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**Part IV**

**Relations with other United Nations organs**

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## **Introductory note**

Part IV, as in previous volumes, deals with relations of the Security Council with the other principal organs of the United Nations: the General Assembly (section I); the Economic and Social Council (section II); and the International Court of Justice (section III). During the period under review, no material relating to the Trusteeship Council required treatment. This Part does not include any material dealing with relations of the Security Council with the Secretariat, which had been placed here in previous Supplements. The relevant material is featured in Part VI of the present Supplement under the functions of the Secretary-General as stipulated under Articles 98 and 99 of the Charter.

## **Section I**

### **Relations with the General Assembly**

#### **Note**

Section I concerns various aspects of the relationship between the Security Council and the General Assembly.

Sub-section A deals with the election by the General Assembly of non-permanent members of the Council. Sub-section B considers the practice of the General Assembly in making recommendations to the Council under Articles 10 and 11 of the Charter, and calling its attention under Article 11 (3) to situations which are likely to endanger international peace and security. Sub-section C concerns the limitation imposed by Article 12 (1) on the authority of the General Assembly to make recommendations with respect to any dispute or situation while the Council is exercising the functions assigned to it by the Charter in respect of that dispute or situation. It also describes the procedure under Article 12 (2) by which the Secretary-General notifies the Assembly of matters relating to the maintenance of international peace and security which are being dealt with by the Council, and when the Council ceases to deal with such matters. Sub-section D considers those instances in which a decision by the Council must be taken prior to that of the General Assembly, for example, the admission, suspension, or expulsion of members, the appointment of the Secretary-General, and the election of the judges of the International Tribunals for the former Yugoslavia and Rwanda, respectively. Sub-section E describes the annual and special reports submitted by the Council to the General Assembly. Sub-section F concerns relations between the Council and certain subsidiary organs established by the General Assembly which have reported to or otherwise played a part in the work of the Council.

During the period under review, the President of the General Assembly participated in one meeting of the Security Council held in connection with Women and peace and security.<sup>1</sup>

The President of the Security Council participated in two meetings of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, a subsidiary organ of the General Assembly. Likewise, the Chairman of the Committee participated in several meetings of the Security Council. (case 5).

As regards to the Offices mandated by the General Assembly, notably, the Office of the Special Advisor on Myanmar<sup>2</sup> and Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO),<sup>3</sup> the Security Council received regular briefings on their activities. On two occasions, the Security Council was briefed by the Secretary-General and his Special Advisor on Myanmar<sup>4</sup> in the implementation of the good offices role entrusted to him by the General Assembly. On several occasions, the Special Coordinator for the Middle East Peace Process briefed the Security Council on the developments in the region, including the political negotiations between the Israeli and Palestinian governments and the situation in the West Bank, Gaza and southern Israel.<sup>5</sup>

## **A. Election by the General Assembly of non-permanent members of the Security Council**

### *Article 23*

*1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be*

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<sup>1</sup> See, S/PV.5916.

<sup>2</sup> The General Assembly had requested the Secretary-General to continue his discussions with the Government of Myanmar in order to assist in its efforts to achieve national reconciliation (A/RES/49/197) and reaffirmed its support for the good offices of the Secretary-General pursued through his Special Adviser on Myanmar (A/RES/64/238).

<sup>3</sup> The General Assembly had considered that an active United Nations role in the Middle East peace process and in assisting in the implementation of the Declaration of Principles could make a positive contribution (A/RES/48/58).

<sup>4</sup> See, S/PV.5854 and S/PV.6161.

<sup>5</sup> See, S/PV.5846, S/PV.5899, S/PV.5974, S/PV.6049, S/PV.6084, S/PV.6150, S/PV.6190 and S/PV.6248.

*permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.*

2. *The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.*

3. *Each member of the Security Council shall have one representative.*

### Note

During the period under review, in accordance with Article 23 of the Charter, the General Assembly, at each regular session, elected five non-permanent members of the Security Council to replace those members whose terms of office were to expire on 31 December of the respective year. At the sixty-third and sixty-fourth sessions, the Assembly elected five non-permanent members in the course of one plenary meeting. A table of the elections is set out below.

| <i>General Assembly session/decision no.</i> | <i>Plenary meeting and date of election</i> | <i>Members elected to two-year terms beginning January of the following year</i> |
|--|---|--|
| 63/403                                       | 28 <sup>th</sup> meeting<br>17 October 2008 | Austria<br>Japan<br>Mexico<br>Turkey<br>Uganda                                   |
| 64/402                                       | 20 <sup>th</sup> meeting<br>15 October 2009 | Bosnia and Herzegovina<br>Brazil<br>Gabon<br>Lebanon<br>Nigeria                  |

## **B. Recommendations by the General Assembly to the Security Council in the form of resolutions under Articles 10 and 11 of the Charter**

### *Article 10*

*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.*

### *Article 11*

- 1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.*
- 2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.*
- 3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.*
- 4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.*

### **Note**

During the period under review, the General Assembly made a number of recommendations - in the form of resolutions - to the Security Council regarding the maintenance of international peace and security. Several of these recommendations were of a general nature, touching upon the “powers and functions” of the Council under the Charter, and/or upon “the general principles of co-operation in the maintenance of



international peace and security”. As such, they may be seen to be illustrative of the recommendation-making powers of the General Assembly under Articles 10 and 11 (1) of the Charter, respectively. A table of those recommendations is set out below.

The General Assembly did not make recommendations to the Security Council with regard to specific questions relating to the maintenance of international peace and security, nor request action from the Council with regard to such questions, in accordance with Article 11 (2) of the Charter.

The General Assembly also did not draw the attention of the Security Council to any situations under Article 11 (3).

**Recommendations on matters relating to the Council’s power and functions, or with regard to the general principles of cooperation in the maintenance of international peace and security**

| <i>General Assembly resolution</i> | <i>Title of agenda item</i>   | <i>Recommendation</i>   |
|------------------------------------|---|---|
| 62/275<br>11 September 2008        | Implementation of the recommendations contained in the report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa | Welcomes efforts to enhance practical cooperation, within the framework of an effective partnership, between the United Nations and the African Union in the realm of conflict prevention and resolution, crisis management, peacemaking, peacekeeping and post-conflict peacebuilding in Africa, and in this context urges the United Nations system and the international community to increase, coordinate and sustain their efforts aimed at assisting African countries in addressing the full range of causes of conflict in Africa. ( <i>para. 5</i> )<br><br>Calls upon the United Nations system and Member States to support the African Union in its effort to effectively integrate training in international humanitarian law and international human rights law, with particular emphasis on the rights of women and children, in the training of civilian and military personnel of national standby contingents at both the operational and |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i> | <i>Recommendation</i>   |
|--|-----------------------------|---|
|  |                             | tactical levels, as set out in article 13 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union. ( <i>para. 14</i> )   |
|  |                             | Takes note of the conclusions of the expert group meeting on “Youth in Africa: participation of youth as partners in peace and development in post-conflict countries”, held in Namibia on 29 November 2006, and calls upon the United Nations system and Member States to adopt strategies to include youth as central stakeholders and key actors in the rehabilitation, reconciliation and rebuilding of war-torn communities and in contributing to sustainable development in their countries. ( <i>para. 18</i> )   |
|  |                             | Calls upon the United Nations system and invites Member States to assist African countries emerging from conflict in their efforts to build national capacities of governance, including the rehabilitation of the security sector, disarmament, demobilization and the reintegration of ex-combatants, provision for the safe return of internally displaced persons and refugees, the launch of income-generation activities, particularly for youth and women, and the delivery of basic public services. ( <i>para. 24</i> )  |
|  |                             | Stresses the importance of effectively addressing challenges that continue to hamper the achievement of peace, stability and sustainable development on the continent, inter alia, the increased prevalence of infectious disease such as HIV/AIDS, the effects of global warming and climate change, the extremely high rates of youth unemployment, human trafficking, massive displacements of people, the illegal exploitation of natural resources, the illicit trade in small arms and light weapons, the emergence of terrorist networks and the increased activity of transnational organized crime, and in this regard encourages the United Nations system and Member States to assist African countries to effectively address these |

| <i>General Assembly resolution</i> | <i>Title of agenda item</i>  | <i>Recommendation</i>   |
|------------------------------------|--|---|
| 63/114<br>5 December 2008          | Cooperation between the United Nations and the Organization of the Islamic Conference  | challenges. ( <i>para. 25</i> )<br><br>Requests the United Nations and the Organization of the Islamic Conference to continue to cooperate in their common search for solutions to global problems, such as questions relating to international peace and security, disarmament, self-determination, promotion of a culture of peace through dialogue and cooperation, decolonization, human rights and fundamental freedoms, terrorism, capacity-building, health-related issues such as combating pandemic and endemic diseases, emergency relief and rehabilitation and technical cooperation. ( <i>para. 5</i> )  |
| 63/159<br>18 December 2008         | Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly | Urges Governments and the United Nations system to take further steps to ensure the integration of a gender perspective and the full and equal participation of women in all efforts to promote peace and security, including in peace negotiations, peacekeeping, peacebuilding and post-conflict situations, as well as to increase their role in decision-making at all levels, including through the development of national action plans and strategies. ( <i>para. 24</i> )   |
| 63/185<br>18 December 2008         | Protection of human rights and fundamental freedoms while countering terrorism   | Recognizes the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance their efficiency and transparency, and welcomes and encourages the Security Council's continued enhancement of efforts in support of these objectives, while emphasizing the importance of these sanctions in countering terrorism. ( <i>para. 19</i> )<br><br>Welcomes the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i>   | <i>Recommendation</i>  |
|--|---|--|
| 63/304<br>23 July 2009                 | Implementation of the recommendations contained in the report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa | <p>Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Human Rights Council, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism. (<i>para. 22</i>)</p> <p>Calls upon the United Nations system and Member States to support the peace consolidation mechanisms and processes, including the Panel of the Wise, the African Union Post-Conflict Reconstruction and Development Framework and the early warning system, as well as the operationalization of the African Standby Force. (<i>para. 4</i>)</p> <p>Calls upon the United Nations system and Member States to support the African Union in its effort to effectively integrate training in international humanitarian law and international human rights law, with particular emphasis on the rights of women and children, in the training of civilian and military personnel of national standby contingents at both the operational and tactical levels, as set out in article 13 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union. (<i>para. 8</i>)</p> <p>Welcomes the ongoing efforts of the African Union to ensure the protection of the rights of women in conflict and post-conflict situations, recalls in this regard the adoption and entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), the Solemn Declaration on Gender Equality in Africa (2004) and the African Union Gender Policy (2009), as well as the Southern African Development Community Protocol on Gender and Development (2008), stresses the significance of those instruments for all countries in Africa in strengthening the role</p> |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i> | <i>Recommendation</i>   |
|--|-----------------------------|---|
|  |                             | of women in peace and conflict prevention on the continent, and strongly urges the United Nations and all parties to redouble their efforts and support in this regard. ( <i>para. 15</i> )   |
|  |                             | Takes note of the conclusions of the expert group meeting on “Promoting partnerships in support of African Peer Review Mechanism implementation”, held in Ethiopia in November 2007, and invites the United Nations system and Member States to take those conclusions into account in support of good governance in Africa. ( <i>para. 19</i> )  |
|  |                             | Calls upon the United Nations system and invites Member States to assist African countries emerging from conflict in their efforts to build national capacities of governance, including the rehabilitation of the security sector, the disarmament, demobilization and reintegration of ex-combatants, provision for the safe return of internally displaced persons and refugees, the launch of income-generation activities, particularly for youth and women, and the delivery of basic public services. ( <i>para. 20</i> )  |
|  |                             | Stresses the importance of effectively addressing challenges that continue to hamper the achievement of peace, stability and sustainable development on the continent, inter alia, the food, fuel and financial crises, the increased prevalence of infectious diseases such as HIV/Aids, the effects of global warming and climate change, the extremely high rates of youth unemployment, human trafficking, massive displacements of people, the illegal exploitation of natural resources, the illicit trade in small arms and light weapons, the emergence of terrorist networks and the increased activity of transnational organized crime, including drug trafficking, and in this regard encourages the United Nations |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i>  | <i>Recommendation</i>   |
|--|--|---|
| 63/310<br>14 September 2009            | Cooperation between<br>the United Nations and<br>the African Union | <p>system and Member States to assist African countries in effectively addressing these challenges. (<i>para. 21</i>)</p> <p>Recalls the primary responsibility of the Security Council in the maintenance of international peace and security, and requests the United Nations system to intensify its assistance to the African Union, as appropriate, in strengthening the institutional and operational capacity of its Peace and Security Council, and in coordinating with other international partners when needed. (<i>para. 2</i>)</p> <p>Emphasizes the need to pursue the ongoing measures to improve the effectiveness and efficiency of United Nations and African Union cooperation, recommends the continued improvement of the field presence of the United Nations Secretariat at the headquarters of the African Union, recognizing the need to ensure an appropriate level of representation at the United Nations Liaison Office at Addis Ababa commensurate with the increasing political integration of the African Union, the responsibilities for implementing all aspects of the ten-year capacity-building programme, coordinating the United Nations system in existing and emerging areas of cooperation in peace and security and political and humanitarian affairs, in order to enhance the strategic and operational partnership between the United Nations and the African Union and its subregions. (<i>para. 3</i>)</p> <p>Stresses the urgent need for the United Nations and the African Union to develop close cooperation and concrete programmes aimed at addressing the problems posed by illicit trafficking in small arms and light weapons and anti-personnel mines, within the framework of the relevant declarations and resolutions adopted by the two organizations. (<i>para. 5</i>)</p> |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i>  | <i>Recommendation</i>  |
|--|--|--|
|  |  | <p>Calls upon the United Nations system, the African Union and the international community to intensify their cooperation in the global fight against terrorism through the implementation of the relevant international and regional treaties and protocols and, in particular, the African Plan of Action adopted in Algiers on 14 September 2002, as well as their support for the operation of the African Centre for Studies and Research on Terrorism inaugurated in Algiers in October 2004. (<i>para. 6</i>)</p>                   |
|  |  | <p>Calls upon the United Nations system to intensify its efforts, in collaboration with the African Union, in combating the illegal exploitation of natural resources, particularly in conflict areas, in accordance with relevant resolutions and decisions of the United Nations and the African Union. (<i>para. 7</i>)</p>   |
| 64/168<br>18 December 2009             | Protection of human rights and fundamental freedoms while countering terrorism | <p>Recognizes the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance their efficiency and transparency, and welcomes and encourages the ongoing efforts of the Security Council in support of these objectives, including by continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism. (<i>para. 9</i>)</p>                        |
|  |  | <p>Welcomes the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and</p> |

| <i>General Assembly<br/>resolution</i> | <i>Title of agenda item</i> | <i>Recommendation</i>  |
|--|-----------------------------|--|
|  |                             | protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism. ( <i>para. 13</i> ) |

### **C. Practice in relation to Article 12 of the Charter**

#### *Article 12*

1. *While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.*

2. *The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.*

#### **Note**

During the period under review, there was no discussion in the Security Council of the nature of the limitation placed by Article 12 (1) upon the authority of the General Assembly to make recommendations. Neither did the Council request that the General Assembly make a recommendation in respect to a dispute or situation in accordance with the exception provided for in Article 12 (1). The General Assembly did, however, adopt a resolution at its tenth emergency session under the agenda item “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory” which



followed the earlier adoption of a resolution by the Security Council on the same matter. Thus, in effect, the Security Council and the General Assembly considered and made decisions on the same agenda item (case 1).

In accordance with Article 12 (2), the Secretary-General continued to notify the General Assembly of matters relative to the maintenance of international peace and security which were being dealt with by the Security Council and of matters with which the Council had ceased to deal with.<sup>6</sup> These notifications were based upon the summary statement of matters of which the Security Council was seized and of the stage reached in their consideration, circulated each week to the members of the Security Council in accordance with rule 11 of the Provisional Rules of Procedure of the Council<sup>7</sup> and notes by the President of the Council.<sup>8</sup>

The consent of the Council, required by Article 12 (2), was obtained through the circulation by the Secretary-General to the members of the Council of copies of the draft notifications.<sup>9</sup> The General Assembly formally took note of the various notifications.<sup>10</sup>

### Case 1

#### *Consideration of the application of Article 12 (1) by the General Assembly*

Following the escalation of violence in the Gaza strip, several Member States sent letters to the President of the General Assembly requesting the convening of the emergency session of the General Assembly in accordance with the “Uniting for Peace” resolution 377 (V) of 3 November 1950 to consider the situation and demand the cessation of hostilities in Gaza.<sup>11</sup>

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<sup>6</sup> See Notes by the Secretary-General entitled “Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations”: A/63/300 (22 September 2008) and A/64/300 (3 September 2009).

<sup>7</sup> Rule 11 reads as follows: “The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration”.

<sup>8</sup> S/2007/749 and S/2008/847.

<sup>9</sup> For details, see Part II, Section A on ‘Agenda’ in the present Supplement.

<sup>10</sup> General Assembly Decision 63/514 (see A/63/PV.53, p. 3) and 64/509 (see A/64/PV.43, p. 1).

<sup>11</sup> See letters dated 7 January 2009 from the representative of Malaysia (A/ES-10/434), the Charge d’affaires a.i. of the Bolivarian Republic of Venezuela (A/ES-10/436), and letters dated 8 January 2009

The Security Council at its 6063<sup>rd</sup> meeting on 8 January 2009, adopted resolution 1860 (2009) in connection with the situation in the Middle East, including the Palestinian question. While expressing grave concern at the escalation of violence and the deterioration of the situation, the Council stressed the urgency of and called for an immediate, durable and fully respected ceasefire leading to the full withdrawal of Israeli forces from Gaza.<sup>12</sup>

In a letter dated 14 January 2009 addressed to the President of the General Assembly, the representative of Israel stated that the meeting of the tenth emergency special session of the General Assembly, scheduled for 15 January 2009, represented a violation of the Charter of the United Nations, as the Security Council was actively addressing the situation. He explicitly invoked Article 12 (1) of the Charter, and stated that according to General Assembly resolution 377 (V), emergency special sessions of the General Assembly were designed to act only when the Security Council failed to exercise its primary responsibility for the maintenance of international peace and security, which was not the case. Given that the Security Council remained deeply engaged in the matter, he called for a cancellation of the meeting.<sup>13</sup>

From 15 to 16 January 2009, the tenth emergency special session of the General Assembly was convened to discuss the matter under the agenda item “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory”.<sup>14</sup> At the outset of the meeting, the representative of Israel raised a point of order stating that the convening of the special emergency session violated Article 12 (1) of the United Nations Charter. He stressed that the session was taking place as the Council was actively addressing the situation in southern Israel and the Gaza Strip. The Charter stated that, while the Council was exercising its function, the General Assembly should not

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from the representative of Indonesia (A/ES-10/440), and the Permanent Mission of the Syrian Arab Republic (A/ES-10/441). Under resolution 377 (V), on Uniting for peace, adopted by the General Assembly in 1950, an emergency session shall be convened within 24 hours at the request of the Security Council or a majority of the members of the United Nations. In recent practice, requests have tended to originate from, and supported by, regional blocs.

<sup>12</sup> Resolution 1860 (2009), para. 1.

<sup>13</sup> A/ES-10/439.

<sup>14</sup> The resumed tenth emergency special held its 32nd to 36th meetings.

make any recommendation with regard to a disputed situation.<sup>15</sup> Taking the floor, the Under-Secretary-General for General Assembly and Conference Management stated that this was not a new emergency session. He had sought the advice of the Office of Legal Affairs which noted that the President of the General Assembly was authorized under General Assembly resolution ES-10/17 to resume the meeting of the special session upon request from Member States.<sup>16</sup>

The President of the General Assembly stated there seemed to be a presumption that, if the Security Council had decided to respond to the current crisis in Gaza within the grouping of the Quartet, or other Member States, the Assembly was bound and had to confine itself to supporting and following their lead. He underlined, however, that all Member States shared an individual and collective responsibility, as the United Nations General Assembly, to uphold the Charter and ensure compliance with United Nations resolutions and international law. The President further stated that he convened the meeting at the request of the 118 Member States that made up the Non-Aligned Movement and was fully aware that the Security Council had passed resolution 1860 (2009). However, the resolution failed to bring about either an immediate ceasefire or unimpeded humanitarian access and had been rejected by the two sides, Israel and Hamas. The President suggested that the Assembly should pass a resolution that reflected the situation's urgency and the Assembly's commitment "to end this slaughter". Lastly, he emphasized that he convened the meeting in order to place the power and prestige of the General Assembly in motion toward the demands of an immediate cease-fire and unimpeded humanitarian access.<sup>17</sup>

Speaking on behalf of the Non-Aligned Movement, the representative of Cuba said a resolution should be adopted that effectively contributed to the implementation of resolution 1860 (2009) and efforts to halt Israeli aggression against Palestinians in Gaza. He strongly condemned Israel's massive military aggression and its disregard of

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<sup>15</sup> A/ES-10/PV.32, p. 2 and A/ES-10/PV.33, p. 5.

<sup>16</sup> A/ES-10/PV.32, pp. 2-3.

<sup>17</sup> A/ES-10/PV.32, pp. 3-8.

resolution 1860 (2009) and demanded the implementation of the resolution, including its call for an immediate ceasefire and the withdrawal of the Israeli forces from Gaza.<sup>18</sup>

The representative of France, speaking in his capacity as President of the Security Council, stated that the Security Council remained seized of the issue and called for compliance with Article 12 of the United Nations Charter. He hoped the emergency session would fully support the implementation of resolution 1860 (2009), notably through completion of diplomatic efforts and the French-Egyptian plan.<sup>19</sup>

The representative of the United States stressed that the General Assembly session should not undermine ongoing diplomatic activity. He stated that this was especially so, as the Security Council was addressing the matter as provided for in the United Nations Charter. The session also should not be allowed to devolve into “vituperative criticism” just as every effort was being made to find a mechanism to bring the conflict to a halt.<sup>20</sup>

Most delegates expressed concern at the situation in Gaza and condemned Israel’s massive military aggression. At the same time, many speakers welcomed the Council’s adoption of resolution 1860 (2009),<sup>21</sup> while others opined that the Council was failing to assume its Charter responsibility.<sup>22</sup> Several speakers cited Article 12 of the Charter to emphasize the limitations placed upon the General Assembly on matters relating to the maintenance of international peace and security.

At the end of the session, the General Assembly adopted resolution A/ES-10/18, which was similar in substance to resolution 1860 (2009). The resolution, inter alia, demanded full respect for Security Council resolution 1860 (2009), including its urgent call for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from the Gaza Strip, and called for the unimpeded provision

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<sup>18</sup> Ibid., p. 16.

<sup>19</sup> A/ES-10/PV.33, p.2.

<sup>20</sup> A/ES-10/PV.34, p. 15.

<sup>21</sup> A/ES-10/PV.32, p. 18 (Czech Republic, on behalf of the European Union). A/ES-10/PV.33, p. 3 (Uganda, on behalf of the Organization of the Islamic Conference); p. 8 (Egypt); p. 16 (Bahrain). A/ES-10/PV.34, p. 26 (Maldives). A/ES-10/PV.35, p. 6 (Republic of Korea); p. 13 (Slovenia); p.14 (Ireland); p. 19 (Sweden). A/ES-10/PV.35 and p. 2 (United Kingdom).

<sup>22</sup> A/ES-10/PV.33, pp.17-19 (Syrian Arab Republic). A/ES-10/PV.34, p. 11 (Nicaragua), p. 21 (Pakistan). A/ES-10/PV.35 and p. 7 (Panama).

and distribution throughout the Gaza Strip of humanitarian assistance, including food, fuel and medical treatment.<sup>23</sup>

#### **D. Practice in relation to provisions of the Charter involving recommendations by the Security Council to the General Assembly**

##### **Note**

On a number of matters, the Charter of the United Nations provides for joint decision-making by the Security Council and the General Assembly, but requires a decision by the Council to be taken first. This is the case, for instance, with respect to the admission, suspension, or expulsion of members (Articles 4, 5 and 6), the appointment of the Secretary-General (Article 97), and the conditions under which a State that is not a United Nations member may become a party to the Statute of the International Court of Justice (Article 93 (2)).<sup>24</sup> In addition, the Statutes of the Tribunals<sup>25</sup> established for Rwanda and the former Yugoslavia provide for the Security Council to submit a list of candidates to the General Assembly, from which the Assembly would elect the judges of the Tribunals (Article 12 of the International Tribunal for the former Yugoslavia (ICTY); Article 13 of the International Tribunal for Rwanda (ICTR)).<sup>26</sup>

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<sup>23</sup> A/RES/ES-10/18, para.1.

<sup>24</sup> The Statute of the International Court of Justice provides for the Security Council to make recommendations to the General Assembly regarding the conditions under which a State, which is a party to the Statute but is not a Member of the United Nations, may participate in electing members of the Court, and in making amendments to the Statute (Articles 4 (3) and 69 of the Statute).

<sup>25</sup> The official titles of the two Tribunals are as follows: (1) International Criminal Tribunal for the prosecution of persons responsible for genocide and other serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994; and (2) International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991.

<sup>26</sup> The procedure for the election of judges of the two Tribunals is set out in Article 13(2), (3) and (4) of the Statute of the International Tribunal for the former Yugoslavia and Article 12(2), (3), (4) and (5) of the Statute of the International Tribunal for Rwanda. In each case, in accordance with the Statute, the Secretary-General forwards to the President of the Security Council the nominations received. The Security Council then convenes a meeting, in accordance with the understanding reached in its prior consultations, and adopts a resolution establishing the list of candidates for judges. Subsequently, the President of the Security Council formally transmits, via letter, the text of the resolution to the President of the General Assembly. The Assembly then proceeds to elect the judges from the list contained in that resolution.

This section considers briefly the Council's practice during the period under review in relation to the admission of members, the appointment of the Secretary-General, and the election of the judges of ICTY and ICTR. No questions arose concerning the conditions of accession to the Statute of the International Court of Justice.

### ***1. Membership in the United Nations***

The admission of a State to membership in the United Nations, and the suspension or expulsion of a Member State from the Organization, is effected by the General Assembly upon the recommendation of the Security Council (Articles 4 (2), 5 and 6 of the Charter). In accordance with rule 60 of its Provisional Rules of Procedure, the Council submits to the General Assembly, within specified time limits, its recommendations concerning each application for membership together with a record of its discussions of the application.

During the period under review, the Council did not recommend the admission of any State for membership in the United Nations. It made no negative recommendations, which would have required submission of a special report to the General Assembly. The Council did not discuss or recommend the suspension or expulsion of any member.

### ***2. Appointment of the Secretary-General***

#### *Article 97*

*The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.*

#### *Rule 48*

*"...Any recommendation to the General Assembly regarding the appointment of the Secretary-General shall be discussed and decided at a private meeting."*

In accordance with rule 48 of the Provisional Rules of Procedure, the meetings of the Security Council to consider the question of a recommendation to the General Assembly regarding the appointment of the Secretary-General are held in private, and the Council votes by secret ballot. A communiqué circulated at the end of each meeting, in accordance with rule 55, indicates the stage reached in the consideration of the recommendation.

During the period under review, the Council did not consider or make any recommendation of this nature.

### ***3. Election of the judges of the International Tribunal for the former Yugoslavia and of the International Criminal Tribunal for Rwanda***

#### **Note**

During the period covered, there were no elections of judges of the two Tribunals. However, the Secretary-General transmitted to the Council letters from the Presidents of the Tribunals requesting, inter alia, the extension of terms of office of judges currently serving the Tribunals and authorization for the expansion of the maximum number of judges. In each case, the Council adopted resolutions and the General Assembly endorsed them (cases 2 and 3).

#### **Case 2**

##### *International Tribunal for the former Yugoslavia*

In two subsequent letters addressed to the President of Security Council, the Secretary-General transmitted letters from the President of the ICTY requesting, inter alia, the appointment of two ad litem judges to enable the Tribunal to start conducting new trials in furtherance of its completion strategy.<sup>27</sup> In response to the request, the Council adopted resolution 1800 (2008) of 20 February 2008, by which it decided, that

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<sup>27</sup> See, letter dated 22 January 2008 (S/2008/44) and letter dated 8 February 2008 (S/2008/99).

the Secretary-General may appoint, within existing resources, additional ad litem judges upon request of the President of ICTY in order to conduct additional trials.<sup>28</sup>

By a letter dated 24 September 2008 addressed to the President of the General Assembly,<sup>29</sup> the Secretary-General transmitted a letter from the President of ICTY requesting the extension of the term of office of the permanent and ad litem judges elected to serve with the Tribunal in 2005 and whose terms of office would expire on 16 November 2009 and 23 August 2009, respectively. In response to the request, the Council adopted resolution 1837 (2008) of 29 September 2008, by which it decided to extend the terms of four permanent judges at the Tribunal who were members of the Appeals Chamber until 31 December 2010, or until the completion of cases before the Appeals Chamber if sooner. The Council also decided, without prejudice to the provisions of resolution 1800 (2008), to amend Article 12, (1) and (2), of the Statute of the Tribunal regarding the Composition of the Chambers. By a letter dated 29 September 2008 addressed to the President of the General Assembly, the President of the Security Council transmitted the text of resolution 1837 (2008).<sup>30</sup> During the sixty-third session, at the 23<sup>rd</sup> plenary meeting on 9 October 2008, the General Assembly endorsed the recommendations contained in resolution 1837 (2008).<sup>31</sup>

By a letter dated 5 December 2008 addressed to the President of the Security Council, the Secretary-General transmitted a letter from the President of ICTY requesting an extension of the terms of resolution 1800 (2008) so that the Tribunal might be authorized to have more than the statutory maximum of 12 ad litem judges beyond 31 December 2008.<sup>32</sup> In response to the request, the Security Council adopted resolution 1849 (2008) of 12 December 2008, by which it decided that the Secretary-General may appoint, within existing resources, additional ad litem judges upon request of the President of the International Tribunal in order to complete existing trials or conduct additional trials.<sup>33</sup>

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<sup>28</sup> Resolution 1800 (2008), para. 1.

<sup>29</sup> A/63/458-S/2008/621.

<sup>30</sup> A/63/470.

<sup>31</sup> General Assembly Decision 63/402.

<sup>32</sup> S/2008/767.

<sup>33</sup> Resolution 1849 (2008), seventh preambular paragraph.



By a letter dated 19 June 2009 addressed to the President of the Security Council, the Secretary-General transmitted a letter from the President of the International Tribunal requesting, *inter alia*, an expansion of the membership of the Appeals Chamber, an extension of the term of office of ICTY judges and authorization for ICTY to exceed temporarily the statutory maximum of *ad litem* judges.<sup>34</sup> In response to the request, the Council adopted resolution 1877 (2009) of 7 July 2009, by which it decided that, upon the request of the President of the Tribunal, the Secretary-General may appoint additional *ad litem* judges in order to “complete existing trials or conduct additional trials”, notwithstanding that the total number of *ad litem* judges would from time to time temporarily exceed the maximum of twelve to a maximum of thirteen, returning to a maximum of twelve by 31 December 2009.<sup>35</sup> The Council further amended Article 14 (3) and (4) of the Statute.<sup>36</sup> By a letter dated 8 July 2009 addressed to the President of the General Assembly, the President of the Security Council transmitted the text of resolution 1877 (2009).<sup>37</sup> During the sixty-third session, at the 104<sup>th</sup> plenary meeting on 9 September 2009, the General Assembly endorsed the recommendations contained in resolution 1877 (2009).<sup>38</sup>

By a letter dated 28 October 2009 addressed to the President of the Security Council, the Secretary-General transmitted a letter from the President of the International Tribunal requesting an extension of the terms of office of two *ad litem* judges until the end of March 2010.<sup>39</sup> In response to the request, on 16 December 2009 the Council adopted resolution 1900 (2009) by which it underlined its intention to extend, by 30 June 2010, the terms of office of all trial judges at the Tribunal based on its projected trial schedule and the terms of office of all appeals judges until 31 December 2012, or until the completion of the cases to which they were assigned if sooner.<sup>40</sup> By a letter dated 22 December 2009 addressed to the President of the General Assembly, the President of the

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<sup>34</sup> S/2009/333.

<sup>35</sup> Resolution 1877 (2009), para 7.

<sup>36</sup> *Ibid.*, para. 8. For the amended paragraphs see the Annex.

<sup>37</sup> A/63/957.

<sup>38</sup> General Assembly Decision 63/426.

<sup>39</sup> S/2009/570.

<sup>40</sup> Resolution 1900 (2009), para. 1.

Security Council transmitted the text of resolution 1900 (2009).<sup>41</sup> During the sixty-fourth session, at the 68th plenary meeting on 23 December 2009, the General Assembly decided to endorse the recommendations of resolution 1900 (2009).<sup>42</sup>

### Case 3

#### *International Criminal Tribunal for Rwanda*

By identical letters dated 13 June 2008 addressed to the Presidents of the General Assembly and the Security Council,<sup>43</sup> the Secretary-General transmitted a letter from the President of ICTR seeking the extension of the terms of office of nine permanent judges and eight ad litem judges whose terms were to expire on 31 December 2008. He sought for each of those judges an extension to 31 December 2009 or until the completion of the cases to which they were assigned. In response to the request, the Council adopted resolution 1824 (2008) of 18 July 2008, by which it extended the term of office of the permanent judges and ad litem judges until 31 December 2010. The Council also amended Article 11(1) and (2) of the ICTR Statute regarding the Composition of the Chambers.<sup>44</sup> By a letter dated 21 July 2008 addressed to the President of the General Assembly, the President of the Security Council transmitted the text of resolution 1824 (2008)<sup>45</sup>. During the sixty-second session, at the 116<sup>th</sup> plenary meeting on 28 July 2008, the General Assembly decided to endorse the recommendations contained in resolution 1824 (2008).<sup>46</sup>

By a letter dated 19 June 2009 addressed to the President of the Security Council, the Secretary-General transmitted a letter from the President of ICTR requesting an expansion of the membership of the Appeals Chamber by authorizing the President to redeploy four permanent judges from the Trial Chambers to the Appeals Chamber.<sup>47</sup> In response to the request, the Council adopted resolution 1878 (2009) of 7 July 2009, by

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<sup>41</sup> A/64/591.

<sup>42</sup> General Assembly Decision 64/416.

<sup>43</sup> A/62/896-S/2008/436.

<sup>44</sup> Resolution 1824 (2008), paras. 1 to 5.

<sup>45</sup> A/62/910.

<sup>46</sup> General Assembly Decision 62/421.

<sup>47</sup> S/2009/333.

which it decided, *inter alia*, to review the extension of the term's of office of the permanent judges at ICTR, who were members of the Appeals Chamber, by 31 December 2009, in light of the progress of the Tribunal in the implementation of the Completion Strategy. The Council further decided to amend Article 13 (3) of the Statute.<sup>48</sup> By a letter dated 8 July 2009 addressed to the President of the General Assembly, the President of the Security Council transmitted the text of resolution 1878 (2009).<sup>49</sup> During the sixty-third session, at the 104<sup>th</sup> plenary meeting on 28 July 2009, the General Assembly decided to endorse the recommendations contained in resolution 1878 (2009).<sup>50</sup>

In a letter addressed to the President of the Security Council, the Secretary-General transmitted letters from the President of ICTR requesting that the Council permit the Tribunal to exceed the maximum number of *ad litem* judges allowed by Article 11(1) of the ICTR Statute by extending to 31 December 2010 the authorization granted in resolution 1855 (2008).<sup>51</sup> In response to the request, the Council adopted resolution 1901 (2009) of 16 December 2009, by which it underlined its intention to extend, by 30 June 2010, the terms of office of all trial judges at the Tribunal based on its projected trial schedule and the terms of office of all appeals judges until 31 December 2012, or until the completion of the cases to which they were assigned if sooner. By a letter dated 22 December 2009 addressed to the President of the General Assembly, the President of the Security Council transmitted the text of resolution 1901 (2009).<sup>52</sup> During the sixty-fourth session, at the 68<sup>th</sup> plenary meeting on 23 October 2009, the General Assembly decided to endorse the recommendations contained in resolution 1901 (2009).<sup>53</sup>

## **E. Reports of the Security Council to the General Assembly**

### *Article 24, paragraph 3*

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<sup>48</sup> Resolution 1878 (2009) paras. 1 and 8. For the amended paragraphs see the Annex.

<sup>49</sup> A/63/956.

<sup>50</sup> General Assembly Decision 63/425.

<sup>51</sup> See letter dated 2 November 2009 (S/2009/571).

<sup>52</sup> A/64/590.

<sup>53</sup> General Assembly Decision 64/415.

*The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.*

*Article 15, paragraph 1*

*The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.*

**Note**

In accordance with Article 24 (3) of the Charter, the Security Council continued to submit annual reports to the General Assembly.<sup>54</sup> Each report covered the period from 1 August of one year to 31 July of the next. The format of the report remained unaltered during this period.

During the period under review, the Council adopted a practice whereby the introduction to the Annual report was prepared under the “leadership and responsibility of the President of the Council for the month of July of each calendar year, and the Secretariat prepared the body of the report”.<sup>55</sup> At the 6007<sup>th</sup> meeting, on 30 October 2008, the Council adopted its draft annual report to the General Assembly for the period from 1 August 2007 to 31 July 2008. Prior to the adoption of the annual report, the President stated that the introduction to the draft report was prepared by the delegation of Viet Nam, as President of the Council in July 2008. In this connection, he pointed out that the format of the draft report before the Council corresponded to the relevant provisions contained in the notes by the President.<sup>56</sup>

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<sup>54</sup> Annual reports were adopted by the Security Council at the following public meetings: 63<sup>rd</sup> report (covering the period 1 August 2007 to 31 July 2008), adopted at the 6007<sup>th</sup> meeting held on 30 October 2008; 64<sup>th</sup> report (covering the period 1 August 2008 to 31 July 2009), adopted at the 6210<sup>th</sup> meeting held on 29 October 2009; 65<sup>th</sup> report (covering the period between 1 August 2009 to 31 July 2010), adopted at the 6413<sup>rd</sup> meeting held on 28 October 2010.

<sup>55</sup> Note by the President of the Security Council dated 19 December 2007 (S/2007/749).

<sup>56</sup> S/2006/507 and S/2007/749.

During the period under consideration, one communication from a Member State addressed to the Secretary-General made an explicit reference to Article 24 (3), in dealing with the issue of annual and special reports of the Security Council to the General Assembly.<sup>57</sup>

During the period covered by this Supplement, the Security Council did not submit any special reports to the General Assembly – under, for example, rule 60 (3) of the Council’s Provisional Rules of Procedure.<sup>58</sup>

## **F. Relations with subsidiary organs established by the General Assembly**

### **Note**

Certain subsidiary organs established by the General Assembly continued to play a part in the work of the Security Council, either because they have been placed in a special relationship to the Council by resolution of the General Assembly, or because the Council has made use of their services or invited their officers to participate in its meetings.

During the period under review, there was no constitutional discussion bearing on the relations between such subsidiary organs and the Security Council. Those subsidiary organs still active included the following: Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council; the Special Committee on Peacekeeping Operations; the Committee on the Exercise of the Inalienable Rights of the Palestinian People; the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial

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<sup>57</sup> See the Annex to the letter dated 24 July 2009 addressed to the Secretary-General from the Representative of Egypt in the introduction to the “Final document of the fifteenth summit conference of heads of state and government of the non-aligned countries” (S/2009/514).

<sup>58</sup> The rule provides that if the Security Council does not recommend an applicant State for membership or postpones the consideration of the application, it “shall submit a special report to the General Assembly with a complete record of the discussion”.

Countries and Peoples; the Human Rights Council; the Disarmament Commission and the Peacebuilding Commission.

During the period under consideration, decisions adopted by the Security Council, did not contain references to the aforementioned subsidiary organs. However, three decisions adopted by the Security Council contained a reference to the Special Committee on Peacekeeping Operations (case 4). For decisions containing references to the Peacebuilding Commission, see Part IX of the present Supplement.

#### **Case 4**

##### *Special Committee on Peacekeeping Operations*

By a presidential statement of 5 August 2009 in connection with the agenda item “United Nations peacekeeping operations”, the Security Council expressed the belief that United Nations peacekeeping was a unique global partnership that drew together the contributions and commitment of the entire United Nations system, and expressed its commitment to strengthening this partnership. In this connection, the Council recognised the important work conducted by the Special Committee on Peacekeeping Operations.<sup>59</sup>

By resolution 1820 (2008) of 19 June 2008, in connection with the agenda item entitled “Women and peace and security”, the Council requested the Secretary-General, in consultations with the Security Council, the Special Committee on Peacekeeping Operations and its Working Group on Peacekeeping Operations to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians, in consultation with, inter alia, the Special Committee on Peacekeeping Operations.<sup>60</sup>

By resolution 1894 (2009) of 11 November 2009, in connection with the agenda item entitled “Protection of civilians in armed conflict”, the Council took note of the

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<sup>59</sup> S/PRST/2009/24.

<sup>60</sup> Resolution 1820 (2008), para. 6.

report of the Secretary-General on the protection of civilians (S/2009/277) and its annex on constraints on humanitarian access, which identified the core challenges to the effective protection of civilians. In that regard, the Council welcomed the proposals, conclusions and recommendations on the protection of civilians included in the report of the Special Committee on Peacekeeping Operations and its Working Group (A/63/19).<sup>61</sup>

### Case 5

#### *Committee on the Exercise of Inalienable Rights of the Palestinian People*

On 24 November 2008 and 30 November 2009, the President of the Security Council made a statement at meetings of the Committee on the Exercise of Inalienable Rights of the Palestinian People, in observance of the International Day of Solidarity with the Palestinian people.<sup>62</sup>

On several occasions, during the period under review, the President of the Security Council received requests from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People to participate in Council meetings (see table below). The letters of request were read into the record of the meeting by the President of the Security Council and were not issued as official documents. For each meeting, invitations were extended as a matter of course and without any discussion.

| <i>Invitee</i>         | <i>Agenda Item</i>       | <i>Meeting</i> | <i>Date</i>      |
|------------------------|--------------------------|----------------|------------------|
| Chairman of the        | The situation in the     | 5940           | 22 July 2008     |
| Committee on the       | Middle East, including   | 6049           | 18 December 2008 |
| Exercise of the        | the Palestinian question | 6061           | 7 January 2009   |
| Inalienable Rights of  |                          | 6100           | 25 March 2009    |
| the Palestinian People |                          | 6201           | 14 October 2009  |

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<sup>61</sup> Resolution 1894 (2009), twentieth preambular para.

<sup>62</sup> A/AC.183/PV.314 and A/AC.183/PV.320, respectively.

**Communications from subsidiary organs established by the General Assembly**

**Communications from the Committee on the Exercise of the Inalienable Rights of the Palestinian People**

| <i>Document Symbol</i> | <i>Date of Issuance</i> | <i>Subject</i>   |
|------------------------|-------------------------|--|
| S/2008/243             | 15 April 2008           | Letter dated 10 April 2008 from the Chairman reiterating the Committee's objection to the deletion from the list of items of which the Security Council is seized of matters relating to the exercise of the inalienable rights of the Palestinian people, the question of Palestine and the situation in the Middle East. |
| S/2009/265             | 21 May 2009             | Letter dated 19 May 2009 from the Chairman, transmitting the statement adopted by the Committee on the Exercise of the Inalienable Rights of the Palestinian People at the 316 <sup>th</sup> meeting of the Committee on the situation in Occupied East Jerusalem.   |



## Section II

### **Relations with the Economic and Social Council: practice in relation to Article 65 of the Charter**

#### *Article 65*

*The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.*

#### **Note**

This part concerns the relationship between the Security Council and the Economic and Social Council (ECOSOC). Section A considers decisions of the Council which contain a reference to either Article 65 of the Charter or ECOSOC. Section B considers deliberations (cases 6 to 8) of the Council during the course of which the importance of closer ties between the two organs was emphasized, particularly in the context of post-conflict peacebuilding.

During the period under review, the President of ECOSOC was invited to brief the Security Council at a meeting held in connection with the question of Haiti (case 6).<sup>63</sup> Conversely, there was one instance when the President of the Security Council was invited to participate in a meeting of ECOSOC.<sup>64</sup>

#### **A. Requests or references to the Economic and Social Council in decisions of the Security Council**

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<sup>63</sup> At its 6233<sup>rd</sup> meeting, the representative of Luxembourg, Ms. Sylvie Lucas, spoke partly in her national capacity and partly in her capacity as President of the Economic and Social Council. She was invited under rule 37 of the Provisional Rules of Procedure (S/PV.6233, resumption 1, pp.12-13).

<sup>64</sup> For details, see E/2008/SR.7 - the President of the Security Council for May 2008 attended meeting held to discuss the global food crisis.

### Note

During the period under consideration, the Security Council did not formally address any requests for information or assistance to ECOSOC. The Council did, however, make an explicit reference to Article 65 of the United Nations Charter in one decision relating to the situation in Somalia.<sup>65</sup> In several other decisions, in the context of a variety of agenda items, the Council made references to ECOSOC (see tables 1 and 2 below).

#### *1. Resolutions containing references to the Economic and Social Council*

| <b>Resolution</b> | <b>Items</b>                  | <b>Relevant provisions</b>  |
|-------------------|-------------------------------|---|
| S/RES/1814 (2008) | The situation in Somalia      | “Recalls that, pursuant to Article 65 of the United Nations, the <u>Economic and Social Council</u> may furnish information to the Security Council and shall assist the Security Council upon its request” (para. 19)  |
| S/RES/1817 (2008) | The situation in Afghanistan  | “Acknowledging the role of the Commission on Narcotic Drugs of the <u>Economic and Social Council</u> as the central policy making and coordinating body within the United Nations system on international drug control issues, and welcoming its intention to consider the issue of precursors control as one of the central questions to be discussed during the high-level segment of the fifty-second session of the Commission on Narcotic Drugs,” (preambular para. 13) |
| S/RES/1892 (2009) | The question concerning Haiti | “Taking note of the Report of the <u>ECOSOC</u> Ad Hoc Advisory Group on Haiti (E/2009/105),” (preambular para. 23)   |

#### *2. Presidential statements containing references to the Economic and Social Council*

| <b>Statement</b> | <b>Item</b>                  | <b>Relevant provisions</b>  |
|------------------|------------------------------|---|
| S/PRST/2009/32   | Peace and Security in Africa | “The Security Council recognizes the importance of the actions undertaken by the General Assembly, the <u>Economic and Social Council</u> , the Commission on Narcotic Drugs, the United Nations Office on Drugs and Crime (UNODC) and other relevant United Nations organs and agencies in facing numerous security risks caused by drug trafficking in many countries and |

<sup>65</sup> Resolution 1814 (2008).

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|  |  | regions, including in Africa. The Council encourages them to undertake further actions in this regard.” (para. 4) |
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## **B. Constitutional discussion arising in connection with the Economic and Social Council**

### **Note**

The issue of relations between the Security Council and the Economic and Social Council (ECOSOC) arose frequently in Security Council debates, particularly in the context of Children and armed conflict; Protection of civilians in armed conflict; Women and peace and security; Maintenance of international peace and security; and Post-conflict peacebuilding. During the debates of the Council, emphasis was placed on the interrelation between peace and development and on the need for the coordination of efforts by the Security Council, ECOSOC and other United Nations organs involved in conflict prevention.

In his report to the Security Council entitled “Report of the Secretary-General on the implementation of Security Council resolution 1625 (2005) on conflict prevention, particularly in Africa”, the Secretary-General touched on the relevance of the oversight role of ECOSOC in matters of development cooperation and humanitarian assistance. He stressed that the Charter-mandated responsibilities of ECOSOC to coordinate the activities of the specialized agencies, funds and programmes, as well as its custodianship of the United Nations development agenda were of particular value in promoting better integration between the relevant policy and operational dimensions of conflict prevention and peacebuilding. Thus, he believed that the Security Council should continue to engage ECOSOC, in the context of its coordination role, to facilitate a better flow of information to it from the funds, programmes and agencies.<sup>66</sup>

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<sup>66</sup> S/2008/18, para. 55.

This section will highlight several case studies grouped under thematic headings, each addressing a different issue before the Security Council, with a view to outlining the evolving relationship between the Security Council and ECOSOC. The three case studies analysed include the following: briefing by the President of ECOSOC in accordance with Article 65 of the Charter (case 6); calls for increased cooperation and coordination between the Security Council and ECOSOC (case 7); and calls for increased interaction between the Security Council, ECOSOC and the Peacebuilding Commission (case 8).

### **Case 6**

#### *Briefing by the President of the Economic and Social Council*

In accordance with Article 65 of the Charter, ECOSOC may furnish information to the Security Council. Following the food and fuel crises in Haiti, the President of ECOSOC was invited to brief the Security Council at its 6101<sup>st</sup> meeting, on 6 April 2009, during its consideration of the item entitled “The question concerning Haiti”.

During the debate, the President of ECOSOC briefed the Council on the most recent report of its Ad Hoc Advisory Group on Haiti and its recommendations. While highlighting the correlations between socio-economic development and political stability, she asserted that it was vital that the Security Council and ECOSOC worked together to support Haiti in meeting challenges. She stated that the Ad Hoc Advisory Group was established to draft recommendations for the long-term development of Haiti and in its most recent report in 2008, the Group noted the economic, social and political instability in Haiti. The Group made three groups of recommendations: first, donors should align their efforts to the facts on the ground and aim to enhance national capacities; second, the reform of Haitian institutions should be stepped up, particularly in the area of justice and the rule of law as well as customs and public administration in general; and third, the further involvement of the private sector and the Haitian Diaspora to create jobs in the structured sector. Lastly, she stated that ECOSOC, particularly through its Ad Hoc

Advisory Group, would visit Haiti in May and would continue to be committed in this process and to assist the country.<sup>67</sup>

### **Case 7**

#### *Calls for increased cooperation and coordination between the Security Council, Economic and Social Council and other United Nations bodies*

During the review period, there were calls for increased interaction and coordination between the Security Council, ECOSOC and other United Nations bodies, underscoring a shared responsibility for maintaining peace and protecting women, children and civilians. These calls were made in various specific contexts, under the agenda items “Children and armed conflict”, “Protection of civilians in armed conflict”, “Women, and peace and security”, “Maintenance of international peace and security”, and “Implementation of the note by the President of the Security Council (S/2006/507)”.

#### (a) Children and armed conflict

At its 5834<sup>th</sup> meeting, on 12 February 2008, the Council held an open debate on the item entitled “Children and armed conflict”. During the debate, the representative of Brazil stated that, in recent years, United Nations efforts to focus international attention on child-specific issues in the context of armed conflicts had been expanding given the seriousness of the issue and the growing number of conflicts affecting children in various parts of the world. In this regard, she expected that the Council performed its work in close coordination with the General Assembly and the Economic and Social Council.<sup>68</sup>

At its 5936<sup>th</sup> meeting, on 17 July 2008, the Council met to discuss the same item. During the debate, the representative of the Russian Federation emphasized that the task of protecting children in conflicts and securing their normal life in the post-conflict period was system-wide in nature and required consolidated approach on the part of the

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<sup>67</sup>S/PV.6101, pp. 22-23.

<sup>68</sup> S/PV.5834 (Resumption 1), p. 8.

Security Council, the General Assembly, the Peacebuilding Commission (PBC), the Human Rights Council, ECOSOC and its functional committees alike.<sup>69</sup> The representative of Egypt stressed that special emphasis should be placed on the reintegration and rehabilitation of children, their reintroduction to normal life and the creation of the necessary conditions for them to enjoy similar standards of education, nutrition and health to those enjoyed by children in advanced countries. In his view, this would require the commitment of more financial resources and better coordination between the Security Council, General Assembly and ECOSOC.<sup>70</sup> Referring to the call made by the President of the Security Council on 12 February 2008 to adopt a broad strategy of conflict prevention that would address the root causes of armed conflict in a comprehensive manner in order to enhance the protection of children on a long-term basis, the representative of Malawi stressed that this could be achieved only if the Security Council worked in full cooperation with relevant organs of the United Nations, such as the General Assembly and ECOSOC, that were mandated to deal with development issues.<sup>71</sup>

At its 6114<sup>th</sup> meeting, on 29 April 2009, the Council met to discuss the same item. During the debate, the representative of China emphasized that since it was the common task of all the relevant organs of the United Nations to protect children in armed conflict and to ensure that they return to normal lives in the aftermath of conflict, an integrated approach and a joint response were needed from the Security Council, the General Assembly, the Human Rights Council, ECOSOC and other relevant entities.<sup>72</sup> The representative of Thailand asserted that because challenges relating to children were multidimensional and diverse, greater coordination and coherence among relevant United Nations forums and agencies were needed. In addition to the Security Council, his delegation welcomed the active interest in child-related issues in the General Assembly, ECOSOC, the Human Rights Council, United Nations funds and programmes, as well as

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<sup>69</sup> S/PV.5936, pp. 23-24.

<sup>70</sup> S/PV.5936 (Resumption 1), pp. 16-17.

<sup>71</sup> *Ibid.*, pp. 18-19.

<sup>72</sup> S/PV.6114, p. 17.

relevant human rights treaty bodies, since each of those forums and agencies had its uniqueness, strengths and constraints, in line with their respective mandates. In his view, with better coordination and coherence among those diverse instruments, the United Nations system as a whole would be able to better respond to the challenges pertaining to children around the world.<sup>73</sup>

(b) Protection of civilians in armed conflict

At its 5898th meeting, on 27 May 2008, the Council held an open debate on the item entitled “Protection of civilians in armed conflict”. During the debate, the representative of China emphasized that the protection of civilians in armed conflict could not rely solely on the efforts of the Security Council, and that he expected the General Assembly, ECOSOC and the Human Rights Council to play a greater role.<sup>74</sup> Likewise, the representative of the United Arab Emirates called for strengthening the Council’s role in cooperation with the Secretariat’s various specialized departments and agencies, including ECOSOC, particularly in taking effective, prompt and decisive action to prevent civilian suffering in conflict zones.<sup>75</sup>

(c) Women and peace and security

At its 5916th meeting, on 19 June 2008, the Council held an open debate on the item entitled “Women and peace and security”. During the debate, while stressing that sexual violence should be addressed through a comprehensive approach in the context of the peace process and the political situation, the representative of China emphasized that the Security Council should enhance its consultation with the General Assembly, ECOSOC, the Secretariat and the relevant treaty bodies in a joint effort to address violence against women.<sup>76</sup> The representative of Brazil asserted that the participation of women in peacebuilding efforts was critical and in that respect more interaction was necessary between the Security Council and ECOSOC, under Article 65 of the Charter.<sup>77</sup>

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<sup>73</sup> S/PV.6114 (Resumption 1), p. 42.

<sup>74</sup> S/PV.5898, p. 9.

<sup>75</sup> S/PV.5898 (Resumption 1), p. 17.

<sup>76</sup> S/PV.5916, p. 19-20.

<sup>77</sup> S/PV.5916 (Resumption 1), p. 12.

At its 6005<sup>th</sup> meeting, on 29 October 2008, the Council met to discuss the same item. During the debate, the representative of China stressed that the Security Council had a unique role to play in the question of women, peace and security. The Security Council should step up its efforts for prevention and resolution of conflicts so that the root causes of the suffering of women in conflict could be addressed. Thus, he opined that the Security Council should strengthen its coordination and cooperation with ECOSOC and UNIFEM in addressing the relevant issues.<sup>78</sup>

At its 6196<sup>th</sup> meeting, on 5 October 2009, the Council met to discuss the same item. During the debate, the representative of Luxembourg suggested that Member States could ensure that the Security Council and ECOSOC launched a dialogue on the best way to address the negative impacts of conflict on women and considered how to involve women in full participation in peacebuilding efforts and post-conflict reconstruction.<sup>79</sup>

(d) Maintenance of international peace and security

At its 6108<sup>th</sup> meeting, on 21 April 2009, the Council held an open debate on the item entitled “Maintenance of international peace and security”. During the debate, the representative of Senegal recalled the Secretary-General’s report dated 14 January 2008,<sup>80</sup> which noted that prevention was a multi-dimensional task involving political decisions, humanitarian activities and development activities, which required that organizations worked in close cooperation with the United Nations, in particular the Security Council, the Human Rights Council and ECOSOC and its specialized agencies. In this regard, he emphasized that cooperation between ECOSOC, the Security Council and the regional organizations was particularly necessary since growing attention should likewise be given to peacebuilding strategies and reconciliation.<sup>81</sup>

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<sup>78</sup> S/PV.6005, p. 26.

<sup>79</sup> S/PV.6196 (Resumption 1), p. 7.

<sup>80</sup> S/2008/18.

<sup>81</sup> S/PV.6108 (Resumption 1), p. 16.



(e) Implementation of the note by the President of the Security Council (S/2006/507)

At its 5968<sup>th</sup> meeting, on 27 August 2008, the Council held an open debate on the item entitled “Implementation of the note by the President of the Security Council (S/2006/507)”. In connection with improving the Council’s working methods, many speakers underlined the need for strengthened cooperation and coordination between the Security Council and other United Nations bodies, especially the General Assembly, ECOSOC and the Peacebuilding Commission.<sup>82</sup> The representative of China, echoed by the representatives of Pakistan and Iceland, emphasized the importance of improving information flow between the Security Council and ECOSOC.<sup>83</sup> The representative of China suggested that the Council should establish ways to carry out dialogue with the General Assembly, ECOSOC and other international partners.<sup>84</sup> The representative of Viet Nam, however, warned, that the Council should take care not to step outside of its mandate for the purpose of transparency and that such actions would weaken the coordination of other bodies.<sup>85</sup>

The representative of Mexico believed that greater coordination was required among United Nations organs, in particular the Security Council, the General Assembly and ECOSOC, in order to avoid any duplication of work. In his view, this could be achieved through better communication among those organs, and by holding periodic meetings among the Presidents of those organs, as indicated in paragraph 51 of document S/2006/507.<sup>86</sup> The representative of the Russian Federation believed that the Council had the task to establish ways and means to carry out dialogue between the Council, the General Assembly, ECOSOC, other United Nations bodies, regional organizations and international partners.<sup>87</sup>

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<sup>82</sup> S/PV.5968, p. 6 (China); p. 12 (Viet Nam); p. 16 (Russian Federation); p. 27 (Mexico); p. 28 (Iceland); p. 29 (New Zealand); and p. 34 (Cuba, on behalf of members of the Non-Aligned Movement). S/PV.5968, (Resumption 1), p. 15 (Argentina); p. 24 (Pakistan); and p. 25 (Guatemala).

<sup>83</sup> S/PV. 5986, p. 6 (China) and p. 28 (Iceland) and S/PV. 5986 (Resumption 1), p. 24 (Pakistan).

<sup>84</sup> Ibid., p. 6.

<sup>85</sup> Ibid. p. 12.

<sup>86</sup> S/PV.5968, p. 27.

<sup>87</sup> Ibid., p. 16.

The representative of Cuba, speaking on behalf of the Non-Aligned Movement (NAM), stated that close cooperation and coordination among all principal organs were indispensable in order to enable the United Nations to remain relevant and capable of meeting the existing, new and emerging threats and challenges. In that context, he reiterated NAM's call on the Presidents of the Security Council, the General Assembly and the Economic and Social Council to meet periodically to discuss and to coordinate among themselves issues on their agendas and the programmes of work of the respective principal organs they represented, in order to establish increased coherence and complementarity among those organs in a mutually reinforcing manner, respectful of each others' mandates, and with a view to generating a mutual understanding among them.<sup>88</sup>

### Case 8

#### *Calls for increased interaction between the Security Council, Economic and Social Council and Peacebuilding Commission*

During the period covered, the Council discussed various aspects of its relationship with the Economic and Social Council (ECOSOC) and the Peacebuilding Commission (PBC) under the agenda item entitled "Post-conflict peacebuilding". In their statements, speakers encouraged more systematic interaction between PBC and ECOSOC as well as welcomed the role of PBC as a nexus for linking the various topics taken up at the Security Council and ECOSOC. Instances where the relationships between these organs were discussed are detailed below under the sub-headings: Roles of the Security Council and the Economic and Social Council; and Coordination mechanism.

#### (a) Roles of the Security Council and the Economic and Social Council

At its 5895<sup>th</sup> meeting, on 20 May 2008, the representative of China stressed that as the organ entrusted with the sacred mission of maintaining international peace and

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<sup>88</sup> S/PV.5968, p. 34.

security, the Security Council should play a crucial role in peacebuilding and to that end, it should work together with other United Nations organs, such as the PBC, the General Assembly and ECOSOC.<sup>89</sup>

At its 5997<sup>th</sup> meeting, on 21 October 2008, the representative of Indonesia stated that the PBC could play a very important role as a nexus for linking the political and security components taken up at the Council with the social, humanitarian and economic aspects focused on by ECOSOC. In that regard, he stated that the close relationship between the Council and PBC should be “nurtured”.<sup>90</sup>

At its 6165<sup>th</sup> meeting, on 22 July 2009, the Secretary-General presented his report entitled “Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict”.<sup>91</sup> The representative of Egypt expressed concern that the report gave the impression that the Security Council was the major player when it came to peacebuilding efforts in the immediate aftermath of conflicts. He noted that the General Assembly and ECOSOC should play an equal role.<sup>92</sup> The representative of Guatemala welcomed reference to ECOSOC in the report, while regretting the fact that it was limited to the issue of financing for development. In his view, it ignored one of the main functions of ECOSOC, which was to coordinate the activities of the specialized agencies and making recommendations to them, especially in the context of the humanitarian segment and the operational activities segment.<sup>93</sup>

(b) Coordination mechanism

At its 5895<sup>th</sup> meeting, on 20 May 2008, the representative of the Libyan Arab Jamahiriya stated that it was imperative to establish mechanisms for full coordination and

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<sup>89</sup> S/PV.5895, p. 25.

<sup>90</sup> S/PV.5997, p. 6.

<sup>91</sup> A/63/881 – S/2009/304.

<sup>92</sup> S/PV.6165 (Resumption 1), p. 3.

<sup>93</sup> *Ibid.*, p. 13.

expertise-sharing between PBC and ECOSOC so as to guarantee the effective performance of those United Nations organs in the area of post-conflict peacebuilding.<sup>94</sup>

At its 5997<sup>th</sup> meeting, on 21 October 2008, while presenting the annual “Report of the Peacebuilding Commission”,<sup>95</sup> the Chair of PBC emphasized that with a view to enhancing partnerships, the PBC had established regular consultations with the Presidents of the Security Council, the General Assembly and ECOSOC.<sup>96</sup> The representative of Italy stated that system-wide coherence was therefore a unique opportunity to make the PBC’s strategies in the field more effective and to prevent gaps in the transition from peacebuilding to development.<sup>97</sup> The representative of the Russian Federation, echoed by the representative of Viet Nam, stressed that strengthening the organic relations between PBC and the Security Council should continue in parallel with the development of a dialogue among PBC, the General Assembly and ECOSOC.<sup>98</sup> In that context, the representative of South Africa commended the establishment of regular contacts between the Chairperson of PBC and the Presidents of the General Assembly, the Security Council and ECOSOC on issues relating to the work of the Commission.<sup>99</sup>

At its 6165<sup>th</sup> meeting, on 22 July 2009, the Secretary-General presented his report entitled “Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict”.<sup>100</sup> The representative of Mexico stated that it was not only the Security Council that should be proactive in seeking the advice of PBC, but that the General Assembly and ECOSOC should do the same in terms of coherence, greater mobilization of resources and coordination of efforts with entities outside the system, along with working with local actors to devise and implement peacebuilding strategies.<sup>101</sup> The representative of the Russian Federation stressed the need for strengthening the organic relationship between

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<sup>94</sup> S/PV.5895, p. 27.

<sup>95</sup> S/2008/417

<sup>96</sup> S/PV.5997, p. 3.

<sup>97</sup> *Ibid.*, p. 6.

<sup>98</sup> *Ibid.*, p. 8 (Russian Federation) and p. 10 (Viet Nam).

<sup>99</sup> *Ibid.*, p. 15.

<sup>100</sup> A/63/881 – S/2009/304.

<sup>101</sup> S/PV.6165, p.15.

PBC and the Security Council, particularly on issues on the agendas of both entities, as well as for timely exchanges of information between them and clear division of labour and complementarity. In his view, this should be done in parallel with the strengthening of the linkages among PBC, the General Assembly and ECOSOC.<sup>102</sup>

At its 6224<sup>th</sup> meeting, on 25 November 2009, the Chair of the Peacebuilding Commission presented the “Report of the peacebuilding commission on its third session”.<sup>103</sup> He reported that the Commission had consolidated its core advisory role and provided increasing support for the countries on its agenda, while broadening and deepening its partnerships with critical actors. In that respect, the PBC had strengthened its linkage with the General Assembly, the Security Council and ECOSOC.<sup>104</sup> The representative of the Libyan Arab Jamahiriya expressed his high appreciation for the efforts exerted by the Peacebuilding Commission to collaborate effectively with other bodies of the United Nations, such as the General Assembly, the Security Council and ECOSOC.<sup>105</sup> The representative of Bangladesh asserted that he was encouraged to see that the Peacebuilding Commission had continued to combine and deepen its linkage to the three principal organs of the United Nations - the General Assembly, the Security Council and the ECOSOC.<sup>106</sup>

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<sup>102</sup> Ibid., p. 25.

<sup>103</sup> A/64/341 – S/2009/444

<sup>104</sup> S/PV.6224, p. 2.

<sup>105</sup> Ibid., p. 12.

<sup>106</sup> Ibid., p. 31.

### Section III

## Relations with the International Court of Justice

### Note

This section concerns the relationship between the Security Council and the International Court of Justice (ICJ). Subsection A deals with the election of the members of the Court, which requires that action be taken by the Security Council in conjunction with the General Assembly, but with both organs proceeding independently. Subsection B reflects on the discussion that arose in the Security Council concerning the application of Articles 94 and 96 of the Charter of the United Nations.

In a letter dated 24 July 2009 addressed to the Secretary-General, the representative of Egypt, in his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement, transmitted the Final Document of the Fifteenth Summit Conference of Heads of State and Government of the Movement of Non-Aligned Countries. The document urged the Security Council to make greater use of ICJ, the principal judicial organ of the UN, as a source of advisory opinions and interpretation of relevant norms of international law, and on controversial issues; further urged the Council to use the Court as a source of interpreting relevant international law; and also urged the Council to have its decisions be reviewed by the Court, bearing in mind the need to ensure their adherence to the United Nations Charter, and international law.<sup>107</sup>

During the period under consideration, the President of ICJ was invited to participate in two private meetings of the Security Council (see table below).

| <b>Invitee</b>   | <b>Agenda item</b>                  | <b>Meeting</b>   | <b>Date</b>     |
|--|-------------------------------------|------------------|-----------------|
| Judge Rosalyn Higgins,<br>President of the International | Briefing by the<br>President of the | 6002<br>(Closed) | 28 October 2008 |

<sup>107</sup> A/63/965-S/2009/514, para. 18.9.

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|--|--|------------------|-----------------|
| Court of Justice   | International Court of Justice   |                  |                 |
| Judge Hisashi Owada,<br>President of the International<br>Court of Justice | Briefing by the<br>President of the<br>International Court of<br>Justice | 6208<br>(Closed) | 29 October 2009 |

## **A. Practice in relation to the election of members of the International Court of Justice**

### **Note**

The procedure for election of members of the Court is set out in Articles 4 and 8, and 10 to 14 of the Statute of ICJ; Rules 150 and 151 of the Rules of Procedure of the General Assembly; and Rules 40 and 61 of the Provisional Rules of Procedure of the Security Council. During the period under review, one round of election took place to elect five members to fill regular vacancies of the Court (case 9).

For the election that took place during the period under review, the Security Council began the election procedure to fill vacancies by fixing the date of the election, in accordance with Article 14 of the Court's Statute and the Council's practice. The Security Council and General Assembly then proceeded independently with the election.<sup>108</sup> During the meeting of the Security Council, the President of the Council drew attention to a memorandum by the Secretary-General describing the composition of the Court and setting out the procedure to be followed in the conduct of the election.<sup>109</sup> He reminded the Council that Article 10 (1) of the Court's Statute provided that, "those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected", adding that the required majority in the Security Council was, therefore, eight votes. He further explained that the voting would proceed by secret ballot.

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<sup>108</sup> For the verbatim records of the relevant Security Council and General Assembly meetings, see: S/PV.6011 and S/PV.6012, and A/63/PV.39 and A/63/PV.40, respectively.

<sup>109</sup> For composition of the Court and the procedure to be followed in the conduct of the election, see S/2008/502.

## Case 9

### *Election of members of the International Court of Justice*

At its 6011<sup>th</sup> meeting, on 6 November 2008, the Security Council met to proceed with the election of five members of ICJ, to fill the seats that would become vacant on 5 February 2009. On the first ballot, five candidates obtained the required majority of votes in the Council. The President of the Security Council stated that he would communicate the result of the vote to the President of the General Assembly. Subsequently, he announced that he had received a letter from the President of the Assembly informing him that five candidates had received the required majority in the Assembly at its 39th plenary meeting. As both the Security Council and the General Assembly had agreed to the same four out of five candidates, the candidates in question were therefore elected to the Court for a period of nine years, beginning on 6 February 2009. The President subsequently announced that in accordance with Article 11 of the Statute of the ICJ, the Council would hold a second meeting to elect a candidate by further ballots for the seat remaining to be filled.

At its 6012<sup>th</sup> meeting, also held on 6 November 2008, the Security Council proceeded with a second meeting to elect a member of the Court through a new vote, in order to fill the remaining position. On the second ballot, one candidate received a majority of the Council's vote. The President subsequently announced that he had been informed that, in the second ballot of the General Assembly, no candidate had obtained an absolute majority, and proposed that the meeting be suspended pending the outcome of the third round of voting in the Assembly.

Following the outcome, the President of the Council informed that no candidate had received an absolute majority and that the Assembly would proceed to a fourth ballot. He noted that the Council was not required to conduct a further ballot since one candidate for the remaining one vacancy had received an absolute majority during the second ballot.



At the resumption of the meeting, the President announced that the votes had been counted in the General Assembly and that one candidate had obtained an absolute majority. He then read the results of the earlier vote during which one candidate obtained the required majority of votes in the Council. Thus, the President communicated the result of the vote to the President of the General Assembly. Subsequently, he announced that he had received a letter from the President of the General Assembly informing him that the same candidate had received the required majority in the Assembly at its 40th plenary meeting. The candidate in question was therefore elected a member of the Court for a term of office of nine years, beginning on 6 February 2009.

## **B. Consideration of the relationship between the Security Council and the Court**

### *Article 94*

1. *Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.*
2. *If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”*

### *Article 96*

1. *The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.*
2. *Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.”*

### *Article 41 of the Statute*

1. *The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.*
2. *Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.”*

## Note

During the period under review, there were two cases concerning the application of Article 94 of the Charter in connection with the ICJ Advisory Opinion on the Wall in the occupied Palestinian territories (case 10) and implementation of ICJ ruling on the Bakassi Peninsula (case 11). In addition, there was another case concerning the application of Article 96 of the Charter in connection with the request by the General Assembly for an advisory opinion of ICJ on the declaration of independence by Kosovo (case 12).

### Case 10

#### *Consideration of the ICJ advisory opinion on the Wall in the occupied Palestinian territory*

During the period under review, the Security Council was seized with the ruling of 9 July 2004 on the legality of the Wall in the occupied Palestinian territory. Subsequent to the ruling, the Security Council received several communications from the Permanent Observer of Palestine condemning the actions of Israel in continuing with the construction of the Wall which they deemed illegal, stating it was in violation of the ruling contained in the ICJ advisory opinion.<sup>110</sup> This position was also reiterated in several communications addressed to the President of the Council by Member States.<sup>111</sup>

During the period under consideration, the Security Council held several meetings in connection with the situation in the Middle East, including the Palestinian question during which the advisory opinion rendered by ICJ was discussed. At the meetings,

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<sup>110</sup> See, for example, A/ES-10/416-S/2008/170; A/ES-10/419-S/2008/365; A/ES-10/460-S/2009/420; A/ES-10/422-S/2008/513.

<sup>111</sup> See, for example the following communications: letter dated 7 April 2008 from the representative of the Syrian Arab Republic (S/2008/232); letter dated 17 June 2008 from the representative of Cuba on behalf of the Coordinating Bureau of the Non-Aligned Movement (S/2008/396); letter dated 3 July 2008 from the representative of Pakistan (S/2008/440); and letter dated 14 October 2009 from the Permanent Observer of the League of Arab States to the United Nations (S/2009/537).

Members States in their statements condemned the action of Israel in continuing with the construction of the Wall and stated that it was illegal and contrary to international law, particularly the ICJ ruling.<sup>112</sup> The representative of Cuba, on behalf of the Coordinating Bureau of the Non-Aligned Movement, stated that such actions by Israel not only constituted flagrant violations and grave breaches of international law, but also heightened tensions, further destabilized the fragile situation on the ground and very negatively impacted the peace process involving the two sides.<sup>113</sup> The Permanent Observer of Palestine repeatedly stated that the Israeli settlements established in the occupied Palestinian territory constituted grave breaches of international law, jeopardized the peace process and undermined the prospects for a viable Palestinian state. He deplored Israeli attempts to challenge the role of the Palestinian Authority and to obstruct Palestinian efforts in the security realm, adding that those actions casted doubt on Israeli intentions in the negotiations.<sup>114</sup> At the same time, the Under-Secretary-General for Political Affairs and Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General continued to report that construction work on the barrier continued within occupied Palestinian territory in deviation from the Green Line and contrary to the advisory opinion of the Court.<sup>115</sup>

In two reports of the Secretary-General entitled “Peaceful settlement of the question of Palestine”, dated 22 September 2008 and 15 September 2009 in accordance with General Assembly resolutions 62/83 and 63/29 respectively, he reported that contrary to the 9 July 2004 ICJ advisory opinion, Israel’s settlement activities had intensified, particularly in and around occupied East Jerusalem and the Jordan Valley.<sup>116</sup> Included in the latter report was a note verbale, dated 26 June 2009, from the Permanent Observer of Palestine in which he asserted that the solution to the Israeli-Palestinian

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<sup>112</sup> See, for example, S/PV.5827, p. 27 (Libyan Arab Jamahiriya); S/PV.5859 (Resumption 1), p. 6 (Sudan) and p. 10 (Cuba); S/PV.5983 p. 19 (Libyan Arab Jamahiriya); S/PV.6049, p. 19 (Indonesia), p. 25 (Syrian Arab Republic), p. 27 (Lebanon); S/PV. 6171 (Resumption 1), p. 5 (Brazil), p. 9 (Malaysia); p.15 (Cuba); p.17 (Nicaragua); p. 23 (South Africa) and S/PV.6201, p.11 (Libyan Arab Jamahiriya).

<sup>113</sup> S/2008/396.

<sup>114</sup> See for example, S/PV.5827, pp. 7-8; S/PV.5859, p. 8; S/PV.6100, p. 8; and S/PV.6171, p. 25.

<sup>115</sup> See for example, the following briefings by the Secretariat: S/PV.5827, S/PV.5846, p. 4; p. 4; S/PV.5859, p. 4; S/PV.5873, p. 4; S/PV.5963, p. 3; S/PV.5974, p. 3; S/PV.5999, p. 3; S/PV.6022, p.4; S/PV.6049, p.5; S/PV.6084, p.4; S/PV.6100, p.5; S/PV.6150, p.2; S/PV.6107, p. 4 and S/PV.6248, p. 3.

<sup>116</sup> A/63/368-S/2008/612 and A/64/351-S/2009/464.

conflict remained the same: two States for two peoples to live side by side in peace and security, the foundation of which he believed could be found, among other instruments, within the 2004 ICJ advisory opinion. The Permanent Observer noted, however, that Israel's continued settlement activities represented a "blatant disrespect" of the ICJ advisory opinion.

In a letter dated 24 July 2009 addressed to the Secretary-General, the representative of Egypt, in his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement, transmitted the Final Document of the Fifteenth Summit Conference of Heads of State and Government of the Movement of Non-Aligned Countries. In the document, the Heads of Government called for Israel to fully respect the ICJ advisory opinion, noting that its settlement activities and construction of the Wall were in "flagrant defiance" of the opinion of the ICJ.<sup>117</sup>

In identical letters dated 13 August 2009 addressed to the Secretary-General and the President of the Council, the Permanent Observer of Palestine transmitted a memorandum from the Head of the Palestinian National Committee for the Register of Damage caused by the construction of the Wall. In the memorandum, he referred to the ICJ advisory opinion which called for the United Nations General Assembly and the Security Council to implement measures to end the illegal situation caused by the construction of the wall. As such, the Committee called upon the Secretary-General and Head and members of the General Assembly "to hold on their responsibilities and press the State of Israel" and its Government to abide by the ICJ advisory opinion with regard to the Wall.<sup>118</sup>

## **Case 11**

### *Implementation of the Court ruling concerning the maritime boundary between Nigeria and Cameroon*

During the period covered, the Security Council was seized with the maritime boundary dispute between Cameroon and Nigeria and the subsequent ruling of the ICJ on

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<sup>117</sup> A/63/965-S/2009/514.

<sup>118</sup> A/ES-10/460-S/2009/420.

the issue.<sup>119</sup> While no meeting of the Council itself addressed this issue, nor decisions adopted, the Security Council received several communications from the Secretary-General and Member States concerning the implementation of the judgment by the Court.

In a report of the Secretary-General on the United Nations Office for West Africa (UNOWA) dated 30 June 2008, he informed that in his capacity as Chairman of the Cameroon-Nigeria Mixed Commission, his Special Representative had met with high-level Government officials in Nigeria and Cameroon, and strongly urged both sides to recommit to an effective and peaceful implementation of the 10 October 2002 ruling of ICJ and the 12 June 2006 Greentree Agreement settling the boundary dispute between the two countries and defining the modalities for the transfer of authority in the Bakassi peninsula in August 2008.<sup>120</sup>

In a letter dated 3 December 2008 addressed to the President of the Security Council, the Secretary-General reported that he had, through his good offices, and with the support of the United Nations Secretariat, continued to facilitate the implementation of the ruling of ICJ. He noted that achievements to date in the implementation of the ruling of ICJ included withdrawal and transfer of authority in the Lake Chad area (December 2003), along the land boundary (July 2004) and in the Bakassi peninsula (June 2006). Furthermore, he reported that in accordance with the Greentree Agreement, the transfer of authority from Nigeria to Cameroon of the remaining “Zone” of the Bakassi peninsula was successfully completed on 14 August 2008, marking a critical milestone in the implementation of the ruling of ICJ and the peaceful resolution of the boundary dispute between the two countries.<sup>121</sup>

In a report dated 19 June 2009 on UNOWA, the Secretary-General commended Cameroon and Nigeria for their continued commitment to the peaceful implementation of the ruling of ICJ on the land and maritime boundary between the two countries, as well as the donor countries for their support to the process.<sup>122</sup>

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<sup>119</sup> On 10 October 2002, the ICJ ruled that the Bakassi Peninsula be ceded to Cameroon.

<sup>120</sup> S/2008/426, para. 55.

<sup>121</sup> S/2008/756.

<sup>122</sup> S/2009/332, para. 58.

In a letter dated 30 November 2009 addressed to the President of the Council, the Secretary-General reported that he had, through his good offices, and with the support of the United Nations Secretariat, continued to facilitate the implementation of the ruling of ICJ.<sup>123</sup>

## Case 12

### *Request by the General Assembly for an advisory opinion on the unilateral declaration of independence by Kosovo*

On 8 October 2008, the General Assembly, at its sixty-third session, adopted a resolution in connection with the “Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law”. While recalling that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations to request the ICJ, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”<sup>124</sup>

Subsequent to the adoption of the General Assembly resolution, the Security Council at its 6025<sup>th</sup> meeting on 26 November 2008, addressed the issue under the agenda item entitled “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)”. During the debate, the representative of Serbia (Minister for Foreign Affairs) referred to the unilateral declaration of independence by Kosovo as a “serious challenge to the foundations of the international system” and asserted that the General Assembly had supported Serbia’s position by an overwhelming majority with the adoption of a resolution to refer the question of Kosovo’s status to

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<sup>123</sup> S/2009/642.

<sup>124</sup> A/RES/63/3.

ICJ.<sup>125</sup> Mr. Skender Hyseni (“Minister of Foreign Affairs” of Kosovo) stated that he expected more recognitions in the coming months, in spite of the fact that the Serbian Government had requested from ICJ an advisory opinion on Kosovo’s independence and regretted the fact that such request had been made. He further stated that Kosovo would “take an active part in presenting [its] case before the International Court of Justice.” Mr. Hyseni concluded by emphasizing that Kosovo was confident that the Court’s deliberations would be fair and impartial, and that it strongly believed that its position would be reconfirmed.<sup>126</sup> The representative of South Africa emphasized that it had constantly expressed its concern over the manner in which Kosovo had declared its independence from Serbia, especially at the fact that it was not achieved through a negotiated settlement, and consequently welcomed the decision of the General Assembly to refer the question to ICJ.<sup>127</sup> The representative of the United Kingdom, referring to the statement by the representative of Serbia, emphasized that it was not the case that in adopting the draft resolution submitted by Serbia requesting the advisory opinion, the General Assembly supported Serbia’s position on Kosovo’s status. The General Assembly had merely agreed that ICJ should be asked to opine on the question which Serbia had asked and this did not prejudice the answer to that question, on which her delegation’s views were well known and set out in the document (A/63/461) that it had circulated at the time.<sup>128</sup>

At its 6097<sup>th</sup> meeting, on 23 March 2009, the representative of Serbia emphasized that all Member States should respect the fact that ICJ would decide the issue and that no one should in any way prejudice its deliberations. He called on Member States that had not recognized the unilateral declaration of independence to stay the course while the Court conducted its work.<sup>129</sup>

At its 6144<sup>th</sup> meeting, on 17 June 2009, the Special Representative of the Secretary-General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK) reported that the mission’s ability to promote status-neutral solutions

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<sup>125</sup> S/PV.6025, p. 5.

<sup>126</sup> *Ibid.*, p. 8.

<sup>127</sup> *Ibid.*, p. 12.

<sup>128</sup> *Ibid.*, p. 20.

<sup>129</sup> S/PV.6097, p. 6.

to practical issues was being affected by the positions taken by the parties in anticipation of the issuance of the advisory opinion requested by the General Assembly from ICJ on Kosovo's declaration of independence. He further noted that "whether justified or not, Belgrade and Pristina ha[d] been viewing every action they or we take through the prism of how it may be perceived or interpreted by ICJ as potentially either weakening or strengthening the case of one side or the other."<sup>130</sup> The representative of Serbia emphasized that the conclusions reached by ICJ would have far-reaching consequences for the international system as a whole, and therefore it was vitally important that the legal process be allowed to run its course, free of political interference. Thus, he further stated that new recognitions of the unilateral declaration of independence should not be encouraged, and multilateral bodies should refrain from extending membership to the secessionist authorities in Pristina.<sup>131</sup> Mr. Skender Hyseni noted that Kosovo had submitted to ICJ its written contribution on 17 April, and had informed ICJ of its intention to participate in all subsequent proceedings.<sup>132</sup> The representative of the Russian Federation believed that it was necessary that ICJ consider, objectively and impartially, the submission of the General Assembly on whether the unilateral declaration of Kosovo's independence was consistent with international law. He stated that his delegation had presented to ICJ a written report reflecting Russia's fundamental position on this issue.<sup>133</sup>

At its 6202<sup>nd</sup> meeting, on 15 October 2009, the Special Representative of the Secretary-General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK) reported that actions by Pristina and Belgrade continued to be aimed at bolstering their respective legal positions before ICJ.<sup>134</sup> The representative of Serbia noted that this was the first time in history that ICJ would rule on the legality of an attempt at secession by an ethnic group from a United Nations Member State in peacetime, and that it was also the first time that all five permanent members of this Council would participate in a proceeding before ICJ. He added that the Court's

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<sup>130</sup> S/PV.6144, p. 3.

<sup>131</sup> *Ibid.*, p. 6.

<sup>132</sup> *Ibid.*, p. 9.

<sup>133</sup> *Ibid.*, p. 14.

<sup>134</sup> S/PV.6202, p. 4.



proceedings should be allowed to run their course unhindered by political pressures, such as further recognitions of Kosovo's unilateral declaration of independence.<sup>135</sup> The representative of the Russian Federation reiterated his delegation's readiness to continue political efforts to elaborate a legally correct, fair and effective settlement of the Kosovo issue. In this connection, he announced his delegation's intention to participate in the oral proceedings before ICJ on the question of Kosovo's declaration of independence.<sup>136</sup>

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<sup>135</sup> *Ibid.*, p. 5.

<sup>136</sup> *Ibid.*, p. 18.