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Article 9

(1) The General Assembly shall consist of all the Members of the United Nations.

(2) Each Member shall have not more than five representatives in the General Assembly.

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- Abbot A, Augustini F, Brown P, and Rode E, 'The Decredentialization of South Africa' (1975) 16 Harv Intl LJ 576.
- Briggs H, 'Chinese Representation in the United Nations' (1952) 6 IO 192.
- Ciobanu D, 'Credentials of Delegations and Representation of Member States at the United Nations' (1976) 25 ICLQ 351.
- Danaher E, 'The Representation of China in the United Nations' (1972) 13 Harv Intl LJ 448.
- Dorfman M, Hasey M, Schmidt J, and Weil L, 'Cambodian Representation' (1974) 15 Harv Intl LJ 495.
- Erasmus G, 'The Rejection of Credentials: A Proper Exercise of General Assembly Powers or Suspension by Stealth?' (1981) 7 SAYIL 40.
- Flauss JF and Singer P, 'La vérification des pouvoirs à l'Assemblée Générale des Nations Unies' (1985) 23 AFDI 620.
- Griffin M, 'Accrediting Democracies: Does the Credentials Committee of the United Nations Promote Democracy through its Accreditation Process, and should it?' (1999–2000) 32 NYU J Intl L & Pol 725.
- Halberstam M, 'Excluding Israel from the General Assembly by a Rejection of its Credentials' (1984) 78 AJIL 179.
- Higgins R, *The Development of International Law through the Political Organs of the United Nations* (OUP 1963).
- Jhabvala F, 'The Credentials Approach to Representation Questions in the UN GA' (1977) 7 Calif W Intl LJ 615.
- Klein E, 'Zur Beschränkung von Mitgliedstaaten in den Vereinten Nationen' (1975) 23 VN 51.
- Koschorreck W, 'Die Vertretung Chinas in den Vereinten Nationen' (1966) 23 EA 655.
- McWhinney E, 'Credentials of State Delegations to the UN General Assembly: A New Approach to Effectuation of Self-Determination for South Africa' (1976) 3 Hastings Const L Q 19.
- Ratliff S, 'UN Representation Disputes: A Case Study of Cambodia and a New Accreditation Proposal for the Twenty-First Century' (1999) 87 Calif L Rev 1207.
- Schermers H and N Blokker, *International Institutional Law* (4th edn, Nijhoff 2003).
- Shraga D, 'La qualité de membre non représenté: Le cas du siège vacant' (1999) XLV AFDI 649.
- Suttner R, 'Has South Africa been Illegally Excluded from the United Nations General Assembly?' (1984) 17 CILSA 279.
- Suy E, 'The Status of Observers in International Organizations' (1978-II) 160 Rec des Cours 75.
- Tabory M, 'Universality at the United Nations: The Attempt to Reject Israel's Credentials' (1988) 18 IYBHR 189.

A. Significance of the General Assembly

1 The GA is the only principal organ (Art. 7 (1)) of the UN in which all member States are represented. As the representatives of the member States in the GA are delegated by their governments and subject to their instructions (see MN 17), the GA is a conference of States, not a world parliament of independent representatives of the peoples. Owing to its composition of nearly all the States in the world as members and of other States as observers (see MN 3), and owing to its competence to discuss any questions or matters within the scope of the UN Charter (Art. 10), it can be described as the world's most important political discussion forum.¹ From a legal viewpoint as well, owing to (p. 447) its manifold functions, it holds an eminent position among the organs of the UN. In addition to the composition of the GA (Art. 9) Chapter IV of the Charter regulates in the following provisions: the functions and powers (Arts 10–17), the voting

conditions (Arts 18–19), and the procedure (Arts 20–22) of the GA including the right to establish subsidiary organs necessary for performing its functions. In order to improve its role and authority, its organization and procedure as the ‘chief deliberative, policymaking and representative organ of the United Nations’,² the GA has initiated a much needed and still continuing process of revitalization of its work since the early 1990s.³

B. Composition of the General Assembly

I. Member States

2 The GA consists of all the members⁴ of the UN (Art. 9 (1)), ie all original members (Art. 3) and all members admitted later (Art. 4). Admission to the GA becomes effective on the date on which the GA approves the application of the State for membership (Art. 4 (2); Rule 138 of the Rules of Procedure of the GA) and ends on the date on which the membership of the State in the UN ends (by expulsion (Art. 6) or in any other way (eg by the extinction of the State)). In order to ensure that the new member may participate as soon as possible in the work of the GA, the decision on the application for membership is usually made at the beginning of a session immediately following the election of the President and prior to the adoption of the agenda.⁵ According to Art. 18 each member of the GA has one vote and decisions of the GA are made by a majority or—in specific cases—by a two-thirds majority of the individual members present and voting. This provision guarantees the formal equality of all member States in the proceedings of the GA. With the increase in the membership of the UN it became necessary to ensure the representative character of the world organization also in those organs and bodies which do not consist of all member States. The Charter requires expressly only an equitable geographical distribution for the election of the non-permanent members of the SC (Art. 23 (1)) and a wide geographical basis for the staff of the Secretariat (Art. 101 (3)). In addition, the GA has developed a system of geographical or regional groups since the late 1950s in order to ensure the representative character for the election of members to organs and bodies on the basis of a balanced geographical distribution among its members, such as its President and Vice-President, the Chairmen of its six Main Committees, and the members of its General Committee as well as the non-permanent members of the SC and the members of the ECOSOC.⁶ The present division into five (p. 448) groups distinguishes among African States, Asian States, Eastern European States, Latin American and Caribbean States, Western European and other States.⁷ The composition of each group is determined by consensus of its members and not strictly based on geographical or regional, but also on political factors.⁸ The clearest example is the group of Western European and ‘other’ States, including Australia, Canada, Israel, New Zealand, and the United States.

II. Observers

3 In addition to the members of the UN, which alone make up the composition of the GA, so-called observers⁹ have been admitted to the GA.

1. Basis

4 The text of the UN Charter provides for non-member States only that the UN shall ensure their observance of the principles of the Charter as far as is necessary for the maintenance of international peace and security (Art. 2 (6)) and that they may bring disputes to which they are a party to the attention of the SC or the GA (Art. 35 (2)) which the GA may discuss when they relate to the maintenance of international peace and security (Art. 11 (2)). In practice, a more comprehensive participation in the work of the GA has been granted to non-member States, as well as to intergovernmental and other organizations. After extending this privilege to ‘other entities’ of a non-governmental character in the early 1990s, the GA restricted its generous practice and decided in 1994 that the granting of observer status should be confined to non-member States and intergovernmental organizations with activities of interest to the GA.¹⁰ In addition, the GA decided in 1999 that requests for the granting of observer status in the GA would be considered in Plenary session after consideration by its Sixth (ie Legal) Committee and requested the SG to inform the members of these bodies about the relevant criteria and procedures laid down by the GA for their decision.¹¹ Admission and participation of these observers have been founded on particular legal

instruments. However, general principles on the status of observers have been developed only to a limited extent.

(p. 449) 2. Categories of Observers

5 Several categories of observers can be distinguished: (1) non-member States which either do not want to join the UN as full members or have not (yet) been able to do so;¹² (2) specialized agencies brought into a relationship with the UN according to Arts 57 and 63 of the UN Charter;¹³ (3) intergovernmental organizations for various—political, economic, social, cultural, regional, and other—purposes according to a specific resolution of the GA;¹⁴ (4) national liberation movements according to a specific resolution by the GA on the particular organization¹⁵ or as far as they were recognized by the (former) (p. 450) OAU;¹⁶ (5) certain ‘other entities’ of a non-governmental character with a special role and mandate whose number has been limited (see MN 4).¹⁷ Not included in this categorization are members of the UN, although they are sometimes called ‘observers’ when they participate in subsidiary organs of which they are not members.¹⁸

3. Participation of Observers

6 Participation in the GA differs according to the category or individual position of the observer and the organizational structure of the GA. The agreements and resolutions granting observer status provide only very general guidelines on the scope of participation, which have been further developed in the procedural practice of the GA.¹⁹ (1) Access to the sessions of the GA, its committees and subsidiary organs depends on the purposes of the particular organ and the functions of the particular observer. Access to organs with limited membership does not go beyond the access granted to member States which are not members of the organ.²⁰ (2) Notifications of the date and the provisional agenda of sessions they may attend are officially transmitted to the observers. (3) Seats are reserved for observers according to their right of presence. (4) Observers may have their written statements circulated by the Secretariat to all delegations and may receive the documents for the meeting and also other UN documents upon specific determination.²¹ (5) Observers are permitted to make oral statements, including the right to reply, although Rules 115 and 161 of the Rules of Procedure of the GA mention this right only in respect of ‘members’. The permission to address Plenary meetings has been granted to representatives of observers in only a few instances.²² (6) Observers are not entitled to vote or to sponsor substantial proposals or procedural motions.²³ (7) Certain observers from liberation movements received payments out of UN funds for their participation in the work of the GA.²⁴

(p. 451) C. Representation in the General Assembly

I. Representatives and Delegations

1. Representatives

7 In the GA, which is composed of all the members of the UN, each member shall have not more than five representatives (Art. 9 (2); Rule 25 of the Rules of Procedure of the GA). These must be natural persons because the GA can only act through natural persons.

2. Delegations

8 The five representatives of a member together with not more than five alternate representatives²⁵ and as many advisers, technical advisers, experts, and persons of similar status as may be required, form the delegation of the member (Rule 25). An alternate representative may act as a representative upon designation by the chairman of the delegation (Rule 26). It must be ensured, however, that the maximum number of representatives of a member (see MN 10) is not exceeded.

3. Permanent Representatives

9 Representatives and delegations of the members in the GA must be distinguished from their permanent missions to the UN which have been established in the practice of the UN.²⁶ Members of these missions

perform functions similar to those of diplomatic missions, in particular to keep the necessary liaison between members and the UN between sessions of the GA.²⁷

II. Size of Delegations

1. Number of Representatives

10 The UN Charter limits the number of representatives of a member in the GA to not more than five (Art. 9 (2)). A similar limitation of not more than three representatives had already been imposed on the Assembly of the League of Nations (Art. 3 (4) of the Covenant). Its purpose is to enhance the efficiency of the GA and to prevent a disadvantage for members who cannot afford a larger delegation.²⁸

2. Additional Members

11 In practice, because of additional advisers, experts, and persons of similar status, several delegations are much larger, with some having more than fifty or even 100 members.²⁹ Their large size enables them to cope better with the personnel requirements resulting from the organizational structure of the GA, which comprises numerous committees and (p. 452) subsidiary organs, often meeting simultaneously (Art. 22 and Rules 96ff, 161 of the Rules of Procedure of the GA). Upon designation by the chairman of the delegation, all members of the delegation, including advisers, experts, or persons of similar status, may act as members of these organs. Only the elections of Chairmen, Vice-Chairmen, or Rapporteurs of these organs, or for seats in the Plenary meetings, are restricted to the representatives of the delegations and their alternates (Rules 100 and 101 of the Rules of Procedure of the GA). The latter restriction is, however, not enforced in practice, even in the case of voting.³⁰

3. Compatibility with United Nations Charter

12 The possibility of enlarging the delegations beyond the maximum number of five representatives laid down in the UN Charter brings about a factual inequality of the members in their participation in the GA. Despite some doubts,³¹ the practice, which was held admissible under similar provisions (see MN 10) in the Assembly of the League of Nations, appears to be compatible with the UN Charter.³² It does not touch upon the formal equality of the members, which is guaranteed in particular by the principle of equality of voting power (Art. 18 (1)) and, in addition, by the payment of the expenses of five representatives from the least developed member States for participation in the work of the GA out of UN funds (see MN 18). It is also justified by the actual differences among members whose workload varies according to their significance and responsibility in world politics, as can be seen by the fact that some members do not even send five representatives despite the reimbursement of expenses.³³

III. Composition of Delegations

13 The UN Charter and the Rules of Procedure of the GA do not determine which persons are to be included in the delegations, so that the designation of the representatives is left to the member States. At the opening of a session, it is often the Head of State or Government, or the minister of foreign affairs who, in addressing the GA, functions as the head of the delegation. Normally, delegations consist of members of the Foreign Service or other government departments, sometimes also of parliamentarians and eminent private individuals.³⁴

IV. Delegation of Representatives

1. Right of Delegation

14 The delegation of representatives to the GA is a right of each member which may only be denied in accordance with the UN Charter. A specific provision for a suspension of this right can be found in Art. 5.³⁵ In practice, however, it amounts to a denial of this right when the representatives of a member are excluded from the GA after a rejection of their credentials (see MN 38).

(p. 453) 2. Duty of Delegation

15 The delegation of representatives to the GA is also a duty of each member because it is a prerequisite for the functioning of this principal organ, which consists of all the members of the UN. A violation of this duty can, however, only be assumed in the case of a systematic refusal to participate, as the work of the GA does not necessarily require the constant attendance of all members.³⁶

3. Representation by other Member States

16 From the duty to delegate representatives to the GA, it follows that members cannot be represented by other members. Exceptions are admissible only in technical organs and only for a combined representation of one member and one observer or of two observers.³⁷

V. Instruction of Delegations

17 In accordance with the right to determine the composition of their delegations (see MN 13), the members have the right to instruct their representatives as to their participation and voting in the GA.³⁸

VI. Expenses

18 Travel expenses for up to five representatives or alternate representatives attending sessions of the GA were originally paid out of UN funds for each member.³⁹ Since 1986, however, payments have been limited to the least developed member States.⁴⁰ Payments were also made to liberation movements, being observers at the UN (see MN 6).

D. Right of Representation in the General Assembly

I. Credentials

1. Form

19 The authority to represent a member (not an observer)⁴¹ in the GA must be established in due form according to the Rules of Procedure of the GA. The credentials of representatives shall be issued either by the Head of State or Government, or by the minister of foreign affairs (who need no credentials themselves).⁴² These credentials and the names of members of the delegation shall be submitted to the SG, if possible not less than one week before the opening of the session (Rule 27 of the Rules of Procedure of the GA).⁴³ (p. 454) In practice, credentials are often submitted late. In such cases when the credentials do not fully meet the requirements of Rule 27, eg when they have been sent by cablegram, the persons named will be seated provisionally.⁴⁴

2. Scope

20 The credentials are valid for a particular session. They remain in effect when a session is merely divided into two parts.⁴⁵ For example, the credentials of the first emergency special session were also recognized at the second emergency special session.⁴⁶ The permanent representatives of members to the UN (see MN 9) also need formal credentials for the GA, which may be included in their general letter of accreditation.⁴⁷

II. Examination of Credentials

1. Credentials Committee

21 The credentials of representatives are examined by a Credentials Committee, which consists of nine members who are appointed by the GA on the proposal of the President. The Committee must be appointed at the beginning of each session and report without delay (Rule 28). In practice, it normally meets in the second or third week after the opening of the session and, because of late submissions of credentials, also at

the end of a session. Member States of the UN which are not members of the Credentials Committee may not participate as observers in the Committee's work.⁴⁸

2. Objections

22 A representative to whose admission a member has raised an objection is seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the GA has made its decision (Rule 29). Despite some early protests, the practice has been accepted that controversies about questions of representation may also be discussed and decided before or parallel to their being dealt with by the Credentials Committee, either by a special committee or directly by the Plenary.⁴⁹ In order to prevent conflicting decisions on controversial credentials in the UN, the GA has recommended that the attitude adopted by it on any such question should be taken into account by other organs of the UN and in the specialized agencies.⁵⁰ In their practice the organizations of the UN system have followed the decisions of the GA on representation.⁵¹

(p. 455) III. Scope of Examination

23 The examination of the authority to represent a member in the GA is determined by the requirements laid down in Rule 27 of the Rules of Procedure of the GA (see MN 19).

1. Undisputed Governments

24 In cases of undisputed governments, the examination of the credentials is restricted to a clarification of the formal question whether the document submitted has been issued according to Rule 27 of the Rules of Procedure of the GA by the Head of State or Government, or by the minister of foreign affairs of the relevant member State, and whether it names the members of the delegation.⁵²

2. Disputed Governments

25 In cases of disputed governments, the GA has, however, extended the examination of the credentials.

(a) In Cases of Rival Claimants

26 In cases of rival claimants who equally purport to be the government entitled to represent the same member State in the GA, a formal clarification that the credentials have been issued in due form by one of the officials designated in Rule 27 is not sufficient to determine beyond doubt the authority to represent the member State in the GA. Rather, the question of the authority of the official to issue the credentials, which is normally answered implicitly, becomes evident and at the same time problematic.

27 As each member State has up to five representatives (Art. 9 (2)) but only one vote (Art. 18 (1)) in the GA, only one delegation may be admitted for each member State. On the other hand, one delegation must be admitted for each member State, as each member State has a right to be represented in the GA (see MN 14). As a consequence, the GA has the right and the duty to decide between the credentials of the rival claimants and thus to clarify the substantive question as to which of the claimants possesses the competence to issue the credentials of the member State for the GA. As far as this decision touches upon the inherent right of the member State to determine its government, this clarification must be regarded as factually unavoidable and legally justified by the provision of Rule 27 of the Rules of Procedure of the GA, permitting and requiring the examination of the credentials issued for the GA.⁵³

28 In practice, the GA has continuously availed itself of this competence⁵⁴ so that it can now be considered legally established.⁵⁵ A prominent early example was the controversy over the representation of China between 1949 and 1971.⁵⁶ Further examples (p. 456) are the controversies over the representation of the Congo in 1960,⁵⁷ Yemen in 1962,⁵⁸ Cambodia (Kampuchea) from 1970 to 1990 and in 1997,⁵⁹ Haiti in 1992,⁶⁰ Zaire in 1993,⁶¹ Afghanistan from 1996 to 2000,⁶² and Côte d'Ivoire in 2010.⁶³

29 In order to provide a general legal basis for this practice, the GA adopted Res 396 (V) on 14 December 1950, in which it recommended 'that whenever more than one authority claims to be the government entitled to represent a member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and

Principles of the Charter and the circumstances of each case' (para 1). It further declared that the attitude adopted by it 'shall not of itself affect the direct relations of individual member States with the State concerned' (para 4). The resolution was the result of a compromise between the opponents of a general regulation and its advocates, who were divided among themselves into those who—subsequent to a British proposal—preferred a more objective standard focusing on the effectiveness of government power, and those who—subsequent to a Cuban proposal—favoured a more subjective standard, which also includes the legitimacy of government power.⁶⁴

30 Subsequent practice has shown that the resolution has neither been able to end the controversy about the standard applicable to rival claimants, nor to bring about a differentiation in the attitude of member States towards rival claimants inside and outside the UN, as had originally been intended by the SG.⁶⁵ Accordingly, in controversial cases, when decisions on the representation of rival claimants in the GA have to be made, member States put forward arguments of effectiveness, as well as of legitimacy, similar to those they use in cases of recognition of governments in their bilateral relations.⁶⁶

31 In the course of this practice, neither a clear line of reasoning nor a definite standard of decision has developed. At most, a tendency towards the principle of effectiveness can be observed.⁶⁷ According to the established practice of the GA, the once accredited representatives of a member State are recognized until the GA, upon the recommendation of the Credentials Committee, decides otherwise.⁶⁸ Thus, a government will generally be regarded by the GA as being authorized to represent a member State as long as it has (p. 457) not been replaced by a rival claimant who has established effective control over the State independently of the support of a foreign power. This tendency can be derived from the changed attitude of the GA in the controversy over the representation of China in favour of the Beijing government in 1971. It can also be derived from the continued recognition of the Pol Pot government in the controversy over the representation of Kampuchea (Cambodia) in spite of its human rights record and its loss of power to the Heng Samrin government, which was considered to owe its position to foreign support, especially that of Vietnam (see MN 28). In the 1990s, after the end of the Cold War, the GA rejected the credentials of several governments that were in effective control but had come to power by force, eg in Afghanistan, Cambodia, and Haiti (see MN 28). Evidence, however, seems neither sufficient nor consistent enough to infer a change from the traditionally dominant principle of effectiveness to a new standard of (democratic) legitimacy.⁶⁹

(b) In Cases without Rival Claimants

32 In cases of disputed governments without rival claimants, it would be sufficient, as in cases of undisputed governments (see MN 24), to establish that the credentials have been issued by one of the officials designated in Rule 27 of the Rules of Procedure of the GA in order to answer the implicit question of authority to represent the member State in the GA. Nevertheless, the GA has—as did the Assembly of the League of Nations in the case of Abyssinia⁷⁰—also in these cases, as in cases where there are rival claimants (see MN 26–31), extended its examination further to the material question of whether the disputed government was authorized to issue the credentials, and thus to represent the member State in the GA.

33 Examples of the practice of the GA are the controversies over the representation of Hungary and South Africa, as well as Israel, Nigeria, Portugal, Chile, and Afghanistan.⁷¹ In some cases, only reservations were expressed by other member States; in other cases, however, formal proposals were submitted which were decided upon by the Credentials Committee (see MN 21) and the GA.⁷² In the case of Hungary, the Credentials Committee decided, with the subsequent approval of the GA, to take 'no decision' or 'no action' on the credentials submitted between 1956 and 1962.⁷³ In the case of Portugal, the Credentials Committee approved the credentials submitted. In 1973, however, the GA approved them only for the European and not for the overseas territories.⁷⁴ In the case of South Africa, the Credentials Committee approved the credentials submitted until 1973. In 1965, however, the GA decided to take 'no decision' on them,⁷⁵ and between 1970 and 1973 to approve the report of the Credentials Committee 'except with (p. 458) regard to the credentials of the representatives (of the Government) of South Africa'.⁷⁶ Since 1974, the Credentials Committee itself, with the subsequent approval of the GA, has rejected the credentials submitted.⁷⁷ In the case of Israel, the GA decided in 1982 and in later years not to act on proposals to add the words 'except (for) the credentials of Israel' to the report of the Credentials Committee which had approved the credentials submitted by the member States.⁷⁸

34 The GA has drawn different conclusions from its decisions on the credentials of disputed governments without rival claimants. Until 1973, the representatives of such governments could continue to participate in the sessions not only when their credentials had expressly been approved, but also when no action had been taken, as in the case of Hungary, or even when a negative decision had been reached, as in the case of South Africa. The conclusion to allow further participation in the case when no action has been taken by the GA may still appear to be in accordance with Rule 29 of the Rules of Procedure of the GA (see MN 22),⁷⁹ but hardly in cases when the credentials have been rejected by the GA.⁸⁰ Nevertheless, this conclusion was also accepted in the latter case between 1970 and 1973, on the basis of the so-called Hambro formula, an interpretation made by the President of the GA in 1970 and upheld by his successors until 1973. According to this understanding, rejection of credentials signified a very strong condemnation of the policies pursued by the government concerned, but not that its delegation could not continue to participate in the work of the GA.⁸¹ In 1974, however, the President of the GA, Bouteflika, changed this interpretation. After a draft resolution to expel South Africa from membership of the Organization according to Art. 6 of the Charter had failed to be adopted in the SC, he concluded that the rejection of credentials in the GA was tantamount to saying in explicit terms that the GA refused to allow the delegation of South Africa to participate in its work. The GA approved this new interpretation by ninety-one votes to twenty-two, with nineteen abstentions.⁸² It changed its policy with regard to the credentials of South Africa only in 1994 with the end of apartheid⁸³ and has not extended its former course of action to other member States, despite proposals that it should do so (see MN 33). This was confirmed in the case of Madagascar in 2009. Although the GA—against the ruling of its President who had consulted the Legal Counsel—refused by twenty-three votes to four, with six abstentions, to give the floor in the Plenary to a representative of this member State,⁸⁴ it later approved the recommendation of its Credentials Committee which decided that the (p. 459) representatives of this member State—and also of Guinea—had the right to participate provisionally, but with all the rights and privileges enjoyed by other member States, in the activities of the session until its final recommendation in the case of a formal objection to the credentials.⁸⁵

35 The legality of this practice is disputed.⁸⁶ The Special Committee on the Rationalization of the Procedures and Organization of the GA whose conclusions were approved by the GA⁸⁷ did not consider itself to be in a position to make any proposal on the problems posed by the non-recognition by the GA of a delegation's credentials.⁸⁸ The prevailing reasons speak against a compatibility of this practice with the present law of the Charter and the Rules of Procedure of the GA.

36 A justification cannot be derived from a parallel to the practice of the GA regarding rival claimants (see MN 26–28).⁸⁹ Unlike the situation of rival claimants who both claim to represent the same member State in the GA, the situation of a disputed government without a rival claimant does not require a decision by the GA on the authority of representation. Thus, the decisive reason which justifies the interference by the GA in the inherent right of the member State to determine its government (see MN 27) is lacking here. This fundamental difference between situations of disputed governments with and without rival claimants is clearly confirmed by para 1 of UNGA Res 396 (V) (see MN 29).

37 A justification cannot be derived from an allegedly established practice of the GA either.⁹⁰ As a result of the completely different situations (see MN 36), the practice relating to rival claimants must be disregarded when assessing the practice relating to a disputed government without a rival claimant. The latter practice, however, at best reveals a tendency according to which the GA assumes the right to express its disapproval of the government by refusing to take a decision on the credentials. The further practice by which the GA has rejected the credentials and precluded the representatives of the government from taking part in its sessions has been limited to the unique and heavily disputed case of South Africa (see MN 33).

38 A justification also fails due to a lack of competence on the part of the GA.⁹¹ The Charter authorizes the GA only upon the recommendation of the SC, and only when certain requirements are met, to suspend a member State from exercising the rights and privileges of membership (Art. 5), including the delegation of representatives to the GA (see MN 14) or to expel the member State from the Organization (Art. 6). Furthermore, a member State forfeits its right to vote in the GA, if its arrears in the payment of its (p. 460) financial contributions to the Organization exceed a certain limit (Art. 19). A suspension of all or some rights and privileges by the GA without recommendation by the SC, however, is not provided for and appears not to be justifiable in view of the well-balanced rules contained in the Charter.

39 It is in line with this reasoning and thus justified under the Charter that the GA,⁹² upon recommendation of the SC,⁹³ considered in 1992 that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the UN. The GA decided, inter alia, that Yugoslavia should not participate in the work of the GA, thus suspending some of its rights and privileges.⁹⁴ The controversy was resolved on 1 November 2000 when the GA,⁹⁵ upon the recommendation of the SC⁹⁶ and the application of the newly elected government, admitted the Federal Republic of Yugoslavia as a (new) member to the UN.⁹⁷

Footnotes:

¹ C Tomuschat, 'General Assembly' in R Wolfrum and C Philipp (eds), *United Nations: Law, Policies and Practice*, vol 1 (CH Beck 1995) 548; M Peterson, *The General Assembly in World Politics* (Allen & Unwin 1986) 1–2; A Bennett and J Oliver, *International Organizations—Principles and Issues* (7th edn, Prentice Hall 2002) 65; for a discussion of a directly elected representative 'UN Parliamentary Assembly' see S Wheatley, *The Democratic Legitimacy of International Law* (Hart 2010) 67–71.

² UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1 para 149; see also Report of the Ad Hoc Working Group on the revitalization of the UNGA (8 September 2010) UN Doc A/64/903 para 12.

³ UNGA Res 46/77 (12 December 1991) UN Doc A/RES/46/77; UNGA Res 65/315 (12 October 2011) UN Doc A/RES/65/315; see also C Much, 'Revitalisierung der UN-Generalversammlung—die unendliche Geschichte' in J Varwick and A Zimmermann (eds), *Die Reform der Vereinten Nationen—Bilanz und Perspektiven* (Duncker & Humblot 2006) 85–99.

⁴ See UNCIO XVII, 39, 393.

⁵ RP 2 II, paras 5–7; RP 3 I, para 7; RP 4 I, paras 6–7.

⁶ UNGA Res 1192 (XII) (12 December 1957) UN Doc A/RES/1192(XII); UNGA Res 1990 (XVIII) (17 December 1963) UN Doc A/RES/1990(XVIII); UNGA Res 1991 (XVIII) (17 December 1963) UN Doc A/RES/1991(XVIII); UNGA Res 2847 (XXVI) (20 December 1971) UN Doc A/RES/2847(XXVI); UNGA Res 33/138 (19 December 1978) UN Doc A/RES/33/138; UNGA Res 48/264 (29 July 1994) UN Doc A/RES/48/264.

⁷ For details see M Peterson, *The UN General Assembly* (Allen & Unwin 2006) 43–50.

⁸ See for details Legal Counsel to the UN (1996) UNJYB 442–43; (2003) UNJYB 528–29; R Kirn, 'Regional groups within the UN post-EU enlargement' in J Wouters and others (eds), *The UN and the EU: An ever stronger partnership* (TMC Asser Press 2006) 355–62.

⁹ See in general Fastenrath Art. 4 MN 42–60 and Fitschen on Art. 21 MN 17–25; A Mower Jr, 'Observer Countries: Quasi Members of the United Nations' (1966) 20 IO 266–83; Suy, *passim*; RG Sybesma-Knol, *The Status of Observers in the UN* (Vrije Universiteit Brussel 1981); N Sybesma-Knol, 'The Continuing Relevance of the Participation of Observers in the Work of the UN' in K Wellens (ed), *International Law: Theory and Practice: Essays in Honour of Eric Suy* (Nijhoff 1998) 371–94.

¹⁰ UNGA Decision 49/747 (2 December 1994) UN Doc A/49/747; for details see P Tavernier, 'L'année des Nations Unies (1993/1994)' (1994) XL AFDI 556–57.

¹¹ UNGA Res 54/195 (17 December 1999) UN Doc A/RES/54/195, paras 2 and 3.

¹² Especially neutral, smaller, or divided States, such as Switzerland (since 1948) before it became a member in 2002 (UNGA Res 57/1 (10 September 2002) UN Doc A/RES/57/1) or the Holy See (since 1964; see UNGA Res 58/314 (1 July 2004) UN Doc A/RES/58/314) and other entities; for further examples see CPF/Lewin, 633; Suy, 162; Fastenrath on Art. 4 MN 46–48; see also P Seger, 'Die Stellung der Schweiz als Beobachter bei den Vereinten Nationen in New York' (1995) 5 RSDIE/SZIER 479–514.

¹³ Suy, 96–98; for a list which comprises, eg ILO, FAO, UNICEF, WHO, IMF, see Executive Office of the Secretary-General—Protocol and Liaison Office, *Permanent Missions to the United Nations* (No 301, March 2011) UN Doc ST/SG/SER.A/301, 341–56.

¹⁴ eg OAS (UNGA Res 253 (III) (16 October 1948) UN Doc A/RES/253(III)); League of Arab States (UNGA Res 477 (V) (1 November 1950) UN Doc A/RES/477(V)); African Union, formerly OAU (UNGA Res 2011 (XX) (11 October 1965) UN Doc A/RES/2011(XX)); European Union, formerly European (Economic)

Community (UNGA Res 3208 (XXIX) (11 October 1974) UN Doc A/RES/3208(XXIX); see also UNGA Res 65/276 on 'Participation of the EU in the work of the UN' (3 May 2011) UN Doc A/RES/65/276, and GAOR 65th Session (3 May 2011) UN Doc A/65/PV.88, 2–14; M Farrell, 'EU Representation and Coordination within the UN' in K Laatikainen and K Smith (eds), *The EU at the UN—Intersecting Multilateralisms* (University of Aarhus 2006) 27–46; E Paasivirta and D Porter, 'EU Coordination at the UNGA and ECOSOC: A view from Brussels, a view from New York' in J Wouters and others (eds), *The UN and the EU: An ever stronger partnership* (TMC Asser Press 2006) 35–48; J Scheffler, *Die Europäische Union als rechtlich-institutioneller Akteur im System der Vereinten Nationen* (Universität St Gallen 2009) 371–89); Islamic Conference (UNGA Res 3369 (XXX) (10 October 1975) UN Doc A/RES/3369(XXX)); Commonwealth Secretariat (UNGA Res 31/3 (18 October 1976) UN Doc A/RES/31/3); Agency for Cultural and Technical Cooperation (UNGA Res 33/18 (10 November 1978) UN Doc A/RES/33/18); Asian-African Legal Consultative Committee (UNGA Res 35/2 (13 September 1980) UN Doc A/RES/35/2); Latin American Economic System (UNGA Res 35/3 (13 October 1980) UN Doc A/35/3); African, Caribbean and Pacific Group of States (UNGA Res 36/4 (15 October 1981) UN Doc A/RES/36/4); African Development Bank (UNGA Res 42/10 (28 October 1987) UN Doc A/RES/42/10); Council of Europe (UNGA Res 44/6 (17 October 1989) UN Doc A/RES/44/6); Caribbean Community (UNGA Res 46/8 (16 October 1991) UN Doc A/RES/46/8); International Organization for Migration (UNGA Res 47/4 (16 October 1992) UN Doc A/RES/47/4); Economic Cooperation Organization (UNGA Res 48/2 (13 October 1993) UN Doc A/RES/48/2); Permanent Court of Arbitration (UNGA Res 48/3 (13 October 1993) UN Doc A/RES/48/3); Latin American Parliament (UNGA Res 48/4 (13 October 1993) UN Doc A/RES/48/4); Organization for (formerly Conference on) Security and Cooperation in Europe (UNGA Res 48/5 (13 October 1993) UN Doc A/RES/48/5); Commonwealth of Independent States (UNGA Res 48/237 (24 March 1994) UN Doc A/RES/48/237); South Pacific Forum (UNGA Res 49/1 (17 October 1994) UN Doc A/RES/49/1); Central American Integration System (UNGA Res 50/2 (12 October 1995) UN Doc A/RES/50/2); International Criminal Police Organization/INTERPOL (UNGA Res 51/1 (15 October 1996) UN Doc A/RES/51/1); International Seabed Authority (UNGA Res 51/6 (24 October 1996) UN Doc A/RES/51/6); International Tribunal for the Law of the Sea (UNGA Res 51/204 (17 December 1996) UN Doc A/RES/51/204); Andean Community (UNGA Res 52/6 (22 October 1997) UN Doc A/RES/52/6); Association of Caribbean States (UNGA Res 53/5 (15 October 1998) UN Doc A/RES/53/5); Organization for Economic Cooperation and Development (UNGA Res 53/6 (15 October 1998) UN Doc A/RES/53/6); Inter-American Development Bank (UNGA Res 55/160 (12 December 2000) UN Doc A/RES/55/160); Economic Community of Central African States (UNGA Res 55/161 (12 December 2000) UN Doc A/RES/55/161); Asian Development Bank (UNGA Res 57/30 (19 November 2002) UN Doc A/RES/57/30); Association of Southeast Asian Nations (UNGA Res 61/44 (4 December 2006) UN Doc A/RES/61/44).

¹⁵ Palestine Liberation Organization (UNGA Res 3237 (XXIX) (22 November 1974) UN Doc A/RES/3237 (XXIX)); see UN Office of Legal Affairs (1982) UNJYB 156–59; designation changed to 'Palestine' (UNGA Res 43/177 (15 December 1988) UN Doc A/RES/43/177); additional rights to participate in work of UNGA granted (UNGA Res 52/250 (7 July 1998) UN Doc A/RES/52/250); South West African People's Organization (UNGA Res 31/152 (20 December 1976) UN Doc A/RES/31/152); see also Legal Counsel to the UN (2000) UNJYB 359–61.

¹⁶ UNGA Res 3280 (XXIX) (10 December 1974) UN Doc A/RES/3280(XXIX).

¹⁷ International Committee of the Red Cross (UNGA Res 45/6 (16 October 1990) UN Doc A/RES/45/6); Sovereign Military Order of Malta (UNGA Res 48/265 (24 August 1994) UN Doc A/RES/48/265); International Federation of Red Cross and Red Crescent Societies (UNGA Res 49/2 (19 October 1994) UN Doc A/RES/49/2); Inter-Parliamentary Union (UNGA Res 57/32 (19 November 2002) UN Doc A/RES/57/32; see also Legal Counsel to the UN (2000) UNJYB 363–64; International Olympic Committee (UNGA Res 64/3 (19 October 2009) UN Doc A/RES/64/3); for details see N Sybesma-Knol (n 9), 378–79; C Koenig, 'Observer Status for the International Committee of the Red Cross at the UN' (1991) 31 *International Review of the Red Cross* 37–48; W Remans, 'The Granting of Observer Status by the GA of the UN to the International Federation of Red Cross and Red Crescent Societies' in K Wellens (ed), *International Law: Theory and Practice: Essays in Honour of Eric Suy* (Nijhoff 1998) 347–62.

¹⁸ See Legal Counsel to the UN (1971) UNJYB 193–94, paras 7–10; 195–96.

- ¹⁹ See for details RP I, Art. 21, paras 90–117; Legal Counsel to the UN (1962) UNJYB 246–47; (1971) UNJYB 193–95; (1975) UNJYB 164–67; (1978) UNJYB 164–67; (1987) UNJYB 220–21; (1998) UNJYB 483–85; (1999) UNJYB 408–09; (2000) UNJYB 349–50; Mower (n 9); RG Sybesma-Knol (n 9) 30–44.
- ²⁰ See Legal Counsel to the UN (1980) UNJYB 188–89.
- ²¹ For details see the table in Suy, 121.
- ²² eg Pope Paul VI (1965), PLO leader Arafat (1974); see Suy, 131–33.
- ²³ See Legal Counsel to the UN (1995) UNJYB 437–38.
- ²⁴ eg the national liberation movements recognized by the OAU; see UNGA Res 3280 (XXIX) (10 December 1974) UN Doc A/RES/3280(XXIX), para 6.
- ²⁵ See UNCIO VIII, 531.
- ²⁶ UNGA Res 257 (III) (3 December 1948) UN Doc A/RES/257(III); see Legal Counsel to the UN (1962) UNJYB 236; (1977) UNJYB 191.
- ²⁷ See for details A El-Erian, ‘Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character’ EPIL IV (2000) 1317f; E Hambro, ‘Permanent Representatives to International Organizations’ (1976) 30 YBWA 30–41.
- ²⁸ See UNCIO III, 93, 98, 167; VIII, 295–96; also GHS, 108; RM, 358, 366, 425, 843.
- ²⁹ RP I, para 12; CPF/Lewin, 636–37; Schermers and Blokker, para 242; List of delegations to the 65th session of the UNGA, UN Doc ST/SG/SER.C/L.619 (16 December 2010).
- ³⁰ CPF/Lewin, 636.
- ³¹ Kelsen, 155–56.
- ³² J Kolasa, *Rules of Procedure of the United Nations General Assembly* (Zakład Narodowy im. Ossolińskich 1967) 82.
- ³³ See CPF/Lewin, 636–37.
- ³⁴ CPF/Lewin, 637; Schermers and Blokker, paras 243–54; R Pedersen, ‘National Representation in the United Nations’ (1961) 15 IO 256–57.
- ³⁵ See UNCIO XVII, 39; JM Lavieille, ‘La procédure de suspension des droits d’un Etat membre des Nations Unies’ (1977) 81 RGDIP 431, 456.
- ³⁶ See UNCIO XVII, 40; Schermers and Blokker, paras 156, 255.
- ³⁷ See Legal Counsel to the UN (1965) UNJYB 223; (1967) UNJYB 317–20; Schermers and Blokker, paras 264–66.
- ³⁸ For details see Schermers and Blokker, paras 240–241.
- ³⁹ UNGA Res 231 (III) (8 October 1948) UN Doc A/RES/231(III); upheld for regular sessions, while restricted to one person for special sessions by UNGA Res 1075 (XI) (7 December 1956) UN Doc A/RES/1075(XI).
- ⁴⁰ UNGA Res 41/213 (19 December 1986) UN Doc A/RES/41/213; see also Recommendation 6 in the Report of the group of high-level intergovernmental experts to review the efficiency of the administrative and financial functioning of the UN, (15 August 1986) UN Doc A/41/49, 6; Legal Counsel to the UN (1976) UNJYB 193–95; (1986) UNYB 1024, 1079–80.
- ⁴¹ Legal Counsel to the UN (1975) UNJYB 164–66, para 9.
- ⁴² Study prepared by the UN Secretariat, ‘The Practice of the UN Relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations’ (1967-II) ILC Yearbook 166, para 19; Legal Counsel to the UN (2005) UNJYB 460–61.
- ⁴³ See Legal Counsel to the UN (1964) UNJYB 225–26; (1970) UNJYB 169–71.
- ⁴⁴ RP I, paras 14–16, 44–45; RP 2 II, para 9; RP 6 II, para 66; see also MN 22.
- ⁴⁵ RP I, paras 37–38.

⁴⁶ RP II, para 10; RP 6 II, para 66.

⁴⁷ UNGA Res 257 (III) (3 December 1948) UN Doc A/RES/257(III), para 4; RP I, para 17; Legal Counsel to the UN (1977) UNJYB 191.

⁴⁸ Legal Counsel to the UN (1983) UNJYB 173–74; see also (1985) UNJYB 128 (selection among UN members).

⁴⁹ RP I, paras 21–34; RP 1 I, paras 14–16; RP 2 II, para 16; Legal Counsel to the UN (1970) UNJYB 169–70, para 4; Dorfman and others, 501–04; for the recent case of Madagascar see MN 34.

⁵⁰ UNGA Res 396 (V) (14 December 1950) UN Doc A/RES/396(V), para 3; see RP I, paras 31–47; Legal Counsel to the UN (1985) UNJYB 129–30.

⁵¹ Legal Counsel to the UN (2003) UNJYB 531–33, para 2.

⁵² Legal Counsel to the UN (1970) UNJYB 169–70, para 4.

⁵³ Schermers and Blokker, para 260; Briggs, 195, 208; Dorfman and others, 499–501; Halberstam, 183–84; Suttner, 287–88; Griffin, 731, 773; *contra* Koschorreck, 660–61.

⁵⁴ RP 5 I, Art. 9, paras 20–81.

⁵⁵ Ciobanu, 368.

⁵⁶ See eg (1950) UNYB 421–29; (1971) UNYB 126–37; also Briggs, 192–209; Danaher, 448–58; M McDougal and R Goodman, ‘Chinese Participation in the United Nations’ (1966) 60 AJIL 671–727; P Potter, ‘Membership and Representation in the United Nations’ (1955) 49 AJIL 234–35. The representation of China by the Beijing government since 1971 has raised a discussion as to the representation of Taiwan in the United Nations (separate membership, observer status etc); see for details P Chang and K Lim, ‘Taiwan’s Case for United Nations Membership’ (1996/97) 1 UCLA J Intl L & For Aff 393–430; JM Henckaerts (ed), *The International Status of Taiwan in the New World Order: Legal and Political Considerations* (Kluwer Law International 1996).

⁵⁷ UNGA Res 1498 (XV) (22 November 1960) UN Doc A/RES/1498(XV); see (1960) UNYB 66–71, 101; Higgins, 162–64.

⁵⁸ UNGA Res 1871 (XVII) (20 December 1962) UN Doc A/RES/1871(XVII); see (1960) UNYB 148–49; Higgins, 161–62.

⁵⁹ RP 5 I, paras 19–20, 23–38; RP 6 II, paras 20–39; RP 7 II, paras 16–17; RP 8 II, paras 17–23; RP 9 II, paras 21–23; (1985) UNYB 228–29; (1997) UNYB 1482; D Rasy, *La question de la représentation Khmère à l’ONU* (Pedone 1974); Dorfman and others, 495–513; E Sciso, ‘La questione delle credenziali cambogiane all’Assemblea Generale delle Nazioni Unite’ (1981) 64 Riv Dir Internaz 83–95; C Warbrick, ‘Kampuchea: Representation and Recognition’ (1981) 30 ICLQ 234–46; C Umhoefer, ‘UNITED NATIONS: Towards a U.N.-Sponsored Cambodian Solution’ (1991) 32 Harv Intl LJ 275–85; Ratliff, 1242–63; Griffin, 737–47.

⁶⁰ (1992) UNYB 238.

⁶¹ (1993) UNYB 212; RP 8 II, paras 32–35.

⁶² First Report of the Credentials Committee (23 October 1996) UN Doc A/51/548 (1996), paras 6–7; (1996) UNYB 1342; (1997) UNYB 1482; (1999) UNYB 1345; (2000) UNYB 1369; RP 9 II, paras 12–20; RP 10 II, paras 10–12.

⁶³ Report of the Credentials Committee (22 December 2010) UN Doc A/65/583/Rev.1; UNGA Res 65/237 (23 December 2010) UN Doc A/RES/65/237.

⁶⁴ RP I, Art. 10, paras 31–47; (1950) UNYB 429–35; GHS, 77–80.

⁶⁵ UNSC S/1466 (9 March 1950) UN Doc S/1466 (1950); see (1950) UNYB 424–25.

⁶⁶ For details see RP 5 I, Art. 9, paras 20–81; Legal Counsel to the UN (1997) UNJYB 465–68, esp para 4.

⁶⁷ Higgins, 166; Danaher, 451–52; Dorfman and others, 504, 509.

⁶⁸ See eg Legal Counsel to the UN (2003) UNJYB 531–33, para 4; (2009) UNJYB 407–10.

⁶⁹ For more details see Griffin, 727, 768–70, 781–85 and *passim*; see also Ratliff, 1231–42, who suggests the establishment of a combined ‘four-factor balancing test’ (effective control, consent of the population,

meeting international obligations, respecting human rights) which, however, would lead to a denial of representation of any member State whose government does not meet all four requirements and regardless of whether there is a dispute between rival claimants or not.

⁷⁰ See H Lauterpacht, 'The Credentials of the Abyssinian Delegation to the Seventeenth Assembly of the League of Nations' (1937) 18 BYIL 184–86.

⁷¹ See RP 5 I, Art. 9, paras 20–81; RP 6 II, paras 40–43, 49–64; RP 7 II, paras 13–15, 19–20; RP 8 II, paras 12–16, 24–29; RP 9 II, paras 24–25.

⁷² Nigeria (RP 4 I, para 23); Afghanistan and Chile (RP 5 I, paras 77–78; RP 6 II, paras 40–43); (1981) UNYB 351–52; UN Chronicle XIX (1982) No 12, 38; (1983) UNYB 393; (1985) UNYB 396–97.

⁷³ RP 2 II, paras 10–13, 18; RP 3 I, para 19; Higgins, 158–59.

⁷⁴ UNGA Res 3181 (XXVIII) (17 December 1973) UN Doc A/RES/3181(XXVIII); (1973) UNYB 747–48; RP 5 I, paras 73–76.

⁷⁵ UNGA Res 2113 B (XX) (21 December 1965) UN Doc A/RES/2113B(XX).

⁷⁶ UNGA Res 2636 A (XXV) (13 November 1970) UN Doc A/RES/2336A(XXV); UNGA Res 2862 (XXVI) (20 December 1971) UN Doc A/RES/2862(XXVI); UNGA Res 2948 (XXVII) (8 December 1972) UN Doc A/RES/2948(XXVII); (1973) UNYB 88, 96; RP 5 I, paras 39–57.

⁷⁷ RP 5 I, paras 61–72; RP 6 II, paras 45–48; (1981) UNYB 351; for details see Abbot and others, 576–88; Ciobanu, 351–81; Erasmus, 40–53; Klein, 51–56; McWhinney, 19–35; Suttner, 279–301.

⁷⁸ (1982) UNYB 394–96; (1983) UNYB 273–74; (1984) UNYB 268; (1985) UNYB 271; see also RP 5 I, paras 79–80; RP 7 II, paras 19–20; RP 8 II, paras 24–29; RP 9 II, paras 24–25; for details see Halberstam, 179–92; Tabory, 188–209.

⁷⁹ See Legal Counsel to the UN (1970) UNJYB 169–70, para 5; Schermers and Blokker, para 258; Erasmus, 43; Halberstam, 184; doubting: Jhabvala, 623.

⁸⁰ Jhabvala, 635; Suttner, 291.

⁸¹ (1970) UNYB 145; (1973) UNYB 88; Legal Counsel to the UN (1973) UNJYB 139–40, paras 8–9; (1970) UNJYB 169–71.

⁸² (1974) UNYB 106–18; see Legal Counsel to the UN (1975) UNJYB 167–68.

⁸³ UNGA Res 48/258 A (23 June 1994) UN Doc A/RES/48/258A para 7.

⁸⁴ GAOR 64th Session (25 September 2009) UN Doc A/64/PV.8, 18–21.

⁸⁵ UNGA Res 64/126 (16 December 2009) UN Doc A/RES/64/126; Report of the Credentials Committee (11 December 2009) UN Doc A/64/571*.

⁸⁶ See also Shraga, 661–64.

⁸⁷ UNGA Res 2837 (XXVI) (17 December 1971) UN Doc A/RES/2837(XXVI).

⁸⁸ Conclusions of the Special Committee, para 116, attached as Annex II to UNGA Res 2837 (XXVI) (17 December 1971) UN Doc A/RES/2837(XXVI), also attached as Annex IV to the Rules of Procedure of the UNGA (September 2007) UN Doc A/RES/520/Rev.17 (2008), cf also Annex I to this commentary.

⁸⁹ Legal Counsel to the UN (1970) UNJYB 169–71; Erasmus, 48; Halberstam, 183, 187; *contra* Jhabvala, 630–31; McWhinney, 32; Suttner, 290.

⁹⁰ Erasmus, 50; Flauss and Singer, 643; Halberstam, 184–91; *contra* McWhinney, 31.

⁹¹ Legal Counsel to the UN (1970) UNJYB 169–70, para 6; (1968) UNJYB 195–200; Erasmus, 50; Flauss and Singer, 650; K Ginther, 'Mitgliedschaft in Internationalen Organisationen, Grundfragen' (1975) 17 DGVR Berichte 7, 36; Halberstam, 185–86; Klein, 52–54; Schermers and Blokker, para 263; Griffin, 773–75; *contra* Abbot and others, 584; Jhabvala, 637; McWhinney, 33–35; Suttner, 284, 297; differentiating: Ciobanu, 380, who holds a rejection of the credentials, but not of the delegates of the disputed government, to be permissible.

⁹² UNGA Res 47/1 (22 September 1992) UN Doc A/RES/47/1; see also Legal Counsel to the UN (1992) UNJYB 428–29 and Note by the SG (30 September 1992) UN Doc A/47/485.

⁹³ UNSC Res 777 (19 September 1992) UN Doc S/RES/777 (1992).

⁹⁴ For details see Tams on Art. 6 MN 25; K Partsch, 'Belgrads leerer Stuhl im Glaspalast' (1992) 40 VN 181–88; Schermers and Blokker, para 263; M Wood, 'Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties' (1997) 1 Max Planck YB UN L 231–57, 249; *contra* Y Blum, 'UN Membership of the 'New' Yugoslavia: Continuity or Break?' (1992) 86 AJIL 830–33; V Jovanovic, 'The Status of the Federal Republic of Yugoslavia in the United Nations' (1998) 21 Fordham Intl LJ 1719–36, 1721.

⁹⁵ UNGA Res 55/12 (1 November 2000) UN Doc A/RES/55/12.

⁹⁶ UNSC Res 1326 (31 October 2000) UN Doc S/RES/1326 (2000).

⁹⁷ In 2006 the name of this new State was changed to 'Serbia and Montenegro'; in 2006 'Montenegro' declared its independence from this State and became a new State of its own as well as a new member of the UN (UNGA Res 60/264 (28 June 2006) UN Doc A/RES/60/264), while the remaining State changed its name to 'Republic of Serbia', but kept its legal personality and its membership in the UN.

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Eckart Klein, Stefanie Schmahl

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The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and 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.

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Select Bibliography

Andrassy J, 'Uniting for Peace' (1956) 50 AJIL 563.

Arntz J, *Der Begriff der Friedensbedrohung in Satzung und Praxis der Vereinten Nationen* (Duncker & Humblot 1975).

Asamoah OY, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (Nijhoff 1966).

Barberis JA, 'Les résolutions des organisations internationales en tant que source du droit des gens' in U Beyerlin, *Recht zwischen Umbruch und Bewahrung—Festschrift für Rudolf Bernhardt* (Springer 1995) 21.

Bentwich N and Martin A, *A Commentary on the Charter of the United Nations* (2nd edn, Routledge & Kegan 1951).

Castañeda J, *Legal Effects of United Nations Resolutions* (Columbia UP 1969).

Cheng B, 'United Nations Resolutions on Outer Space: "Instant" International Customary Law?' (1965) 5 IJIL 23.(p. 462)

Dahm G, *Völkerrecht*, vol 2 (de Gruyter 1961).

Delbrück J, 'Peacekeeping by the United Nations and the Rule of Law' in RJ Akkermann and PJ Krieken and others (eds), *Declaration on principles—Festschrift Röling* (Sijthoff 1977) 73.

- Dicke DC and Rengeling HW, *Die Sicherung des Weltfriedens durch die Vereinten Nationen. Ein Überblick über die Befugnisse der wichtigsten Organe* (Nomos-Verl.-Ges. 1975). RUL-71
- Elias TO, *The International Court of Justice and Some Contemporary Problems* (Nijhoff 1983).
- Ellis ME, 'The New International Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited' (1985) 15 Calif W Intl LJ 647.
- Frowein JA, 'Collective Enforcement of International Obligations' (1987) 47 ZaöRV 67.
- Goodrich LM and Hambro E, *Charter of the United Nations, Commentary and Documents* (2nd edn, Stevens 1949).
- Heidenstecker K, 'Zur Rechtsverbindlichkeit von Willensakten der Generalversammlung' (1979) 27 VN 205.
- Kelsen H, *The Law of the United Nations* (Praeger 1951).
- Marchisio S, 'Le rôle de l'Assemblée générale dans le maintien de la paix et de la sécurité internationale' in SFDI (ed), *Les métamorphoses de la sécurité collective* (Pedone 2005) 95.
- Morley F, *The Charter of the United Nations* (American Enterprise Association 1946).
- Peterson MJ, *The UN General Assembly* (Routledge 2006).
- Schaefer M, *Die Funktionsfähigkeit des Sicherheitsmechanismus der Vereinten Nationen* (Springer 1981).
- 'Notstandssondertagungen der Generalversammlung' (1983) 31 VN 78.
- Simma B, 'Zur völkerrechtlichen Bedeutung von Resolutionen der UN-Generalversammlung' in R Bernhardt, J Delbrück, and others (eds), *Fünftes deutsch-polnisches Juristen-Kolloquium*, vol 2 (Nomos 1981) 45.
- Skubiszewski K, 'Resolutions of the U.N. General Assembly and Evidence of Custom' in Università di Genova, Istituto di Diritto Internazionale e della Navigazione della Facoltà di Giurisprudenza (ed), *International Law at the Time of its Codification. Essays in Honour of Roberto Ago* (Giuffrè 1987) 503.
- Sloan B, *United Nations General Assembly Resolutions in Our Changing World* (Transnational Publ 1991).
- Sohn LB, 'Enhancing the Role of the General Assembly of the United Nations in Crystallizing International Law' in J Makarczyk (ed), *Theory of International Law at the Threshold of the 21st Century* (Kluwer Law International 1996) 549.
- Tomuschat C, 'Die Rechtsverbindlichkeit von Beschlüssen der Vereinten Nationen' (1975) 55 Wirtschaftsdienst 510.
- 'Die Charta der wirtschaftlichen Rechte und Pflichten der Staaten—zur Gestaltungskraft von Deklarationen der UN-Generalversammlung' (1976) 36 ZaöRV 444.
- 'Die Krise der Vereinten Nationen' (1987) 42 EA 97.
- Vallat FA, 'The General Assembly and the Security Council of the United Nations' (1952) 29 BYIL 63.
- Volger H (ed), *A Concise Encyclopedia of the United Nations* (2nd edn, Nijhoff 2010).
- Zieger G, *Die Vereinten Nationen* (Niedersächsische Landeszentrale für Politische Bildung 1976).

A. The Systematic Position*

1 Amongst the principal organs of the UN, the GA is given pride of place in Chapter IV of the UN Charter. In this Chapter, Art. 10 can be found at the beginning of the (p. 463) sub-section 'Functions and Powers' (Arts 10–17). This section is not exhaustive, since many additional functions and powers are attributed to the GA in Chapters IX, X, XII, XIII, and XV. However, the very position of Art. 10 indicates the fundamental importance of the GA, in which every member State has a seat and a vote, as the central organ within the UN.

2 Article 10 vests the GA with a general power of discussion and recommendation regarding any questions which comes within the scope of the Charter (the 'comprehensive jurisdiction' of the GA). The GA represents the most prominent forum for the discussion of world politics and is therefore also described as the 'town meeting of the world'¹ and the 'open conscience of humanity'.² However, the GA is not a world parliament.³ Taking into account the wide-ranging goals and principles which are stipulated in the UN Charter, there are hardly any political questions of international importance not covered by the GA's power of discussion contained in Art. 10.⁴ On the other hand, the breadth and vagueness of the formulation of the scope of its

responsibility mirrors the lack of power to make binding decisions. So long as the GA may only make recommendations that are usually of a non-binding nature (see MN 47–63), there is no real need in practice to lay down and define more precisely its area of responsibility. In addition, the GA's power to discuss issues related to international peace and security is limited by the primary responsibility of the SC in such matters. RUL-71

3 The GA fulfils its tasks through the work of various specialized committees. Most important, six main Committees deal with core issues of UN policy-making.⁵ All member States are represented in these Committees:

- (a) First Committee: disarmament and international security;
- (b) Second Committee: economic and financial matters;
- (c) Third Committee: social, humanitarian, and cultural matters;
- (d) Fourth Committee: special political and decolonization matters;
- (e) Fifth Committee: administrative and budgetary matters;
- (f) Sixth Committee: legal matters.

Additionally, there are two procedural committees (Credential Committee, General Committee) and more than thirty standing committees, Ad hoc Committees, working groups, and boards.

(p. 464) B. The Power of Discussion

I. Definition and Scope

4 According to Art. 10, it is in the discretion of the GA to discuss any questions or matters within the scope of the Charter.⁶ In contrast, Arts 13 (1), 15 (1) and (2), 16, and 17 (1) and (3) prescribe a duty of consideration and discussion.

5 The term 'discuss' is used in Art. 10 in the same way as in Art. 11 (2); while in Arts 11 (1), 15 (1) and (2), and 17 (1) and (3), the term 'consider' is to be found. This difference in terminology goes back to the Dumbarton Oaks Proposals,⁷ and indicates that the term 'consider' was to be broader than the term 'discuss' and was to lead to the making of a recommendation.⁸ This difference, however, has become irrelevant, since in Arts 10 and 11 (2) and in Art. 11 (1) of the final version of the Charter, the GA is explicitly given the right to make recommendations. At most, a difference can be recognized inasmuch as 'consider' refers to a general, regular review of basic principles, while 'discuss' concerns current topics. In the final analysis, however, such a distinction does not lead to a difference in meaning between the two terms.⁹

6 The express statutory right of the GA to discuss and recommend also encompasses a right to investigate. This right can be derived from the Charter, since in order to discuss any matter thoroughly, the GA must be in a position to carry out the necessary investigations.¹⁰ It includes the right to send observers, to set up investigating commissions and fact-finding missions,¹¹ and to undertake any other investigations which are necessary.¹² In addition, Art. 10 became the legal basis for the authority of the GA to supervise mandated territory, and to receive and examine reports from Mandatory Powers.¹³ However, Lauterpacht has correctly pointed out that in such cases Art. 10 is not the basis of an independent jurisdiction, but only provides the authority to exercise the competence given by the mandator.¹⁴ Consequently, Art. 10 gives no absolute authority to exercise control and supervisory functions in member States or to demand reports.¹⁵

7 The GA has in fact repeatedly set up investigating committees. In 1946, it set up a special committee (United Nations Special Committee on Palestine, UNSCOP) to investigate the conditions in Palestine.¹⁶ In 1956, a commission was formed to investigate (p. 465) the course of events in Hungary.¹⁷ The GA also decided to send observers to Lebanon in 1958 (United Nations Observation Group in Lebanon, UNOGIL), in order to apprise itself of the conditions there.¹⁸ In 1968, the GA re-addressed the conflict in the Middle East by establishing a further special committee to investigate Israeli practices affecting the human rights of the population in the occupied territories;¹⁹ this undertaking was lastly reiterated in December 2009.²⁰ (On the authority of the GA to make statements see Klein and Schmahl on Art. 11 MN 34–35.)

8 The formulation ‘any questions or any matters’ grants the GA a far-reaching competence. Since the two terms have the same meaning, this is simply a tautology employed to underline the broad jurisdiction of the GA.²¹

9 The meaning of ‘questions and matters’ is more precisely defined in Art. 11 (1), which speaks of ‘general principles’, while para 2 is concerned with specific ‘questions’. It includes the ‘disputes’ and ‘situations’ mentioned in Art. 12 (1), since reference is made in Art. 10 to the restriction of the GA’s power of recommendation provided for in Art. 12.²² Furthermore, the term ‘situation’, used in Art. 11 (3) to describe a potential threat to the peace, falls under ‘questions and matters’ in Art. 10, with ‘situation’ being a broader term than ‘disputes’, since it also includes the preliminaries to a conflict (see Klein and Schmahl on Art. 12 MN 7).²³

10 The ‘scope’ of the UN Charter referred to in Art. 10 is specified in Arts 1 and 2 in which the goals and principles of the UN are laid down. These cover practically the whole field of international relations.²⁴ The provisions of the Charter are even extended to the actions of non-member States, insofar as these are relevant for the preservation of world peace and international security (Art. 2 (6)). On the other hand, the broad scope of the Charter is restricted by Art. 2 (7), whereby matters essentially belonging to the domestic jurisdiction of a State are not covered by the provisions of the Charter.

11 Yet, Art. 2 (7) has itself always been narrowly interpreted. From the beginning, the GA, and later the SC as well, has concerned itself with the domestic situations of member States. It has considered the observance of the principles of the Charter, especially those relating to human rights, as not belonging to the domestic jurisdiction of the State concerned, based on the argument that, because human rights are embodied in international law, eg in Arts 1 and 2 as well as Art. 55 of the UN Charter, their enforcement has become an international matter.²⁵

(p. 466) **12** Thus, following a disagreement within the SC in 1946, the GA recommended that Spain under Franco should remain barred from membership of the UN until a new, acceptable government was set up; if this failed to occur within a reasonable time, the SC was to discuss appropriate measures to remedy the situation.²⁶ Furthermore, the member States of the UN were called upon to recall their accredited diplomats from Madrid. Despite the doubts that were expressed to the effect that the recommendations of the GA represented interference in the domestic affairs of Spain, the majority of the GA was of the opinion that an indefinite prolongation of the Franco regime would threaten world peace and violate basic human rights. Since the principles of the Charter were being disregarded, the matter was of international importance.²⁷ Similarly, during its third and fourth sessions, the GA considered the observance of human rights and fundamental freedoms in Bulgaria, Hungary, and Romania.²⁸ It referred to the broad applicability of Art. 10, which encompasses the goals of the UN as also laid down in Arts 55 and 56, encouraging international cooperation in the protection of human rights and fundamental freedoms.²⁹ Moreover, on the Hungarian question (1956), the GA rejected the applicability of Art. 2 (7), since the threat and use of force by foreign troops in Hungary was contrary to the prohibition of force in Art. 2 (4) of the UN Charter, and furthermore represented a crime of genocide.³⁰

13 The GA has taken an even clearer position regarding ‘decolonization’, racial discrimination, and apartheid; with regard to these subjects, it has for a long time refused to apply Art. 2 (7). The GA concerned itself with the problem of racial discrimination in South Africa as early as the 1950s, and it repeatedly urged the South African government to change its apartheid policy since it was incompatible with the goals of the Charter, and it prejudiced friendly relations between States.³¹ The majority of member States of the GA thus did not regard the policy of apartheid as an internal problem of South Africa; towards the end of the decade an increasing number of Western States also took this position.³² Following the entry of many new States into the UN, the GA hardened its attitude to this question. It stressed the connection between the maintenance of world peace and the observance of human rights by confirming in Res 1761 (XVII) that ‘the continuance of the apartheid policy seriously endangered peace’. This resolution, which was passed on 6 November 1962, against the votes of many West European countries, also called upon all member States, individually or collectively, to take measures ‘to bring about the cessation of apartheid’. Thereafter, the GA continually called the attention of the SC to the situation in South Africa and urged it to take (p. 467) compulsory measures according to

Chapter VII.³³ The GA has also concerned itself with the Cyprus question,³⁴ the Algerian question,³⁵ the Tibet problem,³⁶ the situation in Angola,³⁷ and, more recently, the situation in Kosovo³⁸ with reference to the protection of human rights and to the right of peoples to self-determination,³⁹ despite objections based on Art. 2 (7) (see Klein and Schmah on Art. 12 MN 11 on the parallel activities of the GA and SC).

14 The practice of the GA thus described is based on the view that a serious violation of human rights is to be regarded as a disturbance of world peace. The SC has also interpreted the provisions of the Charter in this way;⁴⁰ in the case of Rhodesia, it assumed that there was a threat to world peace according to Chapter VII and thus imposed economic sanctions against that government.⁴¹ However, it is doubtful whether an interpretation of the Resolution (UNGA Res 3314 (XXIX) (14 December 1974)) on the ‘definition of aggression’ to the effect that the denial of the right to self-determination constitutes a prohibited use of force, justifying the use of force by liberation movements, is correct. Even if the boundaries of national sovereignty have contracted and the applicability of the principle of non-intervention has been reduced, there is a danger that by this interpretation the prohibition of the use of force in Art. 2 (4) will be weakened if not even annulled. This is made all the more possible because there is still no consensus on the definition of self-determination and decisions are made by the individual States according to their respective views.⁴²

15 It remains a matter of controversial debate whether the scope of Art. 2 (7), read in conjunction with Art. 2 (1), is further limited by the concept of ‘Responsibility to Protect’ (hereinafter ‘R2P’)—a concept which was elaborated by the International Commission on Intervention and State Sovereignty (ICISS) in 2001⁴³ and taken over by UNGA Res 60/1 in 2005 on the grounds of Art. 10.⁴⁴ The concept mainly argues that the protection (p. 468) of its people is a decisive part of a State’s sovereignty and therefore each State has the primary responsibility to protect its own population from genocide, war crimes, ethnic cleansing, and crimes against humanity. If, however, the State concerned is unable or unwilling to carry out this responsibility, the international community has the right, if not the positive duty,⁴⁵ to use appropriate diplomatic, humanitarian, and other (peaceful or, as a last resort, coercive) means to restore peace and security.⁴⁶ This model of a (secondary) responsibility conferred on the international community could strongly limit the scope of the State’s sovereignty in favour of the protection of fundamental human rights, irrespective of their normative coequal nature in international law. Yet, although some provisions of ‘R2P’ already form part of general international law, the legal nature of the entire and multifaceted concept is far from being clear.⁴⁷ While the High-level Panel on Threats, Challenges and Change as well as the Secretary-General consider ‘R2P’ as an emerging norm of customary law,⁴⁸ and the SC constantly refers to this concept in recent resolutions,⁴⁹ the GA has not yet taken a clear position regarding the legal character of ‘R2P’. On the contrary, the GA rather emphasizes the need for further consideration of the entire concept and its implications on the secondary responsibility of the international community.⁵⁰ Against this background and with regard to the still lacking State practice, ‘R2P’ cannot be considered as already being a (binding) norm of international law.⁵¹

16 Finally, it is recognized that, according to existing practice, pending proceedings between two member States before the ICJ do not preclude discussion of the matter by the GA. First, the competence of the GA is only limited in favour of the SC by the reservation in Art. 12; and secondly, only domestic judicial proceedings constitute a (p. 469) ‘domestic matter’, whereas proceedings before the ICJ do not. If understood otherwise, it would be open to any member not fulfilling its obligations under the Charter to call upon the ICJ under a pretext, and thus to prevent the GA from performing its functions.⁵² On the other hand, in the Irian question (1957), in which Indonesia raised a claim to sovereignty over New Guinea, the GA, after heated discussion, declined to pass a resolution because it came to the conclusion that the problem was primarily a legal one, which the ICJ had to decide before the initiation of negotiations.⁵³

17 The UN Charter does not assign the right of authoritative interpretation of the Charter to any organ of the UN and hence does not empower the GA to make a binding definition of its own area of competence. This does not negate its authority to apply the Charter and also to interpret the provisions of the Charter that define its own responsibilities. The ICJ reached a similar conclusion in its Advisory Opinion, *Certain Expenses of the United Nations*. The court had to determine whether the GA had the right to consider expenses incurred in taking measures to maintain peace and security in the Near East and in the Congo (peace-keeping operations UNEF and ONUC) as ‘expenses’ in the sense of Art. 17 (2) and to apportion these expenses also to member States that had voted against the measures.⁵⁴ The ICJ pointed out that proposals made during the formulation of the Charter to the effect that the ICJ should be the final instance for its

interpretation had been rejected; thus, advisory opinions of the ICJ are not legally binding. Accordingly, every organ is obliged in the first instance to specify its own areas of responsibility. Thus, an interpretation made by the GA is not of a binding nature; it does, however, carry effective weight. In practice, as suggested in the Advisory Opinion of the ICJ, decisions made by the GA on its areas of competence have been accepted, and the principles of the Charter tend to be broadly interpreted.⁵⁵

18 Finally, the breadth of the authority of the GA is dependent on the current status of the Charter.

19 The reference to the ‘powers and functions of any organs provided for in the present Charter’ in Art. 10 has no independent significance. The ‘scope of this Charter’ is identical with the competence of the UN as set down in the Charter. The authority of the GA therefore also includes the power to discuss matters which are related to the function of any organ provided for in the Charter.⁵⁶

III. Limitations

20 The authority of the GA to hold discussions, as described above, is not subject to any further constraints. The reservation contained in Art. 10 and referring to Art. 12 relates only to the GA’s power of recommendation, but not to its power of discussion.⁵⁷ Similarly, Art. 11 (2) cl 2 does not preclude discussion;⁵⁸ on the contrary, this section even contains (p. 470) the statement ‘either before or after discussions’. Nor does Art. 11 (3) limit the power of discussion of the GA. Finally, according to Art. 10, the GA does not require a matter to be referred to it, as provided for in Art. 11 (2) cl 1, but rather possesses the right to initiate discussion concerning any matter whatsoever.

C. The Power to Make Recommendations

I. Position

21 The GA’s power to make recommendations parallels its power of discussion (see MN 8–20).⁵⁹ The GA also has the right to initiate recommendations. It is thus not dependent on a referral from another party.

II. Execution

22 Whether the GA makes use of its power of recommendation is also at its discretion (cf MN 4). However, when the conditions stated in Art. 12 (1) apply, the GA may only make recommendations at the request of the SC; and in the case of Art. 13 (1), the GA even has a duty to make recommendations.

III. Limitations

23 The GA’s power of recommendation is subject to the reservation of Art. 12 as stated in Art. 10. Accordingly, the GA may not make any recommendations concerning a dispute or situation which endangers world peace as long as the SC is performing the duties assigned to it. This is a procedural restriction aimed at ensuring the performance of the functions of the SC in the maintenance of peace and international security, and at avoiding any overlap with recommendations of the GA. The restriction is to be understood as being purely temporal in nature (see Klein and Schmahl on Art. 12 MN 1, 2).⁶⁰ Therefore, the GA is not prevented from exercising its power to make recommendations, as long as the SC is not dealing with that issue at the same time.⁶¹

24 On the other hand, the GA’s power of recommendation is not restricted by Art. 11 (3), which was added in San Francisco in order to strengthen the position of the GA (see Klein and Schmahl on Art. 11 MN 34).⁶²

25 It is unclear whether a restriction of the GA’s power of recommendation results from Art. 11 (2) cl 2 and opinions differ on this point. According to one opinion, Art. 11 (2) cl 2 is understood merely as a procedural requirement which does not limit the competence of the GA, but only leads to a temporal limitation of its power to make recommendations as contained in Art. 12 (1). Under the other interpretation, a material restriction on (p. 471) the GA’s freedom of action is effected.⁶³ The dispute centres on the question of whether Art. 10 gives the GA the authority to recommend enforcement measures. This raises the problem of

reconciling the Uniting for Peace Resolution (UNGA Res 377 (V) (3 November 1950), which was passed in connection with the Korean Crisis (see MN 37), with the UN Charter. The most important passage of this resolution reads as follows: RUL-71

[The General Assembly] resolves that 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 making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of 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 twenty-four hours of the request therefore.⁶⁴

26 If one considers only the wording of Art. 10, the power of recommendation is only restricted by the reservation of Art. 12. Accordingly, the GA could simply recommend enforcement measures with the aim of protecting or restoring peace, since, based on Art. 1 (1), these recommendations fall within the scope of the Charter.⁶⁵

27 However, such an interpretation is contradicted, above all, by the legislative history of the Charter. Article 3 (3) of the Covenant of the League of Nations empowered the Assembly to deliberate ‘over every question which falls within the area of activity of the confederation or which concerns world peace’. The same power was given to the Council according to Art. 4 (4) of the Covenant of the League of Nations. In order to avoid this sort of jurisdictional overlap in the UN Charter, the Dumbarton Oaks Proposals did not contain any general clauses of this type, but rather saw a clear distinction between the duties and powers of the GA and those of the SC, and above all a two-fold limitation of the powers of the GA. Thus, the powers of the GA were, first, to be limited to discussion, advice, and the making of recommendations, with the power to take action resting in the SC. Secondly, the GA’s powers of discussion and of recommendation were to concern, above all, economic and social matters, while being limited in political questions; in particular, the GA was to have no right of initiative, and was to be debarred from making recommendations in matters concerning the maintenance of peace and international security with which the SC was occupied.⁶⁶

28 At the San Francisco Conference, there was a conflict of interests between the Great Powers, which supported a concentration of power in the SC, and the smaller States, which wanted to strengthen the position of the GA, especially as a forum for discussion and recommendation. It had, for example, already been proposed by Costa Rica at the Dumbarton Oaks Conference that the GA should have the power at least to suggest measures aimed at the maintenance of peace and the realization of those principles constituting the basis of the Organization.⁶⁷ More far-reaching proposals by Guatemala and Egypt, namely that the decisions of the SC regarding enforcement measures should be presented to the GA for (p. 472) examination and approval,⁶⁸ did not gain acceptance. The current text was finally agreed on as a compromise. In this way, the efforts of the smaller States to extend the competence of the GA at the San Francisco Conference were at least partially successful, in that the specifications of Art. 10 were included in the UN Charter,⁶⁹ thus laying down the comprehensive jurisdiction of the GA. Nevertheless, the basic principle of the predominance of the Great Powers, which is expressed in the competences of the SC, had not been altered. Hence, according to the understanding of the founders, the GA was excluded from making recommendations in the area of collective security (Chapter VII).⁷⁰

29 This result finds support in a consideration of the relationship between Art. 10 and Art. 11, especially Art. 11 (2). Article 10 is defined by Art. 11 (1) with regard to general principles, and through Art. 11 (2) with regard to specific questions concerning the maintenance of international peace and security. Article 11 (2) cl 2 specifies the GA’s duty of referral for questions which require ‘action’. For this reason, the scope of responsibility of the GA depends on the interpretation of the term ‘action’; the narrower the term, the broader the competence of the GA. There is agreement that ‘actions’ go beyond the discussion of matters and the making of recommendations—otherwise Art. 11 (2) cl 1 would be meaningless—and that the term refers to actions by the SC. What is controversial, however, is whether this is to be understood as including all the actions of the SC according to Chapters V–VIII of the Charter,⁷¹ or only its enforcement measures according to Chapter VII.⁷² The ICJ has adopted the following position on this question in its Advisory Opinion on

The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not merely to general questions relating to peace and security, but also to specific cases brought before the General Assembly by a State under Article 35, in its first sentence empowers the General Assembly, by means of recommendations to States or to the Security Council, or to both, to organize peace-keeping operations, at the request, or with the consent, of the States concerned. This power of the General Assembly is a special power which in no way derogates from its general powers under Article 10 or Article 14, except as limited by the last sentence of Article 11, paragraph 2. This last sentence says that when 'action' is necessary the General Assembly shall refer the question to the Security Council. The word action must mean such action as is solely within the province of the Security Council. It cannot refer to recommendations which the Security Council might make, as for instance under Article 38, because the General Assembly under Article 11 has a comparable power. The 'action' which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely 'Action with respect to threats to the peace, breaches of the peace, and acts of aggression'. If the word 'action' in Article 11, paragraph 2, were interpreted to mean that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the General Assembly may make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article 11, paragraph 2, has no application where the necessary action is not enforcement action.

(p. 473) The Practice of the Organization throughout its history bears out the foregoing elucidation of the term 'action' in the last sentence of Article 11, paragraph 2. Whether 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 the 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.

30 From this formulation, however, it remains unclear whether recommendations of the GA can also include the adoption of enforcement measures. Consideration of the fundamental division of functions between the SC and the GA, and also the practice of the Organization, support the interpretation that the authority of the GA is only limited by Art. 11 (2) cl 2 when the GA is of the opinion that binding enforcement measures according to Chapter VII of the Charter, for which the SC alone is responsible, are to be decided upon.

31 There is a 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 taken. Therefore, a non-binding recommendation is not to be considered as 'action', so that the GA is not prevented by Art. 11 (2) cl 2 from recommending coercive measures. This norm only recalls the fact that the GA shall not take any enforcement measures binding on all member States.⁷⁴ Kelsen⁷⁵ makes a similar argument when he emphasizes that the necessity of an 'action' is decided upon by the GA, in most cases after discussions have been held. Referring a question to the SC would therefore also constitute a request to the SC to take enforcement action. In any case, the SC is not bound by decisions of the GA and is totally free in its further actions.

32 A glance at the practice up to the present time shows that the GA favours this opinion, since it has from the outset made recommendations on the question of safeguarding peace. On the Spanish question, it recommended, for example, in Res 39 (I) (12 December 1946) which was quoted earlier, that the member States of the UN recall their ambassadors from Madrid, a measure which came close to breaking off diplomatic relations with Spain, and which approached a coercive measure under Art. 41 of the Charter. In

Res 181 (II) (29 November 1947) the GA directed the attention of the SC towards the Palestine question and recommended, among other things, the use of enforcement measures according to Arts 39 and 41 to the extent necessary to effect the partition plan recommended by the GA (see Klein and Schmahl on Art. 11 MN 35). Furthermore, the GA called upon Albania, Bulgaria, and Yugoslavia in Res 193 (III) (27 November 1948) concerning the Greek question, to discontinue their aid to insurgent groups in Northern Greece, and recommended that the member States of the UN (p. 474) forbid the export of raw materials to Greece's neighbouring States. Finally, on the South African Question, the GA went so far as to consider the continuation of the apartheid policy as a danger to peace and recommended that the member States adopt diplomatic and economic sanctions according to Chapter VII (Art. 41); moreover, it called upon the SC to take 'appropriate' measures in order to ensure compliance with the resolution of the GA.⁷⁶ Since that time, the GA has often repeated resolutions with a similar content (see MN 13). Even if GA practice has not always been unambiguous and has, on the whole, been rather restrained with respect to recommendations of enforcement measures, it has nevertheless achieved considerable importance for the interpretation of the UN Charter as a multilateral treaty.⁷⁷

33 The opinion that recommendations of the GA may include coercive measures is confirmed by looking at the purpose of the Charter. The highest aspiration of the UN is the safeguarding of peace, which is best achieved by combined teleological and functional interpretation; this in turn calls for a comparison of the powers granted to the GA and the SC. According to Art. 24 (1), the SC has a primary but not exclusive responsibility for the maintenance of world peace and international security. On the basis of Arts 10, 11, and 14, the GA has a secondary and—relative to the SC—subsidiary responsibility in questions concerning the safeguarding of peace. This interpretation is confirmed by the statements of the ICJ in its Advisory Opinion on *Certain Expenses* (1962) in which it states, regarding Art. 24 of the Charter:

The responsibility conferred is 'primary', not exclusive. This primary responsibility is conferred upon the Security Council, as stated in Article 24, 'in order to ensure prompt and effective action'. To this end, it is the Security Council which is given a power to impose an explicit obligation of compliance if for example it issues an order or command to an aggressor under Chapter VII. It is only the Security Council which can require enforcement by coercive action against an aggressor.

The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. Article 14 authorizes the General Assembly to '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 provisions of the present Charter setting forth the purposes and principles of the United Nations'. 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 Council requests it to do so. Thus while it is the Security Council which, exclusively, may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations; they are not merely hortatory.⁷⁸

The ICJ further upheld this crucial position regarding the GA's responsibility and competences of engagement in its later Advisory Opinions on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004)⁷⁹ and on *Accordance (p. 475) with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (2010).⁸⁰

34 From this it can be concluded that in the exercise of its secondary responsibility, the GA may take 'effective collective measures' as stated in Art. 1 (1), including the recommendation of coercive measures, in order to realize the safeguarding of world peace as the highest goal of the UN.⁸¹ This power was not first given to the GA through the Uniting for Peace Resolution, but rather can be said to belong to the GA by virtue of the spirit of the Charter itself.⁸²

35 As a result, it can be established that a duty of referral on the part of the GA according to Art. 11 (2) cl 2 arises only when, in the opinion of the GA, binding enforcement measures should be taken by the SC according to Chapter VII of the Charter. The general power of the GA to recommend enforcement measures

(including military measures) is not limited by Art. 11 (2). There is an exception to the GA's duty of referral under Art. 11 (2) cl 2, according to the Uniting for Peace Resolution, in cases when the SC is unable to function. In such cases, the GA can recommend military measures even when, in its opinion, binding enforcement measures should be taken by the SC according to Chapter VII of the UN Charter. RUL-71

36 Finally, the powers of the GA contained in Art. 10 are likewise not limited by Art. 106 which had the function of empowering France and the parties of the Moscow Four-Power Agreement of 1943, for a transitory period and after mutual consultation, to take necessary military measures to safeguard world peace in the name of the UN. This power was to remain until, on the basis of the conclusion of special agreements according to Art. 43, the SC was able to effect military sanctions under Art. 42. Since no special agreements were ever concluded, it is to be assumed that Art. 106 and—according to some authors—also Art. 42 are meaningless. For an action under Art. 42, the agreements necessary under Art. 43 are lacking. Article 106, on the other hand, grants a purely transitional authority until the SC has the ability to act, and is likewise of no significance today. Even if one accepts that Art. 106 has not become completely obsolete, its scope of application is restricted to common action in the absence of a functioning SC that is able to act according to Art. 42. Other cases of inability to act as foreseen in the Uniting for Peace Resolution lie outside the scope of application of Art. 106. Competences of the GA can at most be affected by Art. 106 where a recommendation by the GA directing the SC to act according to Art. 42 could not be carried out for lack of authority to act. Recommendations of other forms of military action, such as a call to support a State in compliance with Art. 51 of the UN Charter, or to the formation of or participation in peacekeeping forces, are *a priori* unaffected by Art. 106.

37 During the Korean Crisis which had led to the adoption of the Uniting for Peace Resolution, the GA made use of the powers assigned to it by the Resolution. After a veto (p. 476) (following the return of the Soviet representative) rendered the SC unable to act, the GA stated in Res 498 (V) (1 February 1951) that the Chinese People's Government had been guilty of an attack, and called upon the member States to aid the UN and to place their military forces under the UN Supreme Command. In Res 500 (V) (18 May 1951) the GA recommended the imposition of a weapons and war materials embargo over the area controlled by the Chinese People's government and the North Korean authorities.⁸³

38 Subsequent practice has shown, however, that the idea of collective security, as practised by the GA in the Korean Crisis, could not be applied in later conflict situations. It instead appears that the GA itself is well aware of the prohibition against the use of force as laid down in Art. 2 (4), including the danger of eroding this norm at a time when international tension is still prevalent on the one hand, and of the fundamental and primary function of the SC with regard to the settlement of disputes on the other.⁸⁴ For this reason, the Uniting for Peace Resolution was never used thereafter as a legal basis for measures against aggression, and the GA has, in particular, made no decision on the gathering of troops against an aggressor State. This is true although there have been recently several occasions where a revitalization of the Uniting for Peace Resolution was seen as a possible way to restore peace and security. During the humanitarian crisis in Kosovo in 1999, the Western States could have invoked the Uniting for Peace Resolution in order to authorize their actions later taken by NATO troops.⁸⁵ After the lack of unanimity of the permanent members in the SC on military actions in Iraq (2003), the US-controlled coalition relinquished discussing relevant measures within the GA. In both cases, the initiating coalitions were obviously afraid that they would not obtain the needed majority when asking the GA for support.⁸⁶

39 Although the Uniting for Peace Resolution has not been used for taking measures since the Korean Crisis, a revivification might occur in connection with the concept of 'R2P' (MN 15). At least ICISS considers Res 377 (V) as a possible alternative to seeking support for military action if the SC fails to exercise its responsibility grounded in 'R2P'.⁸⁷ The GA itself has not dismissed its responsibility as outlined in Res 377 (V) in a recent description of its role and authority (UNGA Res 60/286, Annex I (8 September 2006)). Other UN organs, such as the ICJ⁸⁸ and the GS,⁸⁹ also continuously recall the GA's (secondary) responsibility as laid down in the Charter and the Uniting for Peace Resolution.

(p. 477) **40** However, Res 377 (V) has, in practice, merely served as an authorization for peacekeeping actions and for the convocation of emergency special sessions (see Klein and Schmahl on Art. 12 MN 29, 30),⁹⁰ where the non-members of the SC are given the opportunity to comment on the proceedings and decisions of the SC.⁹¹ The first such session of the GA was called by the SC on the occasion of the Suez Crisis in November

1956, with the agreement of the Soviet Union, although the latter had earlier spoken out against the adoption of the Uniting for Peace Resolution. The GA passed recommendations calling for the immediate cessation of armed conflict and the withdrawal of foreign troops from the occupied areas. Furthermore, it gave the SG the task of forming UNEF (United Nations Emergency Forces in the Near East) and so decisively contributed to the containment of the conflict.⁹² The subsequent special emergency sessions on the Hungarian Crisis (1956), on the situation in Lebanon (1958), and on the Congo question (1960) largely corresponded to the aims of Res 377 (V) in terms of their convocation procedure, implementation, and results, and in none of these cases did the GA make use of its extended sphere of competence. In its decision No 303 (XXVI) (6 December 1971) on the India-Pakistan dispute over Bangladesh (1971), the SC cited the Uniting for Peace Resolution and referred the matter to the GA, because a lack of unanimity among the permanent members prevented it from exercising its competence (cf Klein and Schmahl on Art. 12 MN 26). Thereupon, in Res 2793 (XXVI) (7 December 1971) the GA urged India and Pakistan to introduce a ceasefire, but did not recommend any compulsory measures. The tenth and, to date, last emergency special session was convened in 1997 following the rejection of two draft resolutions concerning Israeli settlements by the SC and deals with asserted 'Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory'.⁹³ The session has not come to its end yet⁹⁴ and has not produced major input on the ongoing conflict in the Middle East. It rather contributes to the transformation of the Uniting for Peace Resolution from a once promising useful instrument into another forum for rhetorical debate.⁹⁵ The only practical outcome was that the members of the session initiated the request for an Advisory Opinion (Art. 96 (1)) from the ICJ in the *Israeli Wall Case*.⁹⁶ Finally, it can be concluded that the security system laid down in the Uniting for Peace Resolution has not asserted itself in (p. 478) practice. Nevertheless, the ability of the UN to act in crisis situations, in particular in the field of peacekeeping measures, has increased, as the example of the special emergency sessions has shown.

IV. Addressees of Recommendations

41 According to the wording of Art. 10, the GA can direct recommendations to the members of the UN, to the SC, or to both. To that extent, Art. 10 is narrower than Art. 11 (2) cl 1, under which recommendations can also be addressed to non-members. In practice, the GA has directed its recommendations to numerous States and has not restricted itself to those named in Art. 10. Thus, recommendations have been made to 'all member states', to 'member states', to 'certain member states', to 'specific member states', to 'all states', to 'designated states', to 'states', to 'all governments or countries', to 'certain governments', to 'nuclear powers', to 'non-nuclear powers', to 'governments or parties concerned', to 'colonial powers', to 'mandatory states', to 'occupying powers', to 'specific subsidiary organs', to 'people of a member state or a territory', to 'special authorities', to 'government institutions', to 'non-governmental organizations', to 'the private sector', to 'the media', to 'civil society', to 'petitioners', and to 'individual persons'. Recommendations have also been directed to the SC, its permanent members, to the SG, to the Secretariat, to the United Nations, to the specialized agencies, to the subsidiary organs of the GA, to ECOSOC, to the funds and programmes of the UN System, to specific international organizations, and to the 'international community'.⁹⁷

D. Form and Legal Nature of Recommendations

I. Concept

42 The Charter of the UN uses the terms 'recommendations' and 'decisions' to describe acts of the GA. This terminology does not reflect any clear legal distinction; 'decision' is used in part as a collective term for all acts (as in Art. 18 (2), without consideration of their contents), but also, in part, to mean a legally binding internal decision (Art. 4 (2)).⁹⁸

II. The Practical Use of Terms

43 In practice, acts of the GA are issued in the form of 'resolutions', 'declarations', or 'decisions'.

44 The meaning of the term 'resolution', which does not appear in the Charter, is the most comprehensive

and can most easily be regarded as the collective term for the mode of expression of the will of the GA. Through ‘resolutions’, the GA makes a specific recommendation, communicates a decision, makes an observation, or issues a reminder.⁹⁹ RUL-71

45 The term ‘declaration’, likewise not contained in the Charter, is used by the GA for resolutions which claim to express political or legal principles of particular importance, which sometimes intend to embody general rules of public international law. The greater (p. 479) importance of a declaration can also be emphasized by its enactment in a particularly solemn way and, in some cases, also through its designation as a ‘Charter’. Where principles are solemnly declared, relevant charters frequently aim at making States aware of novel international public interests and at the eventual codification thereof.¹⁰⁰ Examples of the most important declarations which have attained a quasi-legislative function are: the Universal Declaration of Human Rights of 10 December 1948, Res 217 (III); the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960, Res 1514 (XV); the Declaration on Permanent Sovereignty over Natural Resources of 14 December 1962, Res 1803 (XVII); the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space of 13 December 1963, Res 1962 (XVIII); the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations of 24 October 1970, Res 2625 (XXV); the Charter of Economic Rights and Duties of States, passed on 12 December 1974 as Res 3281 (XXIX); the Manila Declaration on the Peaceful Settlement of International Disputes of 15 November 1982, Res 37/10;¹⁰¹ and the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007, Res 61/295.¹⁰²

46 The Charter empowers the GA to decide specific matters in the form of a legally binding ‘ruling’. These specific matters are questions of a technical or organizational nature, such as the admission, suspension, and expulsion of members (Arts 4, 5, and 6), amendments to the Charter (Arts 108 and 109), the election of members to organs or committees (Arts 23, 61, 97), or budget questions (Art. 17). Most recently, the GA decided, for example, to admit the Republic of South Sudan to membership in the UN, after having received the respective recommendation of the SC (UNGA Res 65/308 (14 July 2011)). Furthermore, the GA suspended, for example, the rights of membership of Libyan Arab Jamahiriya in the Human Rights Council (UNGA Res 65/265 (1 March 2011)), and restored them after the new Libyan regime had made commitments to uphold its obligations under international human rights law (UNGA Res 66/11 (18 November 2011)). The authority of the GA to make legally binding decisions only covers the area relating to internal organization, ie to ‘housekeeping matters’.¹⁰³ For all other matters, the Charter speaks of ‘recommendations’.

III. Legal Nature and Legal Effect

47 It has recently been maintained, in keeping with the UN claim of universality, that resolutions passed with a particularly qualified majority attain a legally binding effect. Similar views are held regarding resolutions effecting a more concrete understanding of (p. 480) the provisions of the Charter, or aimed at the codification of rules of customary international law.¹⁰⁴ Additionally, in the eighth preambular paragraph of Res 3232 (XXIX) (12 November 1974) the GA has recognized that:

the development of international law may be reflected, *inter alia*, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice.

Moreover, the ICJ has held, in the *Nicaragua* Case, in relation to the Friendly Relations Declaration, that:

The effect of consent to the text of such resolution cannot be understood as merely that of a ‘reiteration or elucidation’ of the treaty commitment undertaken in the Charter. On the contrary it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves...It would therefore seem apparent that the attitude referred to expresses an *opinio juris* respecting such rule (or set of rules), to be henceforth treated separately from the provisions, especially those of institutional kind, to which it is subject on the treaty-law plane of the Charter.¹⁰⁵

These formulae seem to indicate that the GA and the ICJ share the view that GA declarations *alone* can be seen as embodiments of rules of international law. However, this view does not seem to be an expression of the proper state of international law in force. For one, several governments have expressed their opposition to the GA's formula, and have declared that they would not have supported it had there been a separate vote on it.¹⁰⁶ In turn, the judgment in the *Nicaragua* Case is contradictory in itself because the ICJ has stressed, later in its judgment, that it 'must satisfy itself that the existence of the rule in the *opinio iuris* of States is confirmed by practice'¹⁰⁷—although it has not adhered to this test throughout the judgment.¹⁰⁸ It is therefore a logical consequence that the ICJ in its Advisory Opinion of 8 July 1996 (*Nuclear Weapons* Case) expressly notes that GA resolutions may sometimes have a normative value, although they are not legally binding *stricto sensu* on member States.¹⁰⁹

48 The Charter (Arts 10–14) gives the GA the power to make 'recommendations'. According to the text, this means a non-binding exhortation. In general international usage, a recommendation describes a legal act which expresses a desire, but which is not binding on the addressees.¹¹⁰

49 The legislative history of the Charter also supports this interpretation. At the San Francisco Conference, a proposal presented by the Philippines expressly to vest the GA with the legislative competence to enact rules of international law was unequivocally (p. 481) rejected.¹¹¹ On the other hand, the lack of a legislative function was precisely the pre-condition for the granting of an extensive power of discussion and recommendation. The lack of legislative competence of the GA was confirmed by the decision of the ICJ in the *South-West Africa* Case, which states: 'Resolutions of the United Nations General Assembly...are not binding, but only recommendatory in character.'¹¹²

50 Of course, the resolutions of the GA could have a binding effect if the GA was entitled to make authentic and binding interpretations of the Charter.¹¹³ Such a power was, however, expressly denied the GA at the founding Conference in San Francisco. The Belgian proposal already made at the Dumbarton Oaks Conference, namely to incorporate a provision to that effect into the Charter, was unsuccessful.¹¹⁴ Judgments of the ICJ thus far have not contradicted this point. In the Advisory Opinion of 20 July 1962 mentioned above (*Certain Expenses* Case), the ICJ acknowledged that every organ itself must in the first instance interpret the specifications of its competence as laid down in the Charter; there is, however, no mention of a binding effect on the member States.¹¹⁵ It follows that the GA does not enjoy a privilege of interpretation; this would require an alteration of the Charter under Arts 108 and 109.¹¹⁶

51 The legal effect of resolutions of the GA has been a matter of heated debate.¹¹⁷ There seems to be general agreement that GA resolutions may in some instances constitute evidence of customary international law. They may help to crystallize emerging customary international law or contribute to the formation of new customary international law. But, as the *Final ILA Report on Formation of Customary General International Law* notes,¹¹⁸ GA resolutions do not *ipso facto* create new rules of customary international law. GA resolutions can at most be used as evidence of customary international law or a general principle of law.¹¹⁹ In that sense, they may be regarded as auxiliary sources of international law.¹²⁰

(p. 482) **52** Further, the adoption of a resolution could be interpreted as the conclusion of an agreement under international law in the sense of Art. 38 (1) (a) of the Statute of the ICJ. This theory, however, would require that the consent expressed in the formal voting procedure expressed an intention to enter into treaty obligations.¹²¹ One problem with this is the fact that representatives of the member States can influence the wishes of the GA while being themselves led by political considerations. Moreover, abstention from voting and express opposition would not be compatible with the construction of a contractually binding effect. Finally, a difference in procedure should be pointed out; the conclusion of a treaty requires, in principle, according to general rules of public international law (cf Art. 11 of the Vienna Convention on the Law of Treaties), the express agreement of the States involved to be legally bound.¹²² A vote neither satisfies these procedural requirements nor expresses an intent of the States to assume contractual obligations *vis-à-vis* other States. Nevertheless, resolutions of the GA can make an important contribution to the further development of international treaty law, by developing principles which are later often incorporated into international agreements.¹²³ The two Covenants of 1966, for example, concerning civil and political, as well as economic, social, and cultural rights, were developed from the principles of the Universal Declaration of Human Rights of 1948 (Res 217 (III) (10 December 1948)); additionally, the Outer Space Treaty of 1967 was based on a declaration of the GA dating from 1963 on the activities of States in the exploration and

exploitation of outer space (Res 1962 (XVIII) (12 December 1963)).¹²⁴ Furthermore, the extension, by Art. 1 (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), on the scope of humanitarian law to wars of national liberation, has codified the substantive content of Res 3103 (XXVIII).¹²⁵ Moreover, the GA has through its resolutions encouraged the conclusion of several agreements in the area of arms limitation (see Klein and Schmahl on Art. 11 MN 11). Finally, the GA adopts resolutions establishing negotiating bodies for the elaboration of treaties¹²⁶ such as the Law of the Sea Convention¹²⁷ or the UN Framework Convention on Climate Change.¹²⁸

53 Obviously, GA declarations convey strong indications of elements of the international *ordre public*. They have been ascribed such ‘authority’¹²⁹ so as to function as a starting point, frame, and scheme for discussing and establishing certain rules of customary international law.¹³⁰ However, given their non-binding character it is necessary to examine further whether declarations contained in resolutions can acquire a binding legal status by way of customary international law (Art. 38 (1) (b) of the ICJ Statute). A prerequisite (p. 483) for the creation of customary international law is a uniform and consistent State practice, coupled with the conviction of the States that their actions satisfy a legal obligation.¹³¹ This subjective element in the development of customary international law can be seen in voting behaviour in the GA, in cases where the text of a resolution expressly points out that the States are expressing an *opinio iuris* with their vote, or where this is evident from the circumstances. There is an ongoing discussion as to whether the notion of State practice has come to entail expressions conveyed through the channels of contemporary international communication and interaction, ie to a certain extent statements rather than actions would qualify as evidence of *opinio iuris*. However, it seems that this proposition would only cover declarations made by individual States.¹³² But voting behaviour alone is not sufficient to establish ‘State practice’¹³³ and would, therefore, remain outside the ambit of this extended understanding of the term.¹³⁴ Rather, States must confirm their legal conviction through actual behaviour outside the Organization. This was demonstrated in the judgment of the ICJ in the *Continental Shelf* Cases. Accordingly, an indispensable prerequisite for the creation of new customary international law is that the practice of the States, especially of those whose interests are particularly affected, is exercised thoroughly and consistently—even if only for a short time—in keeping with the rule in question. Furthermore, the practice should evidence general recognition of a legal obligation.¹³⁵ For this reason, the theory of ‘instant customary international law’¹³⁶ must be rejected since the accepted definition of customary international law would then lose its elements of ‘State practice’.

54 Resolutions of the GA also play an important role in the development of customary international law by forming a basis for States to act appropriately, and can accelerate the generation of norms of customary international law by promptly articulating new problems (eg the accessibility of outer space and the ocean floor).¹³⁷ Additionally, individual resolutions of the GA have significance for judgments of the ICJ in determining customary international law, inasmuch as the *opinio iuris* can, with due caution, be derived from the attitude of States with regard to the recommendations of the GA.¹³⁸ One such judgment considered whether acceptance of the prohibition of the threat or use of force could be derived from the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (Res 2625 (XXV) (24 October 1970)).¹³⁹ Furthermore, (p. 484) individual statements in resolutions of the GA reflect rules of customary international law.¹⁴⁰ Finally, State practice knows examples where governments have relied on GA resolutions as embodying rules of international law. For instance in an answer to a parliamentary question the German government has invoked the Friendly Relations Declaration in favour of its view that raising funds for financing arms purchases by liberation movements be prohibited.¹⁴¹

55 On one occasion the GA has held, by way of adoption of a resolution, that a certain international agreement has acquired the character of customary international law. Thus, Res 2603 (XXIV) states that the Geneva Protocol of 17 June 1925 ‘embodies the generally recognized rules of international law prohibiting the use in international armed conflicts of all biological and chemical methods of warfare, regardless of any technical developments’. However, many UN member States doubted whether the adoption of a resolution was the appropriate procedure for ascribing the character of custom to the rules contained in a treaty.¹⁴²

56 It is widely acknowledged that UNGA resolutions may under certain circumstances constitute evidence of existing customary law. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* the

ICJ has noted that resolutions 'can in certain circumstances, provide evidence important for establishing the existence of a rule or of emergence of an *opinio juris*'.¹⁴³ The final report of the International Law Association at its London conference¹⁴⁴ also recognizes that resolutions of the GA may expressly or impliedly ascertain that a customary rule exists and can constitute rebuttable evidence that such is the case.¹⁴⁵

57 Finally, 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.¹⁴⁶ According to the legislative history of the Statute, these principles originate in concordant national laws, which by way of analogy and comparison become a component of international law. They also include concepts which have developed as principles of form and models of behaviour for new factual conditions in the international legal community. However, as far as relevant in the present context, GA resolutions *as such* do not have any legislative character whatsoever: they can only form the basis for presuming the creation of a general principle. Yet general principles can only be regarded as legally binding if they are expressly recognized by those UN member States. This has not been the case to date.¹⁴⁷ Consequently, it is not possible to classify the content of GA resolutions under one of the categories of Art. 38 (1) (c) of the ICJ Statute.

58 The majority view is that the list in Art. 38 of the ICJ Statute is not a complete enumeration of the sources of public international law. An extension of the authority of the GA could therefore occur—apart from a formal revision of the Charter in compliance (p. 485) with Arts 108 and 109—by way of development of the law through 'formless, inter-state consent'¹⁴⁸ of member States, which is said to constitute the original source of public international law and to be superimposed on the sources of public international law contained in Art. 38 of the ICJ Statute. Because of the sovereignty principle contained in Art. 2 (1) of the Charter, such a change would require at least the same majority as a formal amendment of the Charter; ie a two-thirds majority of the members of the GA, including all permanent members of the SC, would have to consent to a declaration in order to give it legally binding effect. The unanimous acceptance of a resolution by the GA is, however, still not proof but merely an indication of the existence of such consent. Real consent only arises when 'States recognise the content of a resolution as international law before, during or after voting on it by unilateral declarations, implicit acts, or by unopposed acceptance of the respective legal statements'.¹⁴⁹

59 It is, however, doubtful whether under certain circumstances GA resolutions adopted unanimously or almost unanimously, and which evince a clear intention on the part of their supporters to lay down a rule of international law, are capable, exceptionally, of creating general customary law by the mere fact of their adoption, as indicated by the *Final Report of the International Law Association*, adopted at its London Conference 2000.¹⁵⁰ It should be noted, however, that the Final ILA Report stresses that it will be extremely rare that there exists a clear intention of the parties to the resolution to lay down a rule of law. The intentions of governments may be hard to determine. Unanimity or a 'consensus' vote does not necessarily establish an intention to create a rule of law. Furthermore, the ILA Report concedes that even in the case of unanimous resolutions on outer space, which was largely 'virgin territory' before the adoption of those resolutions and therefore apparently a suitable candidate for the creation of new law, Cheng had concluded, after a careful analysis of the relevant resolutions, that there was not a sufficiently widespread or representative agreement that their content should be instant customary law.¹⁵¹ The assumption, however, by the ILA Report, that if governments choose to take their formal stands by means of a GA resolution and if it can be shown that States as a whole really did consent to the rules set out in the resolution, there is no reason why this should not count. It neglects the legal nature of GA resolutions. As Judge Lauterpacht argued in his Separate Opinion in *Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa*, 'the absence of full legal binding force in the resolutions of the GA is a...fundamental and...rudimentary proposition'.¹⁵² Thus, even if one would subscribe in general to the assumption, stated in the ILA Final Report, the condition may only be met under very exceptional circumstances. A large majority of votes certainly does not meet the test. As the ICJ has stated in its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the reiteration of a resolution asserting the illegality of the threat or use of nuclear weapons is not (p. 486) sufficient; in the light of the opposition of nuclear-weapon States to these resolutions, the ICJ felt unable to hold that they represented binding customary law.¹⁵³ Therefore, even repetition of the same alleged rule in a series of resolutions does not of itself add to the legal obligation.¹⁵⁴

60 According to another view, declarations of the GA are to be seen as new sources of public international law when they meet the following criteria:¹⁵⁵

(a) the necessary degree of agreement when the resolution is passed;

(b) a wording which confirms the legal nature of the resolution;

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(c) sufficient conviction of the States as to the legally binding force of the resolution;

(d) a degree of enforcement based on subsequent practice of the members over a definite and limited period of time.

61 According to both views, the acceptance of ‘true consent’ or the necessary degree of agreement does not depend on a marked numerical majority alone; what matters is that States whose interests are particularly affected need to have agreed to the rule in question. The Charter of Economic Rights and Duties of States, which was passed by an overwhelming majority (Res 3281 (XXIX) (12 December 1974)) is one example. The Western industrialized States, which were mainly affected, did not agree with this resolution and, in order to dispel any doubt, documented their objections in formal reservations, which are normally only made in connection with international agreements.¹⁵⁶ In practice, few declarations quoted in the literature as examples of a quasi-legislative function of the GA have been able to fulfil the abovementioned prerequisites for a legally binding effect. The unanimously accepted Outer Space Declaration of the GA (Res 1962 (XVIII) (13 December 1963)) probably comes closest, since the representatives of both the United States and the Soviet Union, the only air space powers at the time, expressed their intention to respect the legal principles laid down in the resolution.¹⁵⁷

62 To sum up, ‘[t]he evidential value of [GA] resolutions varies from case to case and cannot be assessed once and for all’.¹⁵⁸ It appears that generally resolutions of the GA are not legally binding but do help to form and shape new public international law and are thus an important material source of both treaty and customary international law.¹⁵⁹

63 Finally, the significance of GA resolutions is emphasized by judgments of the ICJ attributing specific legal effect to them.¹⁶⁰ In its Advisory Opinions on *Namibia* and on the *Western Sahara*, for example, the ICJ designated the Declaration on the Granting of Independence to Colonial Countries and Peoples (Res 1514 (XV) (14 December 1960)) as the basis for the process of decolonization, which since 1960 has led to the creation of many new States, now members of the UN.¹⁶¹ In its decision in the *Nicaragua* Case, the ICJ referred to UNGA Res 2625 (XXV) (24 October 1970)¹⁶² in order to distinguish (p. 487) between various types of force and to confirm the principle of non-intervention. In addition, constant practice of the UN (Res 380 (V) (17 November 1950), 2131 (XX) (21 December 1965), 2625 (XXV) (26 October 1970), and 3314 (XXIX) (14 December 1974)) was presented as evidence for the contention that protracted State involvement in the activities of armed insurgent troops constituted a prohibited use of force under Art. 2 (4).¹⁶³

IV. Other Significance, Especially Political Effect

64 Since the creation of the UN, the GA has been used as a forum for the articulation of the various political interests of the member States, but also as an instrument for advancing the individual interests of specific major powers or groups of States. For a long time in particular, the ‘Group of 77’, which has grown to almost 120 Third World States, has made political and social demands on the Western industrialized countries to redistribute wealth to benefit developing nations. Thus, declarations of the GA have frequently led to a reconsideration of development issues at the national level.

65 Even if a State has no legal consequences to fear from disregarding GA decisions supported by a large majority of the international community, it exposes itself to international disapproval via the GA. In the long run, no State can do this without being pushed into the position of an outsider. On the other hand, a large numerical majority is not in itself sufficient to establish a GA resolution as an emerging principle requiring at least moral acceptance. Occasionally, the Third World States have used their majority in an extremely unfair manner in the GA, thereby inflicting damage on the Organization,¹⁶⁴ eg by passing Res 3379 (XXX) (10 November 1975) stating that Zionism was a type of racism and racial discrimination. This resolution, finally annulled in 1991, not only weakened the influence of the UN on Israel, but also tarnished its relationship with the United States, its major contributor. In the final analysis, only balanced compromises serve to establish a lawful order within the community of States and to realize the political goals of the Charter.

66 Furthermore, the question arises as to whether resolutions of the GA can legally justify conduct by

member States which would otherwise be contrary to international law. Most, if not all, cases of voluntary agreement on the use of sanctions, eg against South Africa, have been such that the application of the RUL-71 sanctions did not conflict with public international law. Nevertheless, it cannot be assumed that a decision of the SC or a resolution of the GA can be used as a justification simply because the recommendations are made within the scope of the authority of the UN.¹⁶⁵ It is not within the province of the GA nor of other organs of the UN to authorize the release of member States from their duties under public international law or to suspend the effect of law already in force. The claim that resolutions of the GA have a legally justifying effect is, therefore, to be rejected. On the other hand, one must recognize that legal interpretations expressed by a large majority of States representing the ‘world community’ can attain considerable political (p. 488) weight, making it very difficult for the affected State to maintain a diverging legal position; or to put it differently, GA resolutions may shift the burden of argument to this State.

67 According to the ICJ Advisory Opinion on *Certain Expenses of the United Nations*,¹⁶⁶ recommendations of the GA gain special importance in the area of peacekeeping measures. In this particular case, the Soviet Union and France had refused to contribute to budget expenses for peacekeeping activities in the Near East (UNEF) and in the Congo (ONUC). In its Advisory Opinion, the ICJ found it permissible for the GA to demand reimbursement of costs incurred in these operations in the sense of Art. 17 (2) even from those members who had voted against the measures. Thus, the recommendations of the GA are indirectly binding on the member States for any costs which they themselves incur. However, the opinion of the ICJ did not have much practical effect, since the sanction of Art. 19 (disqualification from voting when payments are in arrears) against the defaulting member States was waived in the case in question.

68 Finally, according to the view of the ICJ in the *Namibia* Advisory Opinion,¹⁶⁷ there exists a presumption that a resolution passed by a duly constituted organ of the UN in conformity with the rules of procedure of the organ, and confirmed as such by the President, is formally valid.

E. UN Reform

69 Throughout the 1990s as well as during the last decade (2000–2010) there was—and still continues to be—an ongoing debate on UN reform. Relevant suggestions have included changes of GA discussion and decision-making processes.¹⁶⁸ Not only scholars, but also several UN bodies, such as the GA and the GS, strive towards enhancing the GA’s role as chief deliberative, policy-making, and representative body of the United Nations.¹⁶⁹ To that aim, the Ad Hoc Working Group on the Revitalization of the GA was established in UNGA Res 59/313 (12 September 2005) with the mandate to contribute to the debate and enhance the role, authority, effectiveness, and efficiency of the GA.¹⁷⁰ Furthermore, the GA made amendments to its rules of procedure in order to improve its work.¹⁷¹ Notwithstanding the need for discussion of whether the sources of inefficiencies are diverging interests of member States and lack of financial resources rather than inappropriate structures,¹⁷² there can be no doubt that the GA would be in a position to effect (p. 489) changes considered necessary by changing its internal rules without amending Art. 10 of the Charter. Only the introduction of weighed voting would require such amendment.

F. Evaluation

70 An evaluation of the function of Art. 10 must consider the practical application of this provision, especially in the context of the relationship between the GA and the SC.

71 Soon after the Charter came into force, it was seen that due to deep-seated disagreement between the major powers, which had led to active use of the veto right above all by the Soviet Union, the SC could not fulfil its primary responsibility to maintain peace, and that the system of collective security firmly established in the Charter was, therefore, not functioning. After the SC was unable to come to a decision on the merits of the Spanish question (1946) or the Greek conflict (1946/7), the Western majority on the SC referred the matter to the GA in the hope that it would achieve the necessary majority for an appropriate line of action. The GA dealt with the question and delivered its recommendations, which were frustrated by the Soviet veto in the SC.¹⁷³ The inability of the SC to act led the GA to assume an auxiliary function with respect to Art. 10. Through the Uniting for Peace Resolution, conceived on the occasion of the Korean Crisis, the competing

72 With the decolonization phase of the 1960s and the related growth in the influence of States of the 'Third World', the main emphasis of GA operations shifted to the realization of the independence of numerous previously colonized States. The GA has developed into an indispensable forum for the peaceful airing of conflicts of interest and for the articulation of demands of the Third World for independence. In the area of maintenance of peace, however, the loss of the Western States' majority has become regrettably apparent. The GA was struck by ineffectiveness that shifted emphasis back to the SC, facilitated by the incipient easing of East-West tensions. This development has continued to the present day, since the interests of the major powers often converge, at least partially, as seen in the SC's resolutions on the South African problem, during and since the Gulf War,¹⁷⁴ and more recently during the humanitarian crisis in Kosovo as well as in the preliminary stages before the invasion in Iraq.¹⁷⁵

73 Since the beginning of the 1970s, the GA has increasingly dealt with the revision of the world economic system along with the South African question and has attempted, with the help of the large voting majority of the Group of 77, to enforce unilateral economic and social demands against the Western industrial nations. There have been no recognizable signs to date that the GA has succeeded, through Art. 10, in achieving major progress towards a new global economic system.

(p. 490) **74** As a result, it may be concluded that in practice, Art. 10 has largely served to strengthen the role of the GA, with its interpretation heavily dependent on political elements. The dramatic political changes since the 1990s, particularly the dissolution of the Soviet Union into sovereign States and the enlargement of the European Union, have undoubtedly affected the distribution of powers between the GA and the SC. The primary role of the SC, based upon a particular historical situation, cannot be upheld for an indefinite period of time once the decisive factors for its special structure and powers have changed. In the long run, this finding will probably lead to an increase of powers of the GA.

Footnotes:

* The authors acknowledge that the following text contains elements of the respective comments on Art. 10 by Kay Hailbronner and Eckart Klein in the previous edition of this commentary.

¹ FA Vallat, 'United Nations General Assembly' EPIL IV (2000) 1120.

² Kelsen, 199.

³ E Luard and others, *The United Nations: How it Works and What it Does* (MacMillan 1995) 38. Yet, the language applied by some commentators seems to point in the opposite direction. See for instance LB Sohn, 'Enhancing the Role of the General Assembly of the United Nations in Crystallizing International Law' in J Makarczyk (ed), *Theory of International Law at the Threshold of the 21st Century* (Kluwer Law International 1996) 555: '[T]he Assembly became a more democratic institution in which practically all peoples of the world were directly represented...[T]he General Assembly became entitled to speak in the name of all States in the world, and its decisions became the decisions of the world community, of mankind as a whole.' However, the pathos thus employed cannot 'enhance' the limited role of the GA as framed by the attribution of powers embodied in the Charter.

⁴ RP I, 260; cf Luard (n 3) 39.

⁵ UNGA Res 47/233 (17 August 1993) UN Doc A/RES/47/233. As to the work of the six main Committees and the formally established sub-committees see MJ Peterson, *The UN General Assembly* (Routledge 2006) 60f; N Weiß, *Kompetenzlehre internationaler Organisationen* (Springer 2009) 143ff.

⁶ Weiß (n 5) 152ff. For an outline of a GA session see Peterson (n 5) 57f.

⁷ Dumbarton Oaks Proposals, Chapter V. The General Assembly, s B, Functions and Powers, para 1, UNCIO III, 4f.

⁸ LM Goodrich and E Hambro, *Charter of the United Nations, Commentary and Documents* (2nd edn, Stevens 1949) 164.

¹⁰ G Dahm, *Völkerrecht*, vol 2 (de Gruyter 1961) 195; cf also Art. 22.

¹¹ See UNGA Res 35/176 (15 December 1980) UN Doc A/RES/35/176; further see F Ermacora, 'The Competence and Functions of Fact-finding Bodies' in BG Ramcharan (ed), *International Law and Fact-Finding in the Field of Human Rights* (Nijhoff 1982) 83ff.

¹² Besides the GA, a few other UN bodies are entitled to set up investigating committees. Among those actors are the SC, the ECOSOC, and the GS.

¹³ *International Status of South-West Africa* (Advisory Opinion) [1950] ICJ Rep 137.

¹⁴ *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa* (Advisory Opinion) [1950] ICJ Rep 122.

¹⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Resolution 276 (1970)* (Advisory Opinion) (Dissenting Opinion Judge Fitzmaurice) [1970] ICJ Rep 236.

¹⁶ (1946/1947) UNYB 294, 301.

¹⁷ RP 2 II, 32, 86f; (1956) UNJYB 73, 81f; (1957) UNJYB 60ff.

¹⁸ (1958) UNYB 38.

¹⁹ UNGA Res 2443 (XXIII) (19 December 1968) UN Doc A/RES/2443(XXIII).

²⁰ UNGA Res 64/91 (10 December 2009) UN Doc A/RES/64/91.

²¹ Kelsen, 198; DC Dicke and HW Rengeling, *Die Sicherung des Weltfriedens durch die Vereinten Nationen. Ein Überblick über die Befugnisse der wichtigsten Organe* (Nomos 1975) 100. Similarly CPF/Doumbe-Bille, 644f.

²² Kelsen, 202.

²³ *ibid*, 022041.

²⁴ cf Proposal of New Zealand in Dumbarton Oaks Proposals, UNCIO II, 487: 'the General Assembly shall have the right to consider any matter within the sphere of international relations'.

²⁵ GHS, 113; Bentwich and Martin (n 9) 35f; C Tomuschat, 'Generalversammlung' in R Wolfrum (ed), *Handbuch Vereinte Nationen* (2nd edn, CH Beck 1991) 229; J Delbrück, 'Peacekeeping by the United Nations and the Rule of Law' in RJ Akkermann and others (eds), *Festschrift Röling* (Sijthoff 1977) 88.

²⁶ UNGA Res 39 (I) (12 December 1946) UN Doc A/RES/39(I); GHS, 128.

²⁷ RP I, 314ff.

²⁸ UNGA Res 272 (III) (30 April 1949) UN Doc A/RES/272(III); UNGA Res 294 (IV) (22 October 1949) UN Doc A/RES/294(IV); RP 1 I, 119.

²⁹ RP I, 261.

³⁰ RP 2 II, 44f, 79.

³¹ UNGA Res 616 (VII) (5 December 1952) UN Doc A/RES/616(VII); UNGA Res 721 (VIII) (8 December 1953) UN Doc A/RES/721(VIII); RP I, 262f; UNGA Res 820 (IX) (14 December 1954) UN Doc A/RES/820(IX); UNGA Res 917 (X) (6 December 1955) UN Doc A/RES/917(X); RP 1 I, 117ff; UNGA Res 1016 (XI) (30 January 1957) UN Doc A/RES/1016(XI); UNGA Res 1178 (XII) (26 November 1957) UN Doc A/RES/1178(XII); UNGA Res 1248 (XIII) (30 October 1958) UN Doc A/RES/1248(XIII); RP 2 II, 15.

³² Among others: United States, New Zealand, (1959) UNYB 58.

³³ UNGA Res 2054 (XX) (15 December 1965) UN Doc A/RES/2054(XX); UNGA Res 2671 (XXV) (8 December 1970) UN Doc A/RES/2671(XXV); UNGA Res 3151 (XXVIII) (14 December 1973) UN Doc A/RES/3151(XXVIII).

35 RP 1 I, 121f; RP 3 I, 218.

36 RP 3 I, 220.

37 RP 3 I, 220f.

38 UNGA Res 54/183 (17 December 1999) UN Doc A/RES/54/183; UNGA Res 63/3 (8 October 2008) UN Doc A/RES/63/3.

39 With the pro-democracy protests that have engulfed much of North Africa and the Middle East, the world is currently facing an important shift in global history. However, the GA has only taken two resolutions regarding this topic so far, see UNGA Res 66/176 (19 December 2011) UN Doc A/RES/66/176, and UNGA Res 66/253 (16 February 2012) UN Doc A/RES/66/253, both on the situation of human rights in the Syrian Arab Republic. The SC has not enacted a corresponding resolution against Syria because of Russia's and China's vetoes of 4 February 2012, see Vashakmadze on Responsibility to Protect MN 47f.

40 UNSC Res 181 (7 August 1963) UN Doc S/RES/181, on the situation in South Africa; (1963) UNYB 20. Further see eg UNSC Res 794 (3 December 1992) UN Doc S/RES/794, on the situation in Somalia, and recently UNSC Res 1973 (17 March 2011) UN Doc S/RES 1973, on the situation in Libya.

41 UNSC Res 232 (16 December 1966) UN Doc S/RES/232; (1966) UNJYB 94, 109f.

42 See Oeter on Self-Determination MN 23ff.; Delbrück (n 25) 89; E de Wet and M Wood, 'Collective Security' MPEPIL (online edn) MN 1f. The most recent developments regarding Kosovo and Palestine are analysed by R Falk, 'The Kosovo Advisory Opinion: Conflict Resolution and Precedent' (2011) 105 AJIL 50, 56–60.

43 ICISS, *The Responsibility to Protect* (Report, December 2001) vii and xi, available at <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>> accessed 8 June 2012.

44 UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1, paras 138, 139.

45 As to this topic cf C Verlage, *Responsibility to Protect* (Mohr Siebeck Verlag 2009) 185f.

46 UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1 para 139; ICISS Report (n 43).

47 For a summary of critical remarks on 'R2P' see C Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' (2006) 101 AJIL 99, 102f; M Matthews, 'Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur' (2008) 31 BC Intl & Comp L Rev 137, 146f.

48 See Report of High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (2004) UN Doc A/59/565, paras 201ff and Report of the Secretary-General (Annan), *In Larger Freedom: Towards Development, Security and Human Rights for All* (2005) UN Doc A/59/2005 para 135. Secretary-General Ban Ki-moon further contributes to the acceptance of 'R2P' in a recent Report on 'Implementing the responsibility to protect' (2009) UN Doc A/63/677.

49 UNSC Res 1674 (28 April 2006) UN Doc S/RES/1674 para 4; UNSC Res 1706 (31 August 2006) UN Doc S/RES/1706; UNSC Res 1755 (30 April 2007) UN Doc S/RES/1755; UNSC Res 1857 (22 December 2008) UN Doc S/RES/1857; UNSC Res 1894 (11 November 2009) UN Doc S/RES/1894. See also de Wet and Wood (n 42) MN 16. With regard to Libya, the SC does not mention the concept of 'R2P' explicitly but it does, in substance, make reference to the prerequisites of this concept in order to authorize member States to take all necessary measures to protect civilians under threat of attack in the Libyan Arab Jamahiriya, see UNSC Res 1970 (26 February 2011) UN Doc S/Res/1970 and UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973 (in particular paras 3–4). On the contrary, Russia and China have recently (4 February 2012) vetoed a Draft SC Resolution on Syria, which was proposed by Western States backing up an Arab League plan to stop gross human rights violations in Syria, see MN 13 with n 39.

50 UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1 paras 138, 139; UNGA Res 63/308 (14 September 2009) UN Doc A/RES/63/308.

51 This is the nearly unanimous view of the legal doctrine, see A Bellamy, 'The Responsibility to Protect—Five

Years On' (2010) 24 Ethics & International Affairs 143, 160f; E Luck, 'Der verantwortliche Souverän und die Schutzverantwortung' (2008) 1 VN 2008, 51f; Stahn (n 47), 110f; I Winkelmann, 'Responsibility to Protect' *ICL-71* MPEPIL (online edn) MN 22; T Stoll, 'Responsibility, Sovereignty and Cooperation—Reflections on the "Responsibility to Protect"' in D König and others (eds), *International Law Today: New Challenges and the Need for Reform?* (Springer 2008) 1, 15; Vashakmadze on Responsibility to Protect MN 65–68. For different approaches cf Verlage (n 45) 226f, 262f.

⁵² RP 3 I, 217.

⁵³ RP 2 II, 16ff.

⁵⁴ *Certain Expenses of the United Nations* (Advisory Opinion) [1962] ICJ Rep 151, 168.

⁵⁵ cf FA Vallat, 'The General Assembly and the Security Council of the United Nations' (1952) 29 BYIL 63, 67. Similarly O Dörr, 'Certain Expenses of the United Nations (Advisory Opinion)' MPEPIL (online edn) MN 13–14.

⁵⁶ Kelsen, 198; Dicke and Rengeling (n 21) 100; see also Art. 7 (2).

⁵⁷ GHS, 130; Bentwich and Martin (n 9) 39. See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [22 July 2010] para 40, <<http://www.icj-cij.org/docket/files/141/15987.pdf>> accessed 8 June 2012.

⁵⁸ UN Legal Counsel, (1964) UNJYB 229, 237.

⁵⁹ cf *Status of South-West Africa* [1950] ICJ Rep 137.

⁶⁰ M Schaefer, *Die Funktionsfähigkeit des Sicherheitsmechanismus der Vereinten Nationen* (Springer 1981) 41; Kelsen, 217; Dicke and Rengeling (n 21) 121; B Nolte, 'Uniting for Peace' in R Wolfrum and C Philipp (eds), *United Nations: Law, Policies and Practice*, vol 2 (CH Beck 1995) 1341, 1345.

⁶¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, 148, paras 26f. See also M Cowling, 'The relationship between the Security Council and the General Assembly with particular reference to the ICJ Advisory Opinion in the "Israeli Wall" case' (2005) 30 SAYIL 50, 68f. Further see Klein and Schmahl on Art. 12 MN 23.

⁶² Goodrich and Hambro (2nd edn 1949) (n 8) 171; Dicke and Rengeling (n 21) 119.

⁶³ cf RP I, 309f; Schaefer, *Funktionsfähigkeit* (n 60) 42.

⁶⁴ GAOR 5th Session Supp No 20, 10.

⁶⁵ RP I, 310; Vallat (n 55) 94.

⁶⁶ UNCIO III, 4f MN 4; Bentwich and Martin (n 9) 35; F Morley, *The Charter of the United Nations* (American Enterprise Association 1946) 14; Vallat (n 1) 323.

⁶⁷ UNCIO III, 278f; cf also the proposals by Brazil, Chile, and Greece, UNCIO III, 238, 285, 532; GHS, 111.

⁶⁸ UNCIO III, 258, 456; cf also GHS, 115.

⁶⁹ cf also the proposal of Australia in Decision II/2 of the GA of 20 June 1945, UNCIO IX, 230.

⁷⁰ CPF/Cassan, 674; GHS, 124f; Schaefer, *Funktionsfähigkeit* (n 60) 44; Vallat (n 1) 324.

⁷¹ Thus stated in Goodrich and Hambro (2nd edn, 1949) (n 8) 169f, but later given up in GHS, 126f.

⁷² Bentwich and Martin (n 9) 40.

⁷³ *Certain Expenses* [1962] ICJ Rep 151, 164–65; RP 3 I, 251; cf CPF/Cassan, 672; Kelsen, 964; Schaefer, *Funktionsfähigkeit* (n 60) 44; Vallat (n 55) 98.

⁷⁴ RP I, 318; CPF/Cassan, 673f; G Zieger, *Die Vereinten Nationen* (Niedersächsische Landeszentrale für Politische Bildung 1976) 89; Dahm (n 10) 196, 401; also J Andrassy, 'Uniting for Peace' (1956) 50 AJIL 563–82, 567f.

⁷⁵ Kelsen, 205; also Dahm (n 10) 401; on the lack of a binding effect, see M Benzing, 'International Organizations or Institutions, Secondary Law' MPEPIL (online edn) MN 17.

⁷⁶ UNGA Res 1761 (XVII) (6 November 1962) UN Doc A/RES/1761(XVII); RP I, 240.

⁷⁷ cf M Herdegen, 'Interpretation in International Law' MPEPIL (online edn) MN 20 and MN 40f. RUL-71

⁷⁸ *Certain Expenses of the United Nations* (Advisory Opinion) [1962] ICJ Rep 151, 163; RP I, 306. See also Dörr (n 55) MN 15f.

⁷⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, 148, para 26.

⁸⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [22 July 2010] para 40, <<http://www.icj-cij.org/docket/files/141/15987.pdf>> accessed 8 June 2012.

⁸¹ Schaefer, *Funktionsfähigkeit* (n 60) 51; Dicke and Rengeling (n 21) 116. Tomuschat argues that the assumption of a secondary responsibility is not entirely unproblematic as it sets the GA in a position to control the actions taken by the SC, cf C Tomuschat, 'Uniting for Peace—Ein Rückblick nach 50 Jahren' (2001) 76 *Friedenswarte* 289, 294.

⁸² RP I, 317ff; RP 2 II, 45; lastly: RP 10 II, Art. 10, para 23. Further see UNGA Res 59/313 (12 September 2005) UN Doc A/RES/59/313 para 1(b).

⁸³ RP I, 322ff.

⁸⁴ See also N Schrijver, 'The Future of the Charter of the United Nations' (2006) 10 *Max Planck YB UN L* 2, 15.

⁸⁵ For different opinions on using Res 377 (V) in the Kosovo crisis, see on the one hand: A Pellet, 'Brief Remarks on the Unilateral Use of Force' (2000) 11 *EJIL* 385, 390 (affirmatively), and on the other: V Gowlland-Debbas, 'The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance' (2000) 11 *EJIL* 361, 374 (negatively).

⁸⁶ J Krasno and M Das, 'The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council' in B Cronin and others (eds), *The UN Security Council and the Politics of International Authority* (Routledge 2008) 173, 187f; Tomuschat (n 81) 289; C Binder, 'Uniting for Peace Resolution (1950)' MPEPIL (online edn) MN 34.

⁸⁷ ICISS Report (n 43) paras 6.30 and 6.31.

⁸⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, 150, paras 30f; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [22 July 2010] para 42, 2010 <<http://www.icj-cij.org/docket/files/141/15987.pdf>> accessed 8 June 2012.

⁸⁹ See Report, *Implementing the responsibility to protect* (n 48) para 63.

⁹⁰ Tomuschat (n 25) 232. As to the practice subsequent to the resolution see the comprehensive list by Binder (n 86) MN 9.

⁹¹ Peterson (n 5) 107; D Zaum, 'The Security Council, the General Assembly and War: The Uniting for Peace Resolution' in V Lowe and others (eds), *The UN Security Council and War* (OUP 2008) 154, 166.

⁹² UNGA Res 997 (ES-I) (2 November 1956) UN Doc A/RES/997(ES-I); 998 (ES-I) (4 November 1956) UN Doc A/RES/998(ES-I) and 1001 (ES-I) (7 November 1956) UN Doc A/RES/1001(ES-I); RP 2 II, 36, 92, 98.

⁹³ UNGA Res ES-10/2 (25 April 1997) UN Doc A/RES/ES-10/2; see also RP 9 II, 7ff; RP 10 II, Art. 11, paras 19f.

⁹⁴ Instead of opening a new session concerning current issues in the Middle East, the emergency special session was merely reopened under Res 377 (V) A. Lastly, the session was resumed in January 2009 in order to consider the current crisis in the Gaza strip; see UNGA Res ES-10/18, (16 January 2009) UN Doc A/RES/ES-10/18. As to the lawfulness of this practice of adjournment, reopening, and extending special emergency sessions cf A Zimmermann, 'Uniting-for-Peace und Gutachtenfragen der Generalversammlung' in K Dicke and others (eds), *Weltinnenrecht, Liber amicorum Jost Delbrück* (Duncker & Humblot 2005) 909, 912f.

⁹⁵ Krasno and Das (n 86) 186.

⁹⁶ UNGA Res ES-10/14, (8 December 2003) UN Doc A/RES/ES-10/14; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (Advisory Opinion) [2004] ICJ Rep 136, 148f. Further see Klein and Schmahl on Art. 12 MN 21. RUL-71

⁹⁷ cf eg RP 3 I, 214f; RP 4 I, 115f; and lastly RP 10 II, Art. 10, paras 6f.

⁹⁸ A Verdross and B Simma, *Universelles Völkerrecht* (3rd edn, Duncker & Humblot 1984) 93f.

⁹⁹ K Heidenstecker, 'Zur Rechtsverbindlichkeit von Willensakten der Generalversammlung' (1979) 27 VN 205–10.

¹⁰⁰ cf H Miehsler, 'Zur Autorität von Beschlüssen internationaler Institutionen' in C Schreuer (ed), *Autorität und Internationale Ordnung* (Duncker & Humblot 1979) 35, 50f.

¹⁰¹ Verdross and Simma (n 98) 407; TO Elias, *The International Court of Justice and Some Contemporary Problems* (Nijhoff 1983) 214.

¹⁰² For an in-depth analysis of this declaration see M Barelli, 'The Role of Soft Law in the International Legal System: the Case of the United Nations Declaration on the Rights of Indigenous Peoples' (2009) 58 ICLQ 957, 966f.

¹⁰³ E Klein and S Schmahl, 'Die Internationalen und die Supranationalen Organisationen' in W Graf Vitzthum (ed), *Völkerrecht* (5th edn, de Gruyter 2010) 263, 327. For a detailed analysis see DM Öberg, 'The Legal Effects of Resolutions of the UN Security Council and the General Assembly in the Jurisprudence of the ICJ' (2005) 16 EJIL 879, 883f.

¹⁰⁴ Elias (n 101) 214f; for further references, see Verdross and Simma (n 98) 405f.

¹⁰⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Rep 14.

¹⁰⁶ See GAOR 20th Session, 6th Committee, 1492nd meeting (5 November 1974). See K Skubiszewski, 'Resolutions of the U.N. General Assembly and Evidence of Custom' in *International Law at the Time of its Codification. Essays in Honour of Roberto Ago* (Giuffrè 1987) 503, 508f for a summary of relevant declarations voiced by governments.

¹⁰⁷ *Military and Paramilitary Activities in and against Nicaragua*, Judgment (Merits) [1986] ICJ Rep 97f.

¹⁰⁸ See B Simma, 'Die Erzeugung ungeschriebenen Völkerrechts' in *Festschrift für Karl Zemanek zum 65. Geburtstag* (Duncker & Humblot 1994) 95, 101.

¹⁰⁹ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 254, para 70.

¹¹⁰ C Tomuschat, 'Die Rechtsverbindlichkeit von Beschlüssen der Vereinten Nationen' (1975) 55 Wirtschaftsdienst 511.

¹¹¹ UNCIO III, 536; IX, 70.

¹¹² *South West Africa (Ethiopia v South Africa; Liberia v South Africa)* (1960–1966), Second Phase (Judgment) [1966] ICJ Rep 50; similarly *Continued Presence of South Africa in Namibia* [1971] ICJ Rep 280.

¹¹³ OY Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (Nijhoff 1966) 35; in agreement Castañeda, *Effects of United Nations Resolutions* (Columbia UP 1969), 123, according to whom an interpretation contained in a resolution is binding upon the member States if the resolution was adopted unanimously; likewise M Sahoviæ, 'Codification des principes de droit international des relations amicales' (1972-III) 137 Rec des Cours 243, 253; for a different opinion, see U Scheuner, 'Zur Auslegung der Charta durch die Generalversammlung' (1978) VN 112.

¹¹⁴ UNCIO III, 339.

¹¹⁵ *Certain Expenses* [1962] ICJ Rep 151, 168.

¹¹⁶ R Lagoni, 'Resolution, Erklärung, Beschluß' in R Wolfrum (ed), *Handbuch Vereinte Nationen* (2nd edn, CH Beck 1991) 699.

¹¹⁷ For a survey see R Mullerson, 'Final Report of the Committee on Formation of Customary General

International Law' (International Law Association, London Conference 2000) 54f; K Skubiszewski, 'Report to the Institute of International Law' in Institute of International Law, *Yearbook 61-I* (1985) 29ff; *Yearbook 61-II* (1987) 65ff. For an overview of different approaches to the legal nature of resolutions see B Sloan, *United Nations General Assembly Resolutions in Our Changing World* (Transnational Publ 1991) 54f.

¹¹⁸ Mullerson (n 117) 55.

¹¹⁹ B Simma, 'Zur völkerrechtlichen Bedeutung von Resolutionen der UN-Generalversammlung' in R Bernhardt, J Delbrück, and others (eds), *Fünftes deutsch-polnisches Juristen-Kolloquium*, vol 2 (Nomos 1981) 45, 50f; Benzing (n 75) MN 30f; Lagoni (n 116) 699; JA Barberis, 'Les résolutions des organisations internationales en tant que source du droit des gens' in *Festschrift für Rudolf Bernhardt* (Springer-Verlag 1995) 21, 22f; Skubiszewski (n 106) 503, passim; C Economidès, 'Les actes institutionnels internationaux et les sources du droit international' (1988) 34 AFDI 131f.

¹²⁰ Economidès (n 119) 131, 140.

¹²¹ Thus Asamoah (n 113) 70.

¹²² C Tomuschat, *Die Rechtsverbindlichkeit* (n 110) 512; P Sands and P Klein, *Bowett's Law of International Institutions* (6th edn, Sweet & Maxwell 2009) 28.

¹²³ Vallat (n 1) 328.

¹²⁴ See E Klein, 'Die Vereinten Nationen und die Entwicklung des Völkerrechts' in H Volger (ed), *Grundlagen und Strukturen der Vereinten Nationen* (Oldenbourg 2007) 21, 41ff.

¹²⁵ Barberis (n 119) 21, 39.

¹²⁶ Sands and Klein (n 122) 28.

¹²⁷ See eg UNGA Res 2750C (XXV) (1973) UN Doc A/RES/2750C(XXV) convening the third comprehensive conference on the law of the sea.

¹²⁸ UNGA Res 45/212 (21 December 1990) UN Doc A/RES/45/212.

¹²⁹ This term has been introduced by Miehsler (n 100) 35, 42.

¹³⁰ Simma (n 108) 108, 95, 99.

¹³¹ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* (Judgment) [1969] ICJ Rep 44.

¹³² cf Simma (n 108) 95, 102f referring to K Zemanek, 'What is State Practice and Who Makes It?' in U Beyerlin and others (eds), *Recht zwischen Umbruch und Bewährung—Festschrift für Rudolf Bernhardt* (Springer 1995) 289ff.

¹³³ But see Asamoah (n 113), who expresses the opinion that resolutions are constitutive of State practice, 46, 54, 57.

¹³⁴ Simma (n 108) 95, 103.

¹³⁵ *North Sea Continental Shelf* [1969] ICJ Rep 43.

¹³⁶ B Cheng, 'United Nations Resolutions on Outer Space: "Instant" International Customary Law?' (1965) 5 IJIL 23, 37; concurring R Bernhardt, 'Ungeschriebenes Völkerrecht' (1976) 36 ZaöRV 50, 73.

¹³⁷ Zieger (n 74) 128; Sloan (n 117) 69.

¹³⁸ For an analysis on how the ICJ deduced international *opinio iuris* from several UNGA resolutions see Öberg (n 103) 900f.

¹³⁹ *Nicaragua* [1986] ICJ Rep 99f.

¹⁴⁰ *ibid*, 103, 345, regarding the description of the term 'armed attack' in Art. 3, para (g) of the 'Definition of Aggression', annexed to UNGA Res 3314 (14 December 1974) UN Doc A/RES/3314. See also, as to several provisions of the so-called 'Friendly-Relations-Declaration', the *Case Concerning Armed Activities on the Territory of the Congo* [2005] ICJ Rep 168, 226f, para 162.

¹⁴¹ cf (1984) 44 ZaöRV 507ff.

¹⁴² See Skubiszewski (n 106) 503, 512ff.

¹⁴³ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 254. RUL-71

¹⁴⁴ *ibid*, 57.

¹⁴⁵ *ibid*, 57; Castañeda (n 113) 192; Skubiszewski (n 117) 109.

¹⁴⁶ cf Asamoah (n 113) 61f.

¹⁴⁷ Heidenstecker (n 99) 208.

¹⁴⁸ Simma (n 119) 59 (authors' translation); cf C Tomuschat, 'Die Charta der wirtschaftlichen Rechte und Pflichten der Staaten—zur Gestaltungskraft von Deklarationen der UN-Generalversammlung' (1976) 36 ZaöRV 444, 485; on the meaning of 'consensus' in resolutions of the Geneva Conferences on the Law of the Sea of 1958 and 1960, see the judgments of the ICJ in the *Icelandic Fisheries Cases* (Judgment) [1974] ICJ Rep 23, 192.

¹⁴⁹ Simma (n 119) 59 (authors' translation); similarly R Wolfrum and J Pichon, 'Consensus' MPEPIL (online edn) MN 23. See Sohn (n 3) 556 for the opposite view.

¹⁵⁰ Simma (n 119) 61.

¹⁵¹ Cheng (n 136) 23; cf International Law Association, Final Report, *ibid* 60.

¹⁵² *South-West Africa: Voting Procedure* [1955] ICJ Rep 90, 92.

¹⁵³ *Legality of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 254f.

¹⁵⁴ See Judges Klaested and Lauterbach in *South-West Africa: Voting Procedure* [1955] ICJ Rep 88, 118ff.

¹⁵⁵ MF Ellis, 'The New International Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited' (1985) 15 Calif W Intl LJ 692ff.

¹⁵⁶ Tomuschat, *Die Charta* (n 148) 444, 483.

¹⁵⁷ Simma (n 108) 95, 109ff.

¹⁵⁸ Skubiszewski (n 106) 503, 507.

¹⁵⁹ Tomuschat, *Die Charta* (n 148) 444, 480.

¹⁶⁰ *South-West Africa: Voting Procedure* [1955] ICJ Rep 118, 122.

¹⁶¹ *Namibia* [1971] ICJ Rep 31; *Western Sahara* [1975] ICJ Rep 32.

¹⁶² *Nicaragua* [1986] ICJ Rep 101, 106f.

¹⁶³ *ibid*, 336ff.

¹⁶⁴ C Tomuschat, 'Die Krise der Vereinten Nationen' (1987) 42 EA 100; on the role of this group of States as 'masters of the proceedings' in the GA, see Tomuschat, *Die Charta* (n 148) 444, 488.

¹⁶⁵ But see JA Frowein, 'Die Krise der Vereinten Nationen' (1987) 42 EA 70f; I Brownlie, *Principles of Public International Law* (7th edn, OUP 2008) 691f.

¹⁶⁶ *Certain Expenses* [1962] ICJ Rep 151.

¹⁶⁷ *Namibia* [1971] ICJ Rep 22.

¹⁶⁸ See Luard (n 3) 58ff; S Marchisio, 'Le rôle de l'Assemblée générale dans le maintien de la paix et de la sécurité internationale' in SFDI (ed), *Les métamorphoses de la sécurité collective* (2005) 106ff.

¹⁶⁹ See eg UNGA Res 55/285 (7 September 2001) UN Doc A/RES/55/285; UNGA Res 59/313 (12 September 2005) UN Doc A/RES/59/313; UNGA Res 60/286 (8 September 2006) UN Doc A/RES/60/286; UNGA Res 61/292 (2 August 2007) UN Doc A/RES/61/292; UNGA Res 62/276 (15 September 2008) UN Doc A/RES/62/276; UNGA Res 63/309 (14 September 2009) UN Doc A/RES/63/309; UNGA Res 64/301 (13 September 2010) UN Doc A/RES/64/301; and most recently UNGA Res 65/315 (12 September 2011) UN Doc A/RES/65/315. Further cf RP 10 II, Art. 10, para 17. See also GS Report: *In Larger Freedom* (n 48) paras 158–164.

¹⁷⁰ As to the last results gained by the Working Group see UN Doc A/64/903, and UNGA Res 64/301 (13 September 2010) UN Doc A/RES/64/301 as well as UNGA Res 65/315 (12 September 2011) UN Doc A/RES/65/315. RUL-71

¹⁷¹ UNGA Res 56/509 (8 July 2002) UN Doc A/RES/56/509. See also R Wesel, 'General Assembly' in H Volger (ed), *A Concise Encyclopedia of the United Nations* (2nd edn, Nijhoff 2010) 189, 196f.

¹⁷² H Volger, *Die Vereinten Nationen* (Oldenbourg 1994) 189ff.

¹⁷³ See MN 37.

¹⁷⁴ UNSC Res 181 (7 August 1963) UN Doc S/RES/181; UNSC Res 282 (23 July 1970) UN Doc S/RES/282; and particularly the unanimously adopted UNSC Res 418 (4 November 1977) UN Doc S/RES/418, which set down compulsory measures according to Chapter VII, namely an arms embargo against South Africa.

¹⁷⁵ Marchisio (n 168) 104.