

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS  
SUPPLEMENT NO. 10 (2000 – 2009)**

**(Advance version, to be issued in volume II of Supplement No. 10 (forthcoming)  
of the *Repertory of Practice of United Nations Organs*)**

**ARTICLE 11**

**TABLE OF CONTENTS**

	<i>Paragraphs</i>
Text of Article 11	
Introductory Note .....	1 - 3
I. General Survey .....	4 - 10
**A. Criteria applied in the preparation of the annexes .....	
B. Summary of the activities of the General Assembly on the maintenance of international peace and security .....	7 - 9
C. Summary of the activities of the General Assembly on disarmament and the regulation of armaments .....	10
II. Analytical Summary of Practice .....	11 - 61
A. Question of the Relationship between the responsibilities of the General Assembly and the primary responsibility of the Security Council with regard to matters concerning the maintenance of international peace and security .....	11 - 55
1. The powers of the General Assembly on counter-terrorism .....	12 - 16
2. Resolution 60/1 - “2005 World Summit Outcome” .....	17 - 18
3. Tenth Emergency Special Session .....	19 - 55
i. Resolution ES-10/7 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory” .....	19 - 21
ii. Resolution ES-10/8 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory” .....	22 - 27
iii. Resolution ES-10/10 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory” .....	28 - 34
iv. Resolution ES-10/13 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied	

Palestinian Territory” .....	35 - 37
v. Resolution ES-10/14 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory” .....	38 - 42
vi. Resolution ES-10/15 - “Advisory Opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory, including in and around East Jerusalem” .....	43 - 46
vii. Resolution ES-10/16 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory” .....	47 - 50
viii. Resolution ES-10/18 - “General Assembly resolution supporting the immediate ceasefire according to Security Council resolution 1860 (2009)” .....	51 - 55
**B. The question of the meaning and scope of the term “action” as used in Article 11(2) .....	
**C. The question of the extent of the competence and powers of the General Assembly with regard to questions “on which action is necessary” .....	
**D. The question of the force of a determination by the General Assembly of the obligation of Member States under Article 2(4) of the Charter .....	
**E. The question of the nature and limits of the power of investigation of the General Assembly in matters related to the maintenance of international peace and security .....	
F. The power of the General Assembly to “discuss any questions relating to the maintenance of international peace and security brought before it by a Member of the United Nations” .....	56 - 61
1. Agenda item: “The situation in the occupied territories of Azerbaijan” .....	56 - 61

## TEXT OF 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 a 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.

---

## INTRODUCTORY NOTE

1. In general, the structure of the present study follows that of the corresponding study of this article in *Repertory Supplement* No. 9. The major headings of the study with their subheadings have been retained, except that some subheadings have been added or modified where necessary. A new question entitled “The power of the General Assembly to ‘discuss any questions relating to the maintenance of international peace and security brought before it by a Member of the United Nations’” was considered in the preparation of this study.
2. Resolutions dealing with questions bearing upon the general principles of cooperation in the maintenance of international peace and security and those dealing with questions bearing upon the principles governing disarmament and the regulation of armaments have been referred to in the footnotes, and consequently this study does not contain the listing of the resolutions as annexes.

3. Article 11 is closely linked to Articles 10, 12, 13, 14, 15, 17 and 35. Therefore, reference may be made to studies relating to these Articles in order to obtain a more comprehensive view of the constitutional issues with regard to the respective competence of the General Assembly and the Security Council concerning the maintenance of peace and security.

---

## I. GENERAL SURVEY

4. During the period under review, 13 resolutions<sup>1</sup> of the General Assembly explicitly referred to Article 11.

5. In accordance with paragraph 1 of Article 11, the General Assembly continued its consideration of the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and arms regulation, and made recommendations to Member States to that effect. Four recommendations were made to the Security Council.<sup>2</sup>

6. Similarly, by virtue of paragraph 2 of Article 11, the General Assembly also considered a number of questions relating to the maintenance of international peace and security, and adopted recommendations addressed to the Member States. No recommendation was made to the Security Council.

---

<sup>1</sup> See General Assembly resolutions 55/34D; 56/25D; 57/91; 58/41; 58/61; 59/95; 59/101; 59/313; 60/86; 61/93; 62/216; 63/80; 64/62.

<sup>2</sup> See *infra*, footnote 9.

## **\*\*A. Criteria applied in the preparation of the annexes**

### **B. Summary of the activities of the General Assembly on the maintenance of international peace and security**

7. During the period under review, the General Assembly adopted a number of resolutions which implicitly invoked paragraph 1 of Article 11. These resolutions touched upon various aspects of the general principles of cooperation in the maintenance of international peace and security, including promoting the cooperation between the United Nations system and regional organizations or agencies,<sup>3</sup> promoting multilateral relationships to enhance regional stability,<sup>4</sup> and strengthening of cooperative efforts among States in support of peace and security objectives.<sup>5</sup> Recommendations bearing on the general principles of cooperation in the maintenance of international peace and security were addressed to all States,<sup>6</sup> Member States,<sup>7</sup> certain States,<sup>8</sup> and to the Security Council as well.<sup>9</sup>

8. The General Assembly also continued its consideration of the strengthening of its relationship with other main organs of the Organization, in particular with the Security Council.<sup>10</sup> The importance of enhanced dialogue and cooperation between the General

---

<sup>3</sup> See *e.g.*, General Assembly resolutions 55/10, pars. 4 and 5; 56/47, pars. 3 to 6; 57/298, pars. 3, 23 and 26; 59/9, pars. 4, 5 and 8; 61/14, par. 4; 63/34, par. 2.

<sup>4</sup> See *e.g.*, General Assembly resolutions 55/38, pars. 5 to 7; 56/18, pars. 2, 3 and 11 to 13; 57/88, par. 2; 58/43, pars. 3 and 6; 59/108, pars. 5 to 7; 60/87, pars. 2, 3 and 10; 61/53, pars. 2 and 3; 62/58, pars. 5 to 7; 63/45, pars. 6 and 7; 64/68, pars. 5 to 7.

<sup>5</sup> See *e.g.*, General Assembly resolutions 55/49, par. 2; 56/220A, pars. 3 and 7; 57/63, pars. 1, 2, 5 and 6; 58/58, pars. 5 and 6; 59/89, pars. 2 to 5; 60/48, par. 2; 61/294, pars. 1, 3 and 4; 62/5, pars. 2 and 3; 64/24, par. 2.

<sup>6</sup> See *e.g.*, General Assembly resolutions 55/107, par. 6; 56/24S, pars. 2 and 3; 57/59, pars. 2 to 4; 58/317, par. 6; 59/76 pars. 9, 10 and 12; 60/43, pars. 3 to 7, 9 to 11 and 13 to 15; 61/160, par. 11; 62/6, pars. 34, 36 and 51; 63/129, pars. 5 to 8, 11 to 13 and 15 to 17; 64/157, par. 11.

<sup>7</sup> See *e.g.*, General Assembly resolutions 55/2, pars. 9 and 10; 56/19, pars. 1 and 2; 57/86, pars. 2 and 3; 58/43, pars. 1 and 3; 59/66, pars. 1 and 2; 60/39, par. 17; 61/40, par. 2; 62/5, par. 3; 63/304, pars. 4, 5 and 8; 64/11, pars. 7, 9 and 79.

<sup>8</sup> See *e.g.*, General Assembly resolutions 55/36, par. 3; 56/28, pars. 1 and 2; 57/69, par. 3; 58/51, pars. 8, 11, 15, 18 and 27; 59/94, par. 13; 60/223, par. 7; 61/40, par. 12; 62/58, par. 5; 63/129, par. 12; 64/69, pars. 5 to 7.

<sup>9</sup> See General Assembly resolution 57/337, pars. 21, 22 and 27; ES-10/7, par. 9.

<sup>10</sup> See *e.g.*, General Assembly resolution 59/313, par. 2(d).

Assembly and the Security Council on peace and security matters was stressed by many Member States at plenary discussions during this period.<sup>11</sup>

9. Furthermore, with implicit reference to paragraph 2 of Article 11, the General Assembly also discussed a range of specific questions and situations relating to the maintenance of international peace and security, and made recommendations thereon. These questions included, inter alia, the situation in Afghanistan;<sup>12</sup> Central America;<sup>13</sup> The occupied Syrian Golan;<sup>14</sup> Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, and the occupied Syrian Golan;<sup>15</sup> Peaceful settlement of the question of Palestine;<sup>16</sup> Bosnia and Herzegovina;<sup>17</sup> The Syrian Golan;<sup>18</sup> Emergency international assistance for peace, normalcy and rehabilitation in Tajikistan;<sup>19</sup> Question of Antarctica;<sup>20</sup> Peace, security and reunification on the Korean peninsula.<sup>21</sup>

### **C. Summary of the activities of the General Assembly on disarmament and the regulation of armaments**

10. During the period under review, the General Assembly adopted a range of resolutions bearing upon the principles governing disarmament and the regulation of armaments. The topics

---

<sup>11</sup> See *e.g.*, A/55/PV.65, statement by the representative of Peru; A/56/PV.20, statement by the representative of Tajikistan; A/58/PV.46, statement by the representative of Zimbabwe; A/60/PV.47, statement by the representative of Bahrain; A/62/PV.56, statement by the representative of Brazil; A/64/PV.43, statement by the representative of Egypt.

<sup>12</sup> See *e.g.*, General Assembly resolutions 55/174; 56/220A-B; 58/27A-B; 59/112A-B; 60/32; 61/18; 62/6; 63/18; 64/11.

<sup>13</sup> See *e.g.*, General Assembly resolutions 55/178; 56/224; 57/160; 58/239.

<sup>14</sup> See *e.g.*, General Assembly resolutions 55/134; 56/63; 57/128; 58/100; 59/125; 60/108; 61/120; 62/110; 63/99; 64/95.

<sup>15</sup> See *e.g.*, General Assembly resolutions 55/132; 56/61; 57/126; 58/98; 59/123; 60/106; 61/118; 62/108; 63/97; 64/93.

<sup>16</sup> See *e.g.*, General Assembly resolutions 55/55; 56/36; 57/110; 58/21; 59/31; 60/39; 61/25; 62/83; 63/29; 64/19.

<sup>17</sup> See *e.g.*, General Assembly resolutions 56/215; 57/10.

<sup>18</sup> See *e.g.*, General Assembly resolutions 56/32; 57/112; 58/23; 59/33; 60/40; 61/27; 62/85; 63/31; 64/21.

<sup>19</sup> See *e.g.*, General Assembly resolution 57/103.

<sup>20</sup> See *e.g.*, General Assembly resolutions 57/51; 60/47.

<sup>21</sup> See *e.g.*, General Assembly resolution 62/5.

of these resolutions encompassed, inter alia, compliance with non-proliferation, arms limitation and disarmament agreements,<sup>22</sup> establishment of nuclear-weapon-free zones,<sup>23</sup> verification in all its aspects,<sup>24</sup> prevention of an arms race in outer space,<sup>25</sup> and prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons.<sup>26</sup> Agenda items such as “General and complete disarmament” and “Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly” were subject to periodic review during each session. Furthermore, the Assembly addressed its recommendations to all States,<sup>27</sup> Member States,<sup>28</sup> certain States,<sup>29</sup> specific State(s),<sup>30</sup> international community,<sup>31</sup> non-governmental organizations,<sup>32</sup> and regional organizations.<sup>33</sup> No recommendation was addressed to the Security Council during this period.

---

---

<sup>22</sup> See *e.g.*, General Assembly resolutions 57/86; 60/55, pars. 2 to 4; 63/59, pars. 2 and 4 to 6.

<sup>23</sup> See *e.g.*, General Assembly resolutions 55/33I, pars. 2, 3 and 5; 56/21, pars. 1, 2 and 5 to 7; 57/69, pars. 3 and 4; 58/49, pars. 2 to 5; 59/63, pars. 1, 2 and 5 to 7; 60/58, pars. 1 and 4 to 10; 61/88, pars. 1 and 2; 62/18, pars. 1 and 4; 63/65, pars. 5 to 8 and 10; 64/26, pars. 1 and 4.

<sup>24</sup> See *e.g.*, General Assembly resolutions 56/15, par. 1; 59/60, par. 1; 62/21, par. 1.

<sup>25</sup> See *e.g.*, General Assembly resolutions 55/122, par. 2; 56/51, par. 2; 57/57, pars. 1, 3 and 4; 58/36, pars. 1, 3 and 4; 59/65, pars. 1, 3 and 4; 60/54, pars. 1 to 5; 61/58, pars. 1 to 5; 62/20, pars. 1 to 5; 63/40, pars. 1 to 5; 64/28, pars. 1 to 6.

<sup>26</sup> See *e.g.*, General Assembly resolutions 57/50, pars. 1 to 3; 60/46, pars. 1 to 3; 63/36, pars. 1 to 3.

<sup>27</sup> See *e.g.*, General Assembly resolutions 55/31, par. 3; 56/24N, pars. 9 and 10; 57/100, pars. 4 to 6; 58/51, pars. 2 to 4; 59/75, pars. 1 to 3; 60/95, pars. 4 to 7; 61/100, pars. 1 and 2; 62/60, par. 2; 63/73, pars. 10, 13 and 15; 64/56, pars. 1, 2 and 4 to 7.

<sup>28</sup> See *e.g.*, General Assembly resolutions 55/33U, pars. 3, 4, 5 and 8; 56/14, pars. 1 and 6; 57/81, par. 4; 58/47, par. 3; 59/90, pars. 2, 4 and 5; 60/81, par. 1; 61/85, par. 3; 62/40, pars. 2, 4 and 5; 63/62, par. 5; 64/34, par. 5.

<sup>29</sup> See *e.g.*, General Assembly resolutions 55/33C, par. 8; 56/24P, par. 3; 57/63, par. 6; 58/36, par. 8; 59/107, par. 1; 60/72, par. 4; 61/56, pars. 2 and 5; 62/15, par. 1; 63/88, par. 2; 64/53, pars. 5 to 9 and 13.

<sup>30</sup> See *e.g.*, General Assembly resolutions 55/36, par. 3; 56/24R, pars. 3 to 7; 57/68, par. 6; 58/51, par. 20; 59/94, par. 13; 60/92, par. 3; 61/104, par. 5; 62/37, par. 5; 63/58, par. 4; 64/57, par. 5.

<sup>31</sup> See *e.g.*, General Assembly resolutions 55/33F, par. 2; 57/70, pars. 2 and 6; 58/58, pars. 2 and 6; 59/74, pars. 1 and 6; 60/71, par. 7; 61/71, par. 7; 62/22, par. 7; 63/66, pars. 3 and 7; 64/30, pars. 3 and 7.

<sup>32</sup> See *e.g.*, General Assembly resolutions 55/34F, par. 3; 56/25A, par. 13; 60/61, par. 6; 61/76, par. 5; 62/48, par. 5; 63/62, par. 5; 64/32, par. 5.

<sup>33</sup> See *e.g.*, General Assembly resolutions 56/14, par. 3; 57/83, par. 3.

## II. ANALYTICAL SUMMARY OF PRACTICE

### **A. Question of the Relationship between the responsibilities of the General Assembly and the primary responsibility of the Security Council with regard to matters concerning the maintenance of international peace and security**

11. During the period under review, constitutional discussion arose over the relationship between the responsibilities of the General Assembly and the primary responsibility of the Security Council over the matters concerning the maintenance of international peace and security. The discussion was carried out in the plenary of the General Assembly during the regular sessions and the tenth emergency special session, in the Security Council and in the International Court of Justice. This question was discussed in relation to the following agenda items.

#### *1. The powers of the General Assembly on counter-terrorism*

12. The principal organs of the United Nations have long recognized that terrorist acts could constitute a threat to international peace and security, therefore being of concern to both the General Assembly and the Security Council.<sup>34</sup> On 6 December 2000, the Security Council discussed the respective responsibilities of the Security Council and the General Assembly in the efforts at combating terrorism.<sup>35</sup>

13. The General Assembly was recognized by some delegations as “the principal United Nations platform for initiating efforts to combat international terrorism,”<sup>36</sup> having “the primary

---

<sup>34</sup> See generally Annex to the General Assembly resolution 49/60, Declaration on Measures to Eliminate International Terrorism. Also see Security Council resolution 1269 (1999).

<sup>35</sup> See S/PV.4242.

<sup>36</sup> See S/PV.4242, statement by the representative of the Netherlands.

role in defining the juridical framework and principles for addressing terrorism,”<sup>37</sup> maintaining “its role of defining the principles guiding the fight against terrorism.”<sup>38</sup> The role of the Assembly chiefly manifested in elaboration of international conventions addressing the issue. On the other hand, the role of the Security Council was seen as “complementing and contributing to the collective efforts,”<sup>39</sup> and only “in special cases.”<sup>40</sup> One delegate even cautioned that the Council should not be “acting as a substitute for the General Assembly.”<sup>41</sup>

14. The relevance of both the General Assembly and the Security Council was confirmed on 12 September 2001, when both organs unanimously adopted resolutions condemning the terrorist attacks in New York.<sup>42</sup> Tajikistan, for example, commended the Security Council for “taking a targeted and specific approach to the problem of international terrorism... la[y]ing out a principled position and programme of action in this extremely important area.”<sup>43</sup>

15. On the other hand, the discussions also stressed the continuing role of the General Assembly in “elaborat[ing] a common international legal platform to counter this challenge through the speedy adoption of a comprehensive convention to combat international terrorism, as well as a convention for the suppression of acts of nuclear terrorism.”<sup>44</sup> However, proposals for the establishment, under the auspices of the General Assembly, of specialized organs that would support the actions of the Security Council, were not pursued. For example, during the

---

<sup>37</sup> See S/PV.4242, statement by the representative of Jamaica.

<sup>38</sup> See S/PV.4242, statement by the representative of France.

<sup>39</sup> See S/PV.4242, statement by the representative of Jamaica.

<sup>40</sup> See S/PV.4242, statement by the representative of the Netherlands.

<sup>41</sup> See S/PV.4242, statement by the representative of France.

<sup>42</sup> See General Assembly resolution 56/1 and Security Council resolution 1368 (2001).

<sup>43</sup> See A/56/PV.20, statement by the representative of Tajikistan.

<sup>44</sup> *Ibid.*

plenary discussions on 1 October 2001, the Permanent Representative of Belarus proposed to establish,

on the basis of an appropriate resolution of the General Assembly, a United Nations centre for combating terrorism, with responsibility for ensuring that States parties fulfil their obligations within the framework of these treaties... The establishment of such an anti-terrorist centre by the General Assembly, which is composed of all the Members of the United Nations, would be a substantial addition to the measures undertaken by the Security Council in combating terrorism and would promote the broadest interaction possible within the framework of the United Nations on the issue. The General Assembly has the necessary authority, under Article 11 of the Charter, to take such a decision.<sup>45</sup>

16. This proposal was not discussed further in the plenary.

## *2. Resolution 60/1 - "2005 World Summit Outcome"*

17. High-level Plenary Meetings of the General Assembly which were convened from 14 to 16 September, at the United Nations Headquarters in New York, discussed a wide range of issues. There was some discussion on the relationship between the Security Council and the General Assembly in the maintenance of international peace and security. Some delegations stated that the Security Council was the appropriate body to make decisions on the use of force to deal with threats to international security but that a provision should be made for the General Assembly to have an oversight role on this critical matter.<sup>46</sup> Also, these meetings were the time for greater balance to be established between the powers of the General Assembly and Security Council.<sup>47</sup> Azerbaijan made implicit reference to Article 11, paragraph 2, by stating that the General Assembly "must take bold measures to further strengthen its role and authority, as set

---

<sup>45</sup> See A/56/PV.12, statement by the representative of Belarus.

<sup>46</sup> See A/60/PV.4, statement by the Prime Minister of Malaysia.

<sup>47</sup> See A/6-/PV.4, statement by the Prime Minister of Haiti.

out in the Charter.”<sup>48</sup> The speaker further added that the General Assembly “should discuss issues pertaining to the maintenance of international peace and security, in particular through the consideration of agenda items of special political importance and urgency.”<sup>49</sup>

18. The “2005 World Summit Outcome” (A/RES/60/1) reaffirmed the primary responsibility of the Security Council in respect of the maintenance of international peace and security. The resolution also noted that the General Assembly has a role “relating to the maintenance of international peace and security in accordance with the relevant provisions of the Charter.”<sup>50</sup>

### *3. Tenth Emergency Special Session*

#### *i. Resolution ES-10/7 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory”*

19. In late September and early October of 2000, the escalation of violence and growing numbers of casualties in Palestine gave rise to serious concerns in the organs of the United Nations responsible for the maintenance of international peace and security. The Security Council debated the issue, and on 7 October 2000 adopted resolution 1322 (2000). Among other things, the resolution reaffirmed the need for full respect by all of the Holy Places of the City of Jerusalem, condemned excessive use of force against Palestinians, called for immediate cessation of violence, stressed the importance of establishing an inquiry mechanism and decided to remain seized of the matter.<sup>51</sup> Subsequently, violence continued to escalate, but the Security Council was unable to act to address the violation of its resolution because of a threat of veto of

---

<sup>48</sup> See A/60/PV.7, statement by the Minister for Foreign Affairs of Azerbaijan.

<sup>49</sup> *Ibid.*

<sup>50</sup> See General Assembly resolution 60/1, par. 80.

<sup>51</sup> See Security Council resolution 1322 (2000), preamble and pars. 1, 2, 4, 5 and 8.

a permanent member. The General Assembly, therefore, was called to resume the tenth emergency special session pursuant to resolution 377 A (V), entitled “Uniting for peace”.

20. During the discussions at the tenth emergency special session, a question arose whether the Security Council had failed to discharge its primary responsibility with regard to the maintenance of international peace and security, although no resolution was rejected due to lack of unanimity. According to some States,<sup>52</sup> the threat of veto was a manifestation that the Security Council had failed to discharge its responsibilities, thus enabling the General Assembly to exercise its powers under resolution 377 A (V).

21. Resolution ES-10/7 was adopted on 20 October 2000, by a vote of 92 in favour to 6 against, with 46 abstentions. Among other things, the General Assembly urgently demanded full compliance with the Security Council resolution 1322 (2000) and called upon the Security Council to follow the situation closely and to ensure the implementation of its resolutions, expressed determination to uphold the relevant resolutions of the General Assembly and Security Council, condemned the acts of violence and demanded immediate cessation of the use of force, and expressed strong support for the establishment of a mechanism of inquiry into the violent events.<sup>53</sup>

*ii. Resolution ES-10/8 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory”*

22. Violence in Palestine continued, resulting in over 800 Palestinian casualties and assaults on the Palestinian leadership and Palestinian infrastructure. However, the Security Council remained unable to discharge its responsibilities in Palestine due to a veto or threat of veto by a

---

<sup>52</sup> See *e.g.*, A/ES-10/PV.14, statements by the representatives of Egypt and Cuba.

<sup>53</sup> See A/RES/ES-10/7, preamble and pars. 2, 4, 7 and 9.

permanent member on a number of occasions.<sup>54</sup> As a result, on 18 December 2001, the Permanent Representative of Egypt addressed a letter to the President of the General Assembly,<sup>55</sup> requesting resumption of the tenth emergency special session to consider illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory.

23. During the discussions at the tenth emergency special session, grave concerns were expressed about the continuing inability of the Security Council to discharge its functions. Palestine asserted that “the abnormal situation in the Security Council with respect to the question of Palestine... must be brought to an end,” since it negatively affects “the situation in the Middle East, the credibility of the Council and its ability to move effectively in other areas.”<sup>56</sup> Several delegates regretted<sup>57</sup> the failure of the Security Council to fulfill its primary responsibilities in the maintenance of international peace and security.

24. Some representatives warned that the failure of the Security Council challenged the credibility of the United Nations, since the Organization bears permanent responsibility for the resolution of the Palestinian conflict.<sup>58</sup>

25. Some members expressed the view that the General Assembly should put the full weight of its moral authority to remind the Security Council of its responsibilities in the maintenance of international peace and security. The Observer of Palestine declared that the emergency session

---

<sup>54</sup> See Security Council draft resolution S/2001/270, vetoed on 27 March 2001; no action following the deliberations on 20 and 21 August 2001, and Security Council draft resolution S/2001/1199, vetoed on 14 December 2001.

<sup>55</sup> Letter dated 18 December 2001 from the Permanent Representative of Egypt addressed to the President of the General Assembly (A/ES-10/130).

<sup>56</sup> See A/ES-10/PV.15, statement by the Observer of Palestine.

<sup>57</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of Egypt, South Africa, Senegal, Qatar, China and the Observer of Palestine.

<sup>58</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of Senegal and the Islamic Republic of Iran.

of the Assembly manifested the collective responsibilities of the States Members of the United Nations for the maintenance of international peace and security, and that the resolutions of the emergency special sessions had special strength, bearing “the full moral authority embodied in the international community and its representatives,” or even “at best, the power of law.”<sup>59</sup> Other delegates stressed the need to “send a clear message” to the Council.<sup>60</sup>

26. Other States differed in the interpretation of the role of the General Assembly in the maintenance of international peace and security. The United States of America asserted that the proper role of the United Nations was to “facilitate and strengthen agreements that Israel and Palestinians reach with each other”, rather than “to isolate politically one of the parties to the conflict.”<sup>61</sup>

27. On 20 December 2001, the General Assembly adopted resolution ES-10/8 by a vote of 124 in favour to 6 against, with 25 abstentions. Although the Assembly refrained from making any recommendations to the Security Council, the text of the resolution was identical to that which failed to be adopted in the Security Council in December 2001. It demanded immediate cessation of violence, called on both sides to implement the recommendations for the peace process, emphasized the essential role of the Palestinian Authority for the peace process, and encouraged the establishment of a monitoring mechanism to help parties implement the recommendations.<sup>62</sup>

---

<sup>59</sup> See A/ES-10/PV.15, statement by the Observer of Palestine.

<sup>60</sup> See *e.g.*, A/ES-10/PV.15, statements by the representative of Egypt and the Observer of Palestine.

<sup>61</sup> See A/ES-10/PV.15, statement by the representative of the United States of America.

<sup>62</sup> See A/RES/ES-10/8, preamble and pars. 1, 4 and 5.

*iii. Resolution ES-10/10 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory”*

28. As the violence in Palestine continued to escalate, resulting in almost 1,500 Palestinian casualties by May 2002, the Security Council actively deliberated the matter.<sup>63</sup> Between 12 March and 4 April 2002, the Security Council adopted 3 resolutions dealing with the situation.<sup>64</sup> In response to the reports alleging a massacre in Jenin refugee camp, on 19 April 2002, the Security Council adopted resolution 1405 (2002), in which it welcomed the initiative of the Secretary-General to launch a fact-finding mission into the events in Jenin refugee camp.<sup>65</sup> The Israeli government raised a number of concerns regarding the mission, such that the mission was unable to proceed. On 3 May 2002, the Security Council debated the appropriate response to the failure of the mission: whether it should compel the parties to accept the mission under Chapter VII, or approve the disbanding of the mission while expressing regret for the position of Israel. No resolution was passed.<sup>66</sup>

29. On 3 May 2002, the Permanent Representative of the Sudan addressed a letter<sup>67</sup> to the President of the General Assembly, in which he requested the resumption of the tenth emergency special session of the General Assembly. With the support of the States members of

---

<sup>63</sup> The Security Council remained seized of the matter, holding intensive debates on 21, 26 and 27 February, 12, 29 and 30 March, 2, 3, 4, 8, 9, 10, 18 and 19 April, and on 3 May 2002.

<sup>64</sup> On 12 March 2002, the Security Council adopted resolution 1397 (2002), where it demanded immediate cessation of violence and terror, called upon Israeli and Palestinian leadership to cooperate in the peace process, laid out a vision of the two states living side by side within secure and recognized borders, and decided to remain seized of the matter.

On 30 March 2002, the Security Council adopted resolution 1402 (2002) where it reiterated its demands of 12 March, and called upon both parties to “move immediately to a meaningful ceasefire” and to cooperate fully with the peace efforts.

On 4 April 2002, the Security Council adopted resolution 1403 (2002), where it demanded the implementation of its resolution 1402 (2002), and requested the Secretary-General to follow the situation.

<sup>65</sup> See Security Council resolution 1405 (2002), par. 2.

<sup>66</sup> See S/PV.4525.

<sup>67</sup> Letter dated 3 May 2002 from the Chargé d'affaires A.I. of the Permanent Mission of the Sudan addressed to the President of the General Assembly (A/ES-10/170).

the League of Arab States and the members of the Movement of Non-Aligned Countries, the session was resumed.

30. Once again, the question arose as to whether the Security Council had failed to discharge its responsibility with regards to the maintenance of international peace and security. Some delegates<sup>68</sup> asserted that discussing the matter in the Security Council, or even adopting resolutions, was insufficient to discharge the responsibility of the Council. If the Council failed to ensure compliance with its resolutions, it failed to discharge its responsibility. Failure to enforce the cease-fire, as well as the failure to compel the parties to submit to the investigation, was said to be a failure to ensure compliance with its resolutions.

31. In opposition to this view, some other States<sup>69</sup> indicated that holding a special emergency session was inappropriate since the Security Council has been seized of its responsibilities with regards to the question of Palestine. As evidence of the fulfillment of the responsibilities of the Council, the Permanent Representative of the United States of America referred to the recent “Security Council activism” in discussing the issue.<sup>70</sup> Moreover, he argued that the Security Council had not failed to enforce its resolutions. First, although much remained to be done in order to implement the resolutions, it was indicative of the intransigence of the matter, rather than the failure of the Security Council. So long as “we can report progress in the implementation of the Security Council resolutions,”<sup>71</sup> there were no grounds to assert that the Council has failed to discharge its responsibilities. Second, with respect to the specific provision whereby the Council welcomed the initiative of the Secretary-General to send a fact-finding

---

<sup>68</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of South Africa, the Sudan and Cuba.

<sup>69</sup> See A/ES-10/PV.15, statement by the representative of the United States of America.

<sup>70</sup> *Ibid.*

<sup>70</sup> See Security Council resolution 1405 (2002), par. 2.

<sup>71</sup> *Ibid.*

team to Jenin, some members<sup>72</sup> asserted that no party was in violation of the provision merely as a result of raising concerns with regards to the parameters of the mission, coupled with the eventual failure of the mission.

32. Another question arose as to whether different formulations used by the Security Council gave rise to different obligations, and in particular, whether “welcom[ing] the initiative of the Secretary-General”<sup>73</sup> was tantamount to a demand by the Security Council. It was argued, on the one hand, that the Security Council did not fail to discharge its responsibilities when it failed to enforce a provision that was not mandatory.<sup>74</sup> On the other hand, it was argued that the problem laid in the failure to ensure respect for the resolutions of the Council, semantic issues being irrelevant.<sup>75</sup>

33. The Assembly further discussed the scope of its duty with respect to the maintenance of international peace and security, when the Security Council failed to enforce its resolutions. The Sudan emphasized the duty of the General Assembly to consider “general principles governing cooperation in the area of international peace and security”, and to “condemn Israel for its disregard of, and scorn for, the Security Council and international law, including humanitarian law.”<sup>76</sup> Egypt stated that the duty of the General Assembly included preserving the credibility of the United Nations.<sup>77</sup>

---

<sup>72</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of the United States of America and Israel.

<sup>73</sup> See Security Council resolution 1405 (2002), par. 2.

<sup>74</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of the United States of America and Israel.

<sup>75</sup> See *e.g.*, A/ES-10/PV.15, statements by the representatives of South Africa, Sudan and the Observer of Palestine.

<sup>76</sup> See A/ES-10/PV.15, statement by the representative of Sudan.

<sup>77</sup> See A/ES-10/PV.15, statement by the representative of Egypt.

34. After voting paragraph by paragraph, resolution ES-10/10 as a whole was adopted by 74 votes in favour to 4 against, with 54 abstentions. In the resolution, the General Assembly condemned the attacks by the Israeli forces and the refusal of Israel to cooperate with the fact-finding team, and demanded the immediate and full implementation of the Security Council resolutions.<sup>78</sup> The General Assembly refrained from making any recommendations to the Security Council, and did not adopt the paragraph expressing “regret that the Security Council did not take the necessary measures in response to the Israeli refusal to cooperate with the fact-finding mission.”<sup>79</sup> However, the Assembly noted the failure to implement the resolutions of the Security Council, and took note that “the Security Council is yet to take the necessary measures in response to the Israeli refusal to cooperate with the fact-finding team.”<sup>80</sup>

*iv. Resolution ES-10/13 - “Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory”*

35. By October 2003, the United Nations became concerned about the fact that Israel intended to construct a separation wall, infringing on the territory of Palestine. However, the Security Council was unable to adopt a resolution condemning the construction of the wall on 14 October, due to the exercise by one of its permanent members of the veto.<sup>81</sup> As a result, on 15 October 2003 the Permanent Representative of the Syrian Arab Republic addressed a letter<sup>82</sup> to the President of the General Assembly, in which he requested resumption of the tenth emergency special session, “in order to address the grave issue of Israel’s expansionist wall in the Occupied Palestinian Territory, including East Jerusalem.”

---

<sup>78</sup> See A/RES/ES-10/10, pars. 1, 2 and 4.

<sup>79</sup> See General Assembly draft resolution A/ES-10/L.9 of 6 May 2002.

<sup>80</sup> See A/RES/ES-10/10, preamble.

<sup>81</sup> See Security Council draft resolution S/2003/980, vetoed on 14 October 2003.

<sup>82</sup> Letter dated 15 October 2003 from the Permanent Representative of the Syrian Arab Republic addressed to the President of the General Assembly (A/ES-10/242).

36. In the course of the discussions at the emergency special session, Israel observed that the General Assembly should not lightly declare failure of the Security Council to discharge its responsibilities. In his view, submission of an unacceptable draft resolution in the Security Council, refusal to engage in negotiations as to the acceptable formulations, and submission of the same unacceptable draft resolution to the Assembly constituted “forum shopping.”<sup>83</sup> The discussions in the plenary did not lead to further elucidation of the important question of what efforts should be made to reach unanimity among the Permanent Members of the Security Council before the Council is declared to be paralysed by the threat of a veto, although resolution 377 A (V) reaffirmed “the importance of ... the duty of the Permanent Members to seek unanimity.”<sup>84</sup>

37. On 21 October 2003, the General Assembly adopted resolution ES-10/13 by a vote of 144 in favour to 4 against, with 12 abstentions. In the resolution, the Assembly reaffirmed the principle of inadmissibility of acquisition of territory by force, demanded Israel to stop and reverse the construction of the wall in departure of the Armistice Line of 1949, and declared that further action by the United Nations may be considered if necessary.<sup>85</sup> The draft resolution requesting an advisory opinion of the International Court of Justice on the legality of the construction of, and the obligations of Israel with regard to the wall, was not put to vote at this time.<sup>86</sup>

---

<sup>83</sup> See A/ES-10/PV.21, statement by the representative of Israel.

<sup>84</sup> See General Assembly resolution 377 A (V), preamble.

<sup>85</sup> See A/RES/ES-10/13, preamble and pars. 1 and 3.

<sup>86</sup> See General Assembly draft resolution A/ES-10/L.14 of 23 October 2003.

*v. Resolution ES-10/14 - "Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory"*

38. As the Security Council remained unable to act, and as Israel continued to construct the wall, the General Assembly was once again called upon to resume the emergency special session. On 1 December 2003, the Permanent Representative of Kuwait addressed a letter to the President of the General Assembly, in which he requested resumption of the tenth emergency special session, "in order to address the issue of the expansionist wall being constructed by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem."<sup>87</sup>

39. The draft resolution before the Assembly proposed to request the International Court of Justice to urgently render an advisory opinion on the following question:

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?<sup>88</sup>

40. The question of the failure of the Security Council arose again. Although the Security Council had been paralysed by the threat of veto, it was contended that no resolution had been rejected by the Council before the emergency special session was resumed, and that the issue of requesting an advisory opinion had not been raised before the Security Council. Therefore, it was argued that the General Assembly could not properly convene and raise the issue of the construction of the wall.<sup>89</sup>

---

<sup>87</sup> Letter dated 1 December 2003 from the Chargé d'affaires A.I. of the Permanent Mission of Kuwait addressed to the President of the General Assembly (A/ES-10/249).

<sup>88</sup> See General Assembly draft resolution A/ES-10/L.16 of 3 December 2003.

<sup>89</sup> See A/ES-10/PV.23, statement by the representative of Israel.

41. On the other hand, it was argued that the failure of the Council to act was clear;<sup>90</sup> that the recourse to the Court was within the powers of the General Assembly in accordance with Article 96 of the Charter of the United Nations;<sup>91</sup> and that it was appropriate for the Assembly to ascertain the international legal obligations applicable to Israel, given the absolute disrespect of Israel for the resolutions of General Assembly and Security Council.<sup>92</sup> In its advisory opinion subsequently delivered, the International Court of Justice agreed with this view.<sup>93</sup>

42. On 8 December 2003, the resolution ES-10/14 was adopted by 90 votes in favour to 8 against, with 74 abstentions.

*vi. Resolution ES-10/15 - “Advisory Opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory, including in and around East Jerusalem”*

43. On 9 July 2004, the International Court of Justice delivered its advisory opinion, confirming that the United Nations, including both the General Assembly and the Security

---

<sup>90</sup> See *e.g.*, A/ES-10/PV.23, statements by the representatives of Malaysia and the Islamic Republic of Iran.

<sup>91</sup> See A/ES-10/PV.23, statement by the representative of Kuwait.

<sup>92</sup> See *e.g.*, A/ES-10/PV.23, statements by the Observer of Palestine and the representative of South Africa.

<sup>93</sup> See A/ES-10/273, p. 15-6. The Court found that, in 1997, the tenth emergency special session was validly convened pursuant to the resolution 377 A (V). The Court further found that the session was validly resumed in October 2003, when the Security Council failed to discharge its responsibilities. Finally, the Court reasoned that the situation remained unchanged until December 2003, when the session was resumed: the Council had failed to discuss the construction of the wall, to reconsider the negative vote, and to adopt another resolution dealing with the matter. With respect to the ability of the Assembly to raise the issue of the wall, the Court also found that, during the emergency special session, the General Assembly could deal with any issue falling within the subject-matter for which the session had been convened, and that it was not limited to the specific issues with regard to which the Council had failed to discharge its responsibilities. Finally, with respect to the power of the Assembly to convene the special emergency session at a time when the regular Session of the General Assembly was in progress, the Court stated that there was no rule prohibiting it.

Council, have the responsibility to deal with the issue of the wall.<sup>94</sup> In order to consider the advisory opinion, the General Assembly resumed the tenth emergency special session.

44. During the session, some delegate called on the Assembly to consider stronger measures in case Israel failed to comply with its legal obligations. In particular, the Observer of Palestine stated:

in the case of Israel's non-compliance with its legal obligations, we expect States, individually, regionally and collectively at the United Nations, to undertake actions consistent with their legal obligations as determined by the Court. Those should include, inter alia, actions against all settlement activities and settlement products as well as sanctions against companies and entities involved in the construction of the wall or involved in other unlawful activities in the occupied Palestinian territory, including East Jerusalem... In accordance with the Charter, and consistent with the Court's ruling, it is clear that further action would, of course, entail the involvement of the Security Council, and we intend to pursue that... It is obvious that we must anticipate action in the Security Council... We shall not exempt the Security Council from its responsibilities, irrespective of the threat of the use of veto.... With regard to the threat of vetoing a resolution concerning the respect of the advisory opinion and the legal obligations determined therein, we believe such an action would be tantamount to attacking the system and be a formal declaration of responsibility.<sup>95</sup>

45. Delegates made it clear that the Assembly was vested with significant powers in relation to the maintenance of peace and security. The Permanent Representative of Jordan stated that:

[T]he General Assembly — which requested the advisory opinion — is a forum where the international community can adopt such practical measures. By shouldering its responsibilities with regard to the issue of Palestine and carrying out its duties as stipulated by the Charter, the Assembly can help to put an end to

---

<sup>94</sup> See A/ES-10/273, p. 11 and 21. At page 11, the Court made an explicit reference to Article 11, paragraph 2 of the Charter, grounding the jurisdiction of the General Assembly in matters relating to the maintenance of international peace and security. The Court further declared that the Assembly was entitled to deal with the issue of the wall, since it was raised in the context of the tenth emergency special session, convened to deal with "what the Assembly, in its resolution ES-10/2 of 25 April 1997, considered to constitute a threat to international peace and security."

<sup>95</sup> See A/ES-10/PV.24, statement by the Observer of Palestine. Cf. Repertory of Practice, Supplement No 3, p. 239-40, discussion of resolution 1761 (XVII) in connection with the question of apartheid, where the General Assembly approved a resolution recommending certain measures relating to diplomatic relations, transportation and trade.

the illegal situation caused by the building of the separation wall and to ensure the implementation of international law as set forth by the Court.<sup>96</sup>

46. On 20 July 2004, the Assembly adopted resolution ES-10/15, in which it acknowledged the advisory opinion and called upon Israel to comply with the opinion. The resolution called on other Member States to comply with their legal obligations as mentioned in the advisory opinion. It also requested the Secretary-General to establish a register of damage caused to “all natural or legal persons” by the construction of the wall, in order to fulfil the obligation of Israel to make reparation and return land.<sup>97</sup>

*vii. Resolution ES-10/16 - “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory”*

47. At the request of Qatar<sup>98</sup> and the Non-Aligned Movement,<sup>99</sup> the tenth emergency special session of the General Assembly was resumed on 17 November 2006 to continue discussion of the agenda item entitled “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory.” Discussion on this agenda item was reopened after the Security Council failed to adopt a resolution pertaining to Israeli aggression in the Palestinian territory.<sup>100</sup>

48. During the discussion, a number of representatives shared the view of the Observer of Palestine that the Security Council had “failed to uphold its responsibilities due to the negative vote of one of its permanent members”.<sup>101</sup> A number of Member States advanced the argument that since the Security Council had not fulfilled its primary responsibility for the maintenance of

---

<sup>96</sup> See A/ES-10/PV.24, statement by the representative of Jordan.

<sup>97</sup> See A/RES/ES-10/15, pars. 1 to 4.

<sup>98</sup> Letter dated 14 November 2006 from the Permanent Representative of Qatar addressed to the President of the General Assembly (A/ES-10/366).

<sup>99</sup> Letter dated 15 November 2006 from the Permanent Representative of Cuba addressed to the President of the General Assembly (A/ES-10/367).

<sup>100</sup> See S/PV.5565, p. 3.

<sup>101</sup> See *e.g.*, A/ES-10/PV.28, statements by the Observer of Palestine and the representatives of Cuba and Pakistan; A/ES-10/PV.29, statements by the representatives of Egypt and Zimbabwe.

international peace and security, the General Assembly should take appropriate steps, in accordance with the Charter, to resolve the question before the emergency special session.<sup>102</sup>

49. A number of Member States were concerned that the resumption of the tenth emergency special session would not assist the cause of peace in the Middle East given the proliferation of resolutions on the Middle East.<sup>103</sup> Other Member States felt only one side of the issue would be addressed as Israel was responding in self-defence to rocket attacks by Hamas.<sup>104</sup> Further, it was brought forward that the Security Council had not failed to act but had failed to address the origins of the situation.<sup>105</sup>

50. After discussions, the General Assembly adopted resolution ES-10/16 of 17 November 2006, entitled “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,” by a vote of 156 in favour to 7 against, with 6 abstentions. In the resolution, the Assembly called for the immediate cessation of military operations and all acts of violence, terror, provocation, incitement and destruction between the Israeli and Palestinian sides.<sup>106</sup> The resolution also called upon Israel to abide by its obligations and responsibilities under the Geneva Convention relative to the Protection of Civilian Persons in Time of War.<sup>107</sup> The tenth emergency special session was temporarily adjourned until further request from Member States.<sup>108</sup>

---

<sup>102</sup> See *e.g.*, A/ES-10/PV.28, statements by the representatives of Qatar, Cuba, South Africa and Pakistan; A/ES-10/PV.29, statement by the representative of Egypt.

<sup>103</sup> See *e.g.*, A/ES-10/PV.28, statement by the representative of Australia; A/ES-10/PV.29, statement by the representative of Canada.

<sup>104</sup> See *e.g.*, A/ES-10/PV.28, statement by the representative of Israel; A/ES-10/PV.29, statement by the representative of the United States of America.

<sup>105</sup> See A/ES-10/PV.28, statement by the representative of Israel.

<sup>106</sup> See A/RES/ES-10/16, par. 2.

<sup>107</sup> *Ibid.*, par. 4.

<sup>108</sup> *Ibid.*, par. 13.

*viii. Resolution ES-10/18 - “General Assembly resolution supporting the immediate ceasefire according to Security Council resolution 1860 (2009)”*

51. The tenth emergency special session of the General Assembly was once again resumed in January 2009 at the request of Malaysia,<sup>109</sup> the Bolivarian Republic of Venezuela,<sup>110</sup> Indonesia<sup>111</sup> and the Syrian Arab Republic.<sup>112</sup> On 14 January 2009 the Permanent Representative of Israel, in a letter addressed to the President of the General Assembly, demanded the cancellation of the meeting given the fact that the Security Council was actively seized of the matter at the time the tenth emergency special session was called to resume.<sup>113</sup>

52. The discussion of the agenda item entitled “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory” continued with most of the debate focusing on whether the Assembly could consider this agenda item while the Security Council was seized of the matter.<sup>114</sup> The Under-Secretary-General for General Assembly and Conference Management noted that the tenth emergency special session was not new and thus, if any Member States had requested the resumption of this session, the General Assembly could meet.<sup>115</sup>

---

<sup>109</sup> Letter dated 7 January 2009 from the Permanent Representative of Malaysia addressed to the President of the General Assembly (A/ES-10/434).

<sup>110</sup> Letter dated 7 January 2009 from the Chargé d'affaires A.I. of the Bolivarian Republic of Venezuela (Bolivarian Republic of ) addressed to the President of the General Assembly (A/ES-10/436).

<sup>111</sup> Letter dated 8 January 2009 from the Permanent Representative of Indonesia addressed to the President of the General Assembly (A/ES-10/440).

<sup>112</sup> Note Verbale dated 8 January 2009 from the Permanent Mission of the Syrian Arab Republic addressed to the President of the General Assembly (A/ES-10/441).

<sup>113</sup> Letter dated 14 January 2009 from the Permanent Representative of Israel addressed to the President of the General Assembly (A/ES-10/439).

<sup>114</sup> See *e.g.*, A/ES-10/PV.32 – 33, statements by the representative of Israel.

<sup>115</sup> See A/ES-10/PV.32, statement by the Under-Secretary-General for General Assembly and Conference Management.

53. A number of Member States questioned how the Security Council was unable to take steps to meet its responsibility in maintaining peace and security.<sup>116</sup> Member States emphasized that the “General Assembly is mandated by the Charter to call attention to situations which are likely to endanger international peace and security”<sup>117</sup> and how “[n]owhere is that more true than in respect of the situation in the Middle East, which has the question of Palestine at its heart.”<sup>118</sup> The General Assembly was urged by these Member States to “step forward and play its rightful role under the Charter.”<sup>119</sup>

54. Other Member States felt it unnecessary to have a separate General Assembly resolution when the Security Council had already passed a resolution on this issue, and that the objective of the tenth emergency special session should be to support implementation of the provisions of Security Council resolution 1860 (2009).<sup>120</sup> Some Member States saw this debate as one-sided as the rocket attacks by Hamas that had led to the current crisis were not recognized in the draft resolution presented and the resolution adopted by the General Assembly did not go far enough to take action that would lead to the achievement of a durable, sustainable ceasefire.<sup>121</sup>

55. After discussions, the Assembly adopted resolution ES-10/18 of 16 January 2009, entitled “General Assembly resolution supporting the immediate ceasefire according to Security Council resolution 1860 (2009),” by a vote of 142 in favour to 4 against, with 8 abstentions. The

---

<sup>116</sup> See *e.g.*, A/ES-10/PV.32, statement by the representative of Malaysia; A/ES-10/PV.33, statements by the representatives of the Islamic Republic of Iran and the Syrian Arab Republic; A/ES-10/PV.34, statements by the representatives of Nicaragua and Pakistan.

<sup>117</sup> See A/ES-10/PV.33, statement by the representative of Indonesia.

<sup>118</sup> *Ibid.*

<sup>119</sup> See A/ES-10/PV.34, statement by the representative from Pakistan. See *e.g.* A/ES-10/PV.33, statements by the representatives of the Islamic Republic of Iran and the Syrian Arab Republic; A/ES-10/PV.34, statement by the representative of Nicaragua.

<sup>120</sup> See *e.g.*, A/ES-10/PV.32, statement by the representative of the Czech Republic; A/ES-10/PV.36, statement by the representative of the United States of America.

<sup>121</sup> See *e.g.*, A/ES-10/PV.36, statements by the representatives of Israel, Canada and Australia.

Assembly demanded full respect for Security Council resolution 1860 (2009) and called upon Member States to urgently extend the necessary support to efforts aimed at alleviating the critical humanitarian and economic situation in the Gaza Strip.<sup>122</sup> As of the end of the period under review, the tenth emergency special session was temporarily adjourned on 16 January 2009 until further request from Member States.<sup>123</sup>

**\*\*B. The question of the meaning and scope of the term “action” as used in Article 11(2)**

**\*\*C. The question of the extent of the competence and powers of the General Assembly with regard to questions “on which action is necessary”**

**\*\*D. The question of the force of a determination by the General Assembly of the obligation of Member States under Article 2(4) of the Charter**

**\*\*E. The question of the nature and limits of the power of investigation of the General Assembly in matters related to the maintenance of international peace and security**

**F. The power of the General Assembly to “discuss any questions relating to the maintenance of international peace and security brought before it by a Member of the United Nations”**

*1. Agenda item: “The situation in the occupied territories of Azerbaijan.”*

56. On 27 October 2004, during the discussion in the General Committee,<sup>124</sup> Azerbaijan and Turkey requested the inclusion in the agenda of the current session of an additional item entitled “The situation in the occupied territories of Azerbaijan.” Although eventually the item was included in the agenda without a negative vote, 14 delegations abstained from voting, breaking the usual practice of consensual decision-making in the Committee. The discussion raised the

---

<sup>122</sup> See A/RES/ES-10/18, paras. 1 and 5.

<sup>123</sup> *Ibid.*, par. 6.

<sup>124</sup> See A/BUR/59/SR.5, p. 3-5.

issue of the limits on the right of any Member State to include issues in the agenda of the General Assembly under Article 11, paragraph 2 of the Charter.

57. It was argued, on the one hand, that any Member State had a right, in accordance with Article 11, paragraph 2 of the Charter of the United Nations, to request the General Assembly to consider a situation relating to the maintenance of international peace and security.<sup>125</sup> Azerbaijan argued that it faced “obvious threats to [its] sovereignty and territorial integrity,” as admitted by the relevant Security Council resolutions, therefore making it “urgent to include the issue of the situation in the occupied territories of Azerbaijan in the agenda of the fifty-ninth session of the General Assembly.”<sup>126</sup> Another delegate argued that the lack of progress of the existing negotiations made it appropriate for the Assembly to address the problem, since it “continued to pose a threat to international peace and security and merited serious consideration by the General Assembly.”<sup>127</sup>

58. On the other hand, although no one denied the rights under Article 11, paragraph 2 of the Charter, it was contended that the forum of the General Assembly was not appropriate. The Organization for Security and Cooperation in Europe (OSCE) had been engaged in negotiations seeking a peaceful settlement of the situation in Azerbaijan, which were sufficient to address the concerns of Azerbaijan;<sup>128</sup> and the consideration by the General Assembly could undermine negotiations and increase tensions.<sup>129</sup> Armenia argued that “the request by Azerbaijan was politically motivated and was aimed at manipulating public opinion.”<sup>130</sup>

---

<sup>125</sup> See *e.g.*, A/BUR/59/SR.5, statements by the representatives of Azerbaijan and Pakistan.

<sup>126</sup> See A/BUR/59/SR.5, statement by the representative of Azerbaijan.

<sup>127</sup> See A/BUR/59/SR.5, statement by the representative of Gambia.

<sup>128</sup> See A/BUR/59/SR.5, statement by the representative of France.

<sup>129</sup> See *e.g.*, A/BUR/59/SR.5, statements by the representatives of France and Belgium.

<sup>130</sup> See A/BUR/59/SR.5, statement by the representative of Armenia.

59. The issue provoked animated discussion in the General Assembly as well. On 29 October 2004, the item was eventually included by 42 votes in favour to 2 against; however, 99 Member States abstained from voting.<sup>131</sup>

60. Some delegations invoked the right of Member States under Article 11, paragraph 2 of the Charter of the United Nations, and the deliberative spirit of the General Assembly.<sup>132</sup> In opposition, other States argued against the inclusion of the item. First, there was no ongoing violence; cease-fire had been maintained, “without a single peacekeeper,” for ten years.<sup>133</sup> Second, the issues to be resolved in the settlement of a conflict must be considered and negotiated as a package, and the creation of a parallel process whereby issues would be considered individually would be “damaging to the prospects for peace and the resolution of the conflict.”<sup>134</sup>

61. The General Assembly asserted its right to discuss issues relating to peace and security, despite the objections of some delegations that such discussion may undermine the parallel peace process. The General Assembly had followed the same approach, for example, to the question of Palestine: it maintained its right to discuss the conflict between Israel and Palestine despite objections that this would lead to the political isolation of one party, increased tension and failed to strengthen the peace process.<sup>135</sup>

---

<sup>131</sup> See A/59/PV.46, pp. 4-8.

<sup>132</sup> See *e.g.*, A/59/PV.46, statements by the representatives of Azerbaijan and Pakistan.

<sup>133</sup> See A/59/PV.46, statement by the representative of Armenia.

<sup>134</sup> See *e.g.*, A/59/PV.46, statements by the representatives of Armenia and the Netherlands.

<sup>135</sup> See *e.g.*, A/ES-10/PV.15, statement by the representative of the United States of America.