Procedure of the UN Security Council* (~~3rd edn.~~, Oxford: Oxford University Press, ~~3rd ed.~~, 1998), 296; Hailbronner and Klein, 'Article 10' in ~~Simma~~ (~~ed.~~), *The Charter of the United Nations*, 266.

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of Uniting for Peace showed that the envisaged power was not restricted to a legitimating function, whereby self-defence would be endorsed by the Assembly.⁷⁸

Furthermore, the argument that the Security Council was simply endorsing the right of self-defence in the Korean and Kuwait operations of 1950 and 1990 respectively is misconceived, shown by the fact that contributing, neutral, and target states, as well as crucial actors such as the UN Secretary-General, viewed both operations as United Nations military operations, not actions in self-defence.⁷⁹ Though there is clearly an overlap between the right of self-defence under Article 51 and the power to take military action to restore peace and security under Article 42 when an armed attack/armed aggression has taken place, the legal basis of any military operation has to be judged by a combination of objective analysis of whether the necessary conditions for the exercise of the legal power are present, as well as the claims and reactions of states in relation to such military action.

The Security Council in exercising its power under Chapter VII to authorize military action acts on behalf of the membership of the United Nations,⁸⁰ and so arguably the exceptions to the ban on force are those undertaken in legitimate self-defence and those authorized by organs representing the membership of the United Nations in matters of peace and security. The question of which organ within the UN authorizes them is an internal issue and does not affect the legitimacy of UN action *vis-à-vis* a

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⁷⁸ UNGA 299th mtg (1950), France and the US; UNGA 300th mtg (1950), UK.

⁷⁹ Nigel D. White, 'From Korea to Kuwait: The Legal Basis of United Nations' Military Action', (1998) 20 *International History Review* 507, at 612–616.

⁸⁰ UN Charter, Art 24(1) UN Charter.

transgressing ~~S~~state.⁸¹ This internal issue can be resolved in favour of both organs having the ability to authorize (in the case of the Security Council) or recommend (in the case of the General Assembly) military action. It is submitted that the Assembly possessed a power to recommend military action in 1945, but its conversion from power *in abstracto*, to power in reality, has been achieved through the practice of the Assembly, including the Uniting for Peace ~~r~~Resolution.

The Uniting for Peace ~~r~~Resolution, whereby the Assembly can be activated in the face of a deadlocked Security Council by means of a procedural vote in the Council that is not subject to the veto, has been used to gain UN authority for innovative military actions. In the face of a military intervention by two permanent members (France and the UK) in the Suez crisis of 1956, and in the face of a threat to the peace in the Congo in 1960, which was in ~~at~~the state of collapse, the Security Council, unable to take substantive action itself due to the veto, transferred the matter to the Assembly,⁸² which duly became the mandating organ in the case of the United Nations Emergency Force (UNEF), a traditional peacekeeping force, and temporarily in the case of the United Nations Operation in the Congo (ONUC), which acted in a more muscular fashion. Although it may be argued that these two operations were more 'peacekeeping' than 'enforcement', and thus are not direct precedents for seeking an enforcement mandate, the reality was

⁸¹ ~~Certain Expenses~~~~Expenses case, above note 3 at~~, Advisory Opinion, 168.

⁸² ~~UNSC Res-~~ 119, 31 ~~October~~ 1956 (UK and France voted against); ~~UNSC Res-~~157 (17 ~~September~~ 1960) (USSR voted against).

that the Congo operation constituted enforcement action against non-state actors (secessionist fighters and mercenaries).⁸³

In addition, the General Assembly had, even before the adoption of the Uniting for Peace Resolution, become involved in the direction of the Korean military enforcement operation. In fact, the Assembly made a substantial contribution to the UN-mandated action in Korea by passing a resolution on 7 October 1950, which allowed the UN force to continue its military operations in order to establish 'a unified, independent and democratic government of Korea', after the Security Council had been deadlocked by the return of the Soviet representative.⁸⁴ This Resolution was seen as permitting the US-led force's crossing of the 38th parallel and so can be classified as recommending enforcement action. The British Foreign Secretary, Ernest Bevin, who was instrumental in the drafting of the Resolution, saw it as essential to have the mandate from the UN for the non-defensive intervention in North Korea.⁸⁵

Though actual practice by the General Assembly in recommending that states take military action is extremely limited, the [aboveprevious](#) analysis has established that the Assembly has the power to make such recommendations, to combat threats to the peace as well as breaches and acts of aggression. The Assembly reluctance to exercise its powers is a reflection of the dominance of the Security Council in matters of peace and security, and increasingly in matters of international criminal law. However, when there

⁸³ White, *Keeping the Peace*, [above note 14 at](#) 254–261. But see *Certain Expenses of the United Nations* Expenses case, [above note 3](#), 177.

⁸⁴ UNGA Res 376 (1950).

⁸⁵ See [Anthony](#) Farrar-Hockley, *The British Part in the Korean War: Volume 1: A Distant Obligation* (London: HMSO, 1990), 209.

is strong evidence of a threat to the peace and of egregious violations of human rights, there are compelling reasons to recognize that the Assembly needs to revive its apparently long-lost competence to recommend military action. In the face of genocide or crimes against humanity, both egregious violations of human rights that sit squarely in the remit of the General Assembly, and in the face of a deadlocked Security Council, the Assembly should come under increasing pressure to fulfil the UN's responsibility to protect.

It is somewhat ironic that a procedure advocated by Western States in 1950 was conveniently 'forgotten' in the case of the Kosovo crisis of 1999, when Western states (in the form of NATO) threatened and then used force to end the crimes against humanity being committed by Serb forces. The threat of Chinese and Russian vetoes seemed to have blocked further Council action beyond non-forcible measures. The cumbersome nature of convening an emergency special session of the Assembly, which can be done by the Assembly itself, was not a legitimate excuse for failing to activate Uniting for Peace, given that NATO first threatened to use force without express authority in October 1998 when the Assembly was meeting in its 53rd annual session. Canada briefly considered taking such an initiative,⁸⁶ as apparently did the UK. The reasons for not doing so were not primarily legal but political—a fear of losing the vote and a fear of resurrecting a precedent that might be used against Western States in the future, although the UK later stated that it doubted the legality of such a move.⁸⁷ Uniting for

⁸⁶ Paul Heinbecker, 'Kosovo', in David Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 543.

⁸⁷ House of Commons Select Committee on Foreign Affairs, 18 Nov. 1999, 63–64 (Emyr Jones Parry). But see 4th Report of the Select Committee on Foreign Affairs, 23 May

Peace provokes controversy, not only out of legal concerns, but because it embodies a very different approach to collective security than that envisaged by the Security Council.

Finally, it is interesting to note that the legality of the Uniting for Peace Resolution was not really questioned when the Assembly utilized its reconvened tenth emergency special session in 2003 to request an advisory opinion of the International Court of Justice on the legal consequences of the construction of a security wall in the occupied Palestinian territory, in which the Court determined that the construction of the security wall by Israel was illegal.⁸⁸ In determining it had jurisdiction the Court was concerned, *inter alia*, with whether the conditions of the Resolution were satisfied rather than with the legality of Uniting for Peace itself.⁸⁹ However, in determining that those conditions were: *—firstly* that the Council had failed to exercise its primary responsibility as a result of one or more vetoes, and *secondly* that the situation is one where there appeared to be a threat to the peace, breach of the peace, or act of aggression;⁹⁰ *—the* Court was effectively endorsing the Assembly's competence in matters of peace and security as contained in the Resolution.

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IX. CONCLUSION

The Assembly is a slumbering giant, in thrall to the smaller but sporadically powerful Council. While the Council is equipped with an impressive array of powers, their use is

2000, para- 128; I-an Brownlie and C-hristine J. Appleby, 'Kosovo Crisis Inquiry: Memorandum on International Law Aspects'; (2000) 49 *International and Comparative Law Quarterly* 904.

⁸⁸ *Wall* ~~Wall~~ *opinion, above note 43 at, Advisory Opinion*, 197.

⁸⁹ *Wall* ~~Ibid.~~, *Advisory Opinion*, at-136.

⁹⁰ *Wall* ~~Ibid.~~, *Advisory Opinion*, 151–152.

not guaranteed even though the Council has become much more active in the post-Cold War period. Its failure to act in Kosovo in 1999 and in Syria in 2012, either side of its humanitarian military action in Libya in 2011, puts in perspective the true nature of its ‘responsibility’ to prevent and react to genocide and crimes against humanity. Such crimes were being committed in all three cases, and moreover all three were threats to the peace. ~~In such situations, if a plan were to come~~~~A plan coming~~ from ~~(a group of)~~ member states and the Secretary-General involving peacekeeping, peace enforcement, or humanitarian action, and ~~that plan were to be~~ endorsed by the General Assembly,⁹¹ ~~this would be~~ neither ~~be~~ a breach of the Charter nor ~~would it be~~ ~~is it~~ confusing police action with issues of justice.⁹² Rather, it ~~would be~~ ~~is~~ a powerful form of collective security based on the principles of the Charter and ~~on~~ upholding the purposes of the ~~United Nations~~.⁹³

⁹¹ Lester Pearson of Canada and Dag Hammarskjöld combined effectively in 1956 to put in place the first peacekeeping force under a General Assembly mandate—see ~~W-M-illiam~~ Roger Louis, ‘The Suez Crisis and the British Dilemma at the United Nations’, in ~~V-aughan~~ Lowe et al (eds), *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), 280–~~at~~ 297.

⁹² But see ~~M-artti~~ Koskenniemi, ‘The Police in the Temple Order, Justice and the UN: A Dialectical View’, (1996) 6 *European Journal of International Law* 325–~~at~~ 337–348.

⁹³ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), xii. But see ~~D-ominik~~ Zaum, ‘The Security Council, the General Assembly and War: The Uniting for Peace Resolution’, in ~~V-~~Lowe et al (eds), *The United Nations Security Council*, ~~above note 90~~, 154–~~at~~ 156, 173–174.