



## *Repertoire of the Practice of the Security Council*

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### **PART IV**

#### **Relations with other United Nations organs**

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## **Introductory note**

Part IV, in sections I through III, deals with relations between the Security Council and the following principal organs of the United Nations: the General Assembly; the Economic and Social Council; and the International Court of Justice. In this supplement, the election of members of the International Court of Justice is featured under relations with the General Assembly, given the involvement of both the General Assembly and the Security Council in that process.

During the period under review, the Security Council, among various matters it dealt with in conjunction with other principal organs, re-appointed the Secretary-General Ban Ki-moon for his second term from 2012 to 2016, recommended the admission of a new member to the United Nations, South Sudan, which became the 193<sup>rd</sup> Member State of the Organization, and for the first time, dealt with the election of judges of the International Residual Mechanism which was established by resolution 1966 (2010) of 22 December 2010 to carry out residual functions of the International Tribunals for the Former Yugoslavia and Rwanda (all covered under section I. Relations with the General Assembly).

## Section I

### Relations with the General Assembly

#### Note

Section I focuses on various aspects of the relationship between the Security Council and the General Assembly in accordance with Articles 4-6, 10-12, 15, 20, 23, 24 (3), 93-94 and 96-97 of the Charter, rules 40<sup>1</sup> and 60-61 of the provisional rules of procedure of the Council and Articles 4, 8, 10-12 and 14 of the Statute of the International Court of Justice.

This section is organized into eight subsections. Subsection A deals with the election by the General Assembly of non-permanent members of the Council, in accordance with Article 23. The next two subsections (subsections B and C) concern the functions and powers of the General Assembly vis-à-vis Articles 10 through 12, with a particular focus on the practice and authority of the General Assembly to make recommendations to the Security Council. Subsection D considers instances in which a decision by the Council must be taken prior to that of the General Assembly under Articles 4 through 6, 93 and 97, such as the admission of new members of the Organization and the appointment of the Secretary-General. Subsection E examines the practices related to the election of members of the International Court of Justice, which requires concurrent actions by both organs. Subsection F deals with annual and special reports by the Council to the General Assembly, in accordance with Articles 15 and 24 (3). Subsection G concerns Council relations with the subsidiary organs established by the General Assembly which have played a part in the work of the Council. Finally, subsection H features other Council practice bearing on relations with the General Assembly.

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<sup>1</sup> Rule 40 of the provisional rules of procedure is also covered in part II, section VIII with regard to decision-making and voting.

## **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 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.*

In accordance with Article 23 of the Charter, the General Assembly, at each regular session, elects five non-permanent members to the Security Council for a two-year term to replace those members whose terms of office expire on 31 December of the respective year. During the period under review, the General Assembly elected five non-permanent members in one plenary meeting in 2010, and in the course of two plenary meetings in 2011, electing four members in one meeting and the fifth member in another. Table 1 sets out the details of those elections.

Table 1

**Elections of non-permanent members of the Security Council by the General Assembly**

<i>Term</i>	<i>General Assembly decision</i>	<i>Plenary meeting and date of election</i>	<i>Members elected for the term</i>
2011-2012	65/402	28 <sup>th</sup> 12 October 2010	Colombia, Germany, India, Portugal, South Africa
2012-2013	66/402	37 <sup>th</sup> 21 October 2011	Guatemala, Morocco, Pakistan, Togo
	66/402	40 <sup>th</sup> 24 October 2011	Azerbaijan

**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.*

In accordance with Articles 10 and 11 of the Charter, the General Assembly may make recommendations to the Security Council on any matter except as provided in Article 12 and on general principles of cooperation in the maintenance of international peace and security.

From 2010 to 2011, the General Assembly made references to the Security Council in a few resolutions under the agenda item entitled “Protection of human rights and fundamental freedoms while countering terrorism” which might be considered illustrative of the recommendation-making powers of the General Assembly under Articles 10 and 11 (1) of the Charter. Those provisions in resolutions of the General Assembly are cited in full in table 2.

During the period under review, in the deliberations of the Security Council, Article 10 was explicitly invoked in the discussion relating to the working methods of the Council,<sup>2</sup> which is included as a case study below (case 1). Explicit references were also made four times to Article 11 and its paragraph 2, without giving rise to a constitutional discussion.<sup>3</sup> The General Assembly neither made recommendations to the Security Council with regard to specific questions relating to the maintenance of international peace and security, nor requested action from the Council in accordance with Article 11 (2). Additionally, the General Assembly did not draw the attention of the Security Council to any situations under Article 11 (3).<sup>4</sup>

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<sup>2</sup> [S/PV.6300](#), p. 27 (Saint Vincent and the Grenadines, on behalf of the 14 States members of the Caribbean Community (CARICOM)); S/PV. 6672, p. 19 (Switzerland); and p. 23 (Jordan).

<sup>3</sup> *Ibid.*, p. 21 ((Egypt, speaking on behalf of the Non-Aligned Movement (NAM)); p. 27 (Saint Vincent and the Grenadines, on behalf of the 14 States members of CARICOM); [S/PV.6300 \(Resumption 1\)](#), p. 26 (Qatar); and S/PV.6672, p. 25 (Egypt, speaking on behalf of NAM).

<sup>4</sup> For more information on Article 11 (3) concerning the referral of situations by the General Assembly to the Security Council, see part VI, section I with regard to referrals of disputes or situations to the Security Council

Table 2

**Recommendations to the Security Council in resolutions of the General Assembly**

<i>General Assembly resolution and date</i>	<i>Provisions</i>
<b>Protection of human rights and fundamental freedoms while countering terrorism</b>	
65/221 21 December 2010	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 establishing an office of the ombudsperson and continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism (para. 9)  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 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 their ongoing work relating to counter-terrorism (para. 12)  <i>Same provision in resolution 66/171 of 19 December 2011, para. 14</i>
66/171 19 December 2011	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 supporting the enhanced role of the office of the ombudsperson and continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism (para. 11)

**Case 1**

**Implementation of the note by the President of the Security Council**

At the 6300<sup>th</sup> meeting, on 22 April 2010, under the item entitled “Implementation of the note by the President of the Security Council (S/2006/507)”, the representative of Saint Vincent and the Grenadines, speaking on behalf of the 14 States members of the Caribbean Community (CARICOM)), argued that Article 30 of the Charter with regard to the adoption of the rules of procedure by the Council did not make the Council immune from the General Assembly’s explicit authority to discuss and make recommendations on any matters within the scope of the Charter relating to the



functions of any organ of the United Nations, including the Security Council. Referring to Articles 10 through 12 which in his opinion established the scope of the Assembly's powers and its limits with absolute clarity, he further stressed that the General Assembly was clearly empowered not only to discuss the Council's working methods but to make recommendations to the Council, whether or not those recommendations touched on and concerned the rules of procedure and therefore, the Council should adopt, rather than resist, the relevant recommendations from the wider membership, given the acknowledged role of the General Assembly in conferring legitimacy on bodies, decisions and norms.<sup>5</sup>

At the 6672<sup>nd</sup> meeting, on 30 November 2011, under the item entitled "Implementation of the note by the President of the Security Council (S/2010/507)", the representative of Switzerland, speaking on behalf of the group of five small nations (S-5), stressed the need for measures to achieve the goals of legitimacy, transparency and accountability, as reflected in the outcome document of the World Summit in 2005<sup>6</sup> "in line with Article 10" of the Charter mandating the General Assembly to make recommendations, including to the Security Council. He stated that the S-5 group had been formed for the sole purpose of contributing to the improvement of the working methods of the Council.<sup>7</sup> In addition, the representative of Jordan, a member of S-5, argued that S-5 based its recommendations in its new draft resolution of the General Assembly<sup>8</sup> which contained measures to enhance the implementation of the note by the President of 26 July 2010<sup>9</sup> "on the right accorded to the General Assembly under Article 10" of the Charter.<sup>10</sup>

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<sup>5</sup> [S/PV.6300](#), p. 27.

<sup>6</sup> General Assembly resolution 60/1.

<sup>7</sup> [S/PV.6672](#), p. 19.

<sup>8</sup> Not circulated as an official document.

<sup>9</sup> [S/2010/507](#).

<sup>10</sup> [S/PV.6672](#), p. 23.

## 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.*

This subsection includes the practice of the Council in relation to Article 12 of the Charter. Article 12 (1) limits the authority of the General Assembly in respect to any dispute or situation while the Security Council is exercising its functions assigned to it by the Charter, and Article 12 (2) requires notification to the General Assembly by the Secretary-General of the matters relating to the maintenance of international peace and security which are being dealt with by the Security Council or with which the Council has ceased to deal.

#### *1. Authority of the General Assembly to make recommendations in accordance with Article 12 (1)*

Although an explicit reference to Article 12 was made during the period under review,<sup>11</sup> 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. Nor did the Council request the General Assembly to make a recommendation in respect to a dispute or situation in accordance with the exception provided for in Article 12 (1).

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<sup>11</sup> [S/PV.6300](#), p. 27 (Saint Vincent and the Grenadines, on behalf of the 14 States members of CARICOM). For more details, see above case 1 under subsection B. with regard to recommendations by the General Assembly to the Security Council in the form of resolutions under Articles 10 and 11 of the Charter in this section.

*2. Notification by the Secretary-General to the General Assembly in accordance with Article 12 (2)*

During the period under review, in accordance with Article 12 (2), the Secretary-General continued to notify the General Assembly of the matters relating to the maintenance of international peace and security which were being dealt with by the Security Council or with which the Council had ceased to deal.<sup>12</sup> Following receipt of the notifications, the General Assembly, at each session, formally took note of them.<sup>13</sup>

As per past practice of the Council, those notifications were based upon the summary statements of matters of which the Security Council was seized and 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. The items in the notifications were the same as those in the summary statements for the relevant period, apart from the omission of those items not considered to relate to the maintenance of international peace and security.<sup>14</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.

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

*Article 4*

*1. Membership in the United Nations is open to all other peace loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.*

*2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.*

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<sup>12</sup> [A/65/300](#) and [A/66/300](#).

<sup>13</sup> General Assembly decisions [65/509](#) and [66/509](#).

<sup>14</sup> For more details on matters of which the Council is seized, see part II, section II, B. with regard to matters of which the Council is seized (rules 10-11).

*Article 5*

*A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.*

*Article 6*

*A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.*

*Article 93, paragraph 2*

*A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.*

*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 60*

*The Security Council shall decide whether in its judgement the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and, accordingly, whether to recommend the applicant State for membership.*

*If the Security Council recommends the applicant State for membership, it shall forward to the General Assembly the recommendation with a complete record of the discussion.*

*If the Security Council does not recommend the 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.*

*In order to ensure the consideration of its recommendation at the next session of the General Assembly following the receipt of the application, the Security Council shall make its recommendation not less than twenty-five days in advance of a regular session of the General Assembly, nor less than four days in advance of a special session. [...]*

On a number of matters, the Charter provides for joint decision-making by the Security Council and the General Assembly, but requires a decision by the Council to be taken first. For instance, this is the case 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>15</sup> In addition, the statutes of the International Tribunals for the Former Yugoslavia and Rwanda<sup>16</sup> require the Security Council to submit a list of candidates to the General Assembly, from which the Assembly would elect the judges of the Tribunals.<sup>17</sup>

During the period under review, no questions arose concerning the conditions of accession to the Statute of the International Court of Justice. With regard to the International Tribunals for the Former Yugoslavia and Rwanda, there were no elections of their judges but the Council took decisions on matters relating to terms of office of

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<sup>15</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 that 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>16</sup> The full 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 1994 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>17</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, by 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.

judges and the statutory limits for the number of ad litem judges, after which the General Assembly endorsed. Furthermore, the two organs were involved in the election of judges of the International Residual Mechanism established by resolution 1966 (2010) to carry out residual functions of the Tribunals.

Accordingly, this section considers briefly the Council's practice in relation to the admission of members, the appointment of the Secretary-General, and matters relating to judges of the International Tribunals for the Former Yugoslavia and Rwanda and the election of the judges of the International Residual Mechanism.

### *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” as set out in 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.

From 2010 to 2011, the Council recommended the admission of one State, the Republic of South Sudan, to membership in the United Nations (see case 2). The Council also considered the application of Palestine for membership in the United Nations<sup>18</sup> and referred the application to its Committee on the Admission of New Members at the 6624<sup>th</sup> meeting on 28 September 2011; the Committee did not make any recommendation.<sup>19</sup> The Council did not discuss or recommend the suspension or expulsion of any Member.

## **Case 2**

### **Admission of new Members**

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<sup>18</sup> [S/2011/592](#).

<sup>19</sup> For more details on the Committee on the Admission of New Members, see part IX, section I. A. with regard to Standing Committees.

In a letter dated 9 July 2011 from the President of the Republic of South Sudan addressed to the Secretary-General, the Republic of South Sudan submitted an application for membership in the United Nations, which was circulated in a note by the Secretary-General of the same date.<sup>20</sup>

The Security Council considered the application at its 6580<sup>th</sup> meeting, on 11 July 2011 and in accordance with rule 59 of its provisional rules of procedure, and referred the application to the Committee on the Admission of New Members. The Committee unanimously decided to recommend to the Security Council that the Republic of South Sudan be admitted to membership in the United Nations and recommended the adoption of a draft resolution to that effect.<sup>21</sup>

At the 6582<sup>nd</sup> meeting, on 13 July 2011, the Council adopted resolution 1999 (2011), without a vote, recommending the admission of the Republic of South Sudan to membership in the United Nations.<sup>22</sup> In addition, the Council adopted a presidential statement informing of this recommendation and congratulating the Republic of the Sudan on the historic occasion.<sup>23</sup> Subsequently, in a letter of the same date from the President of the Council to the Secretary-General, the Council requested the latter to transmit to the General Assembly resolution 1999 (2011) and the verbatim records of the 6580<sup>th</sup> and 6582<sup>nd</sup> meetings<sup>24</sup> in accordance with rule 60.<sup>25</sup>

On 14 July 2011, having received the recommendation of the Security Council,<sup>26</sup> the General Assembly decided to admit the Republic of South Sudan to membership in the United Nations by its resolution 65/308.

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

Article 97 of the Charter provides that the Secretary-General be appointed by the General Assembly upon the recommendation of the Security Council. Moreover, in

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<sup>20</sup> [S/2011/418](#).

<sup>21</sup> See the report of the Committee on the Admission of New Members concerning the application of the Republic of South Sudan for admission to membership in the United Nations ([S/2011/420](#)).

<sup>22</sup> [S/2011/420](#), para. 3.

<sup>23</sup> [S/PRST/2011/14](#).

<sup>24</sup> [S/PV.6580](#) and [S/PV.6582](#).

<sup>25</sup> [A/65/905](#).

<sup>26</sup> *Ibid.*

accordance with rule 48 of the provisional rules of procedure, the meetings to consider the question of the recommendation for the appointment of the Secretary-General are held in private, and the Council votes by secret ballot. At the end of each meeting, in accordance with rule 55, a communiqué is circulated which indicates the stage reached in the consideration of the recommendation.

During the period under review, the Council recommended the appointment of Mr. Ban Ki-moon as the Secretary-General for a second term of office (see case 3).

### **Case 3**

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

At its 6556<sup>th</sup> meeting, held in private on 17 June 2011, the Security Council considered the question of the recommendation for appointment of the Secretary-General of the United Nations. The Council adopted resolution 1987 (2011) by acclamation, recommending to the General Assembly that Mr. Ban Ki-moon be appointed Secretary-General for a second term of office, from 1 January 2012 to 31 December 2016. By a letter dated 17 June 2011 addressed to the President of the General Assembly, the President of the Security Council informed the General Assembly on the matter.<sup>27</sup>

Acting in accordance with this recommendation, on 21 June 2011, the General Assembly, by resolution 65/282, appointed Mr. Ban Ki-moon for a second term of office.

#### *3. Matters relating to judges of the International Tribunals for the Former Yugoslavia and Rwanda*

During the period under review, in response to requests made by the International Tribunals for the Former Yugoslavia and Rwanda, the Security Council, as the parent organ of the Tribunals, adopted seven resolutions under Chapter VII of the Charter by which it authorized the judges to serve beyond the expiry of their terms of office and beyond the statutory limit of their cumulative service,<sup>28</sup> authorized the Tribunals to

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<sup>27</sup> [A/65/865](#).

<sup>28</sup> [Resolutions 1931 \(2010\)](#), [1932 \(2010\)](#), [1954 \(2010\)](#), [1955 \(2010\)](#), [1993 \(2011\)](#) and [2029 \(2011\)](#).



temporarily exceed their statutory limits for the total number of ad litem judges<sup>29</sup> and amended a relevant provision of the statute of the International Tribunal for Rwanda,<sup>30</sup> all for the purpose of completing the ongoing cases by the serving judges. The Council then transmitted the text of the resolutions to the General Assembly, the organ which originally had elected those judges. Subsequently, the General Assembly decided to endorse those decisions of the Council. One case is presented below as an example of such a proceeding (case 4). For details on all the actions taken by the two organs in relations to the judges of the Tribunals during the period under review, see table 3.<sup>31</sup>

Table 3

**Actions of the Security Council and the General Assembly concerning judges of the International Tribunals for the Former Yugoslavia and Rwanda**

<i>Letter from the Secretary-General transmitting the request from the Tribunal</i>	<i>Security Council resolution</i>	<i>Transmission to the General Assembly</i>	<i>General Assembly decision and date</i>
<b>International Tribunal for the Former Yugoslavia</b>			
<a href="#">S/2010/133</a> (requesting to: (i) extend the terms of office of two ad litem judges to complete a case; and (ii) increase the total number of ad litem judges over the statutory limit of 12)	<a href="#">Resolution 1915 (2010)</a> of 18 March 2010 (deciding a temporary increase in the total number of ad litem judges to a maximum of 13, returning to a maximum of 12 by 30 June 2010 or upon completion of the case, if sooner)	<a href="#">A/64/727</a>	64/416B 29 March 2010
<a href="#">S/2010/330</a> (requesting to: (i) extend the terms of office of three ad litem judges till 31 December 2011, four permanent and seven ad litem judges until 31 December 2012, four permanent judges until 31 December 2013 and five permanent judges until 31 December 2014, or upon completion of their cases, if sooner; and (ii) permit nine ad litem judges to serve beyond the cumulative period of three years provided for under article 13 ter, (2) of the statute)	<a href="#">Resolution 1931 (2010)</a> of 29 June 2010 (authorizing: (i) an extension of the terms of office of all the requested judges until 31 December 2011 or upon completion of their cases, if sooner; and (ii) nine ad litem judges to serve beyond the statutory limit of the cumulative period of service)	<a href="#">A/64/861</a>	64/416C 16 July 2010
<a href="#">S/2011/392</a> (requesting to: (i) extend the terms of office of six ad litem judges until 31 December 2012, 10 permanent and two ad litem judges until 31 December 2014 and three permanent and one ad litem judges until 31 December 2015 or upon completion of their cases, if sooner; and (ii) permit eight ad litem judges to serve beyond the statutory	<a href="#">Resolution 1993 (2011)</a> of 29 June 2011 (authorizing an extension of the terms of office of eight permanent and nine ad litem judges until 31 December 2012 or upon completion of their cases, if sooner)	<a href="#">A/65/894</a>	65/413B 19 July 2011

<sup>29</sup> [Resolutions 1915 \(2010\)](#) and [1955 \(2010\)](#).

<sup>30</sup> [Resolution 1932 \(2010\)](#).

<sup>31</sup> For more details on the mandate of by the International Tribunals for Rwanda and the Former Yugoslavia, see part IX, section IV with regard to tribunals.

<i>Letter from the Secretary-General transmitting the request from the Tribunal</i>	<i>Security Council resolution</i>	<i>Transmission to the General Assembly</i>	<i>General Assembly decision and date</i>
limit of the cumulative period of service)			
<a href="#">S/2010/599</a> (requesting to: (i) extend the terms of office of one permanent judge until 28 February 2011 and one ad litem judge until 30 April 2011; and (ii) allow the said ad litem judge to serve beyond the statutory limit of the cumulative period)	<a href="#">Resolution 1954 (2010)</a> of 14 December 2010 (authorizing: (i) the requested judges to complete their cases notwithstanding the expiry of their terms of office; and (ii) allowing the ad litem judge to serve beyond the statutory limit of the cumulative period of service)	<a href="#">A/65/662</a>	65/413A 14 January 2011
<b>International Tribunal for Rwanda</b>			
<a href="#">S/2010/289</a> (requesting to: (i) extend the terms of office of one permanent and nine ad litem judges until 31 December 2011, 4 permanent judges until 31 December 2013 and 2 permanent judges until 31 December 2014; (ii) change the time frame for redeployment to the Appeals Chamber; (iii) address the need for judges to fill the key functions of the Tribunal by either (a) converting ad litem judges to permanent judges, or (b) amending the statute regarding ad litem judges; and (iv) amend article 12 ter (2) of the statute to reestablish a roster on non-serving judges)	<a href="#">Resolution 1932 (2010)</a> of 29 June 2010 (authorizing: (i) an extension of terms of office of five permanent and nine ad litem judges until 31 December 2011 and two permanent judges until 31 December 2012 ;and (ii) amendment of article 12 ter of the statute concerning the appointment of former permanent and ad litem judges)	<a href="#">A/64/862</a>	64/415B 19 July 2011
<a href="#">S/2010/513</a> (requesting: (i) an extension of terms of office for one permanent and one ad litem judges to complete their cases; (ii) an extension of the exemption of the maximum number of ad litem judges; and (iii) to fill the key functions of the Tribunal either by (a) conversion of at least three ad litem judges to permanent judges or (b) amendment of the statute regarding ad litem judges)	<a href="#">Resolution 1955 (2010)</a> of 14 December 2010 (authorizing: (i) an extension of terms of office for the three judges to complete their cases; and (ii) the requested exemption of the maximum number of ad litem judges until 31 December 2011)	<a href="#">A/65/661</a>	65/412 14 January 2011
<a href="#">S/2010/598</a> (requesting an extension of the term of office of one ad litem judge to complete a case)			
<a href="#">S/2011/780</a> (requesting extension of the terms of office of four permanent judges and seven ad litem judges until 30 June 2012)	<a href="#">Resolution 2029 (2011)</a> of 21 December 2011 (authorizing the extension of terms of office of all the requested judges until 30 June 2012)	<a href="#">A/66/660</a>	66/418A 25 January 2012
<a href="#">S/2011/781</a> (requesting the extension of the term of office of one ad litem judge until 30 June 2012)			

#### Case 4

### **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**

By two sets of identical letters dated 13 October and 23 November 2010 addressed to the President of the General Assembly and the President of the Security Council, the Secretary-General transmitted letters from the President of the International Tribunals for Rwanda requesting the extension of the term of office of one permanent judge and one ad litem judge in order to allow them to complete the *Ndindiliyimana et al.* case, and of another ad litem judge to allow for the completion of the *Hategekimana* trial. The President of the Tribunal further requested that the Tribunal be allowed to exceed temporarily the maximum number of nine ad litem judges allowed by article 11 (1) of the statute of the Tribunal, by extending an earlier exemption granted by resolution 1901 (2009) and that in order to address the need to fill the key functions of the Tribunal, either (a) at least three ad litem judges be converted to permanent judges, or (b) the statute be amended to permit ad litem judges to have the same powers as permanent judges, including eligibility as President and Presiding Judge of a Trial Chamber.<sup>32</sup>

In response to the above-mentioned request, the Council adopted resolution 1955 (2010) of 14 December 2010, by which, acting under Chapter VII of the Charter, it decided that, notwithstanding the expiry of their term of office on 31 December 2010, the three requested judges were authorized to complete the *Ndindiliyimana et al.* case and the *Hategekimana* trial and that, in order for the Tribunal to complete existing trials or conduct additional trials, the total number of ad litem judges serving at the Tribunal could, from time to time, temporarily exceed the maximum of nine provided for in article 11 (1) of the statute, to a maximum of 12 at any one time, returning to a maximum of nine by 31 December 2011.<sup>33</sup> By a letter dated 20 December 2010 to the President of the General Assembly, the President of the Council transmitted the text of resolution 1955 (2010).<sup>34</sup>

During its 65<sup>th</sup> session, at its 74<sup>th</sup> plenary meeting, on 14 January 2011, the General Assembly decided to endorse the recommendations contained in resolution 1955 (2010).<sup>35</sup>

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<sup>32</sup> [S/2010/513](#) and [S/2010/598](#), respectively.

<sup>33</sup> [Resolution 1955 \(2010\)](#), paras. 1-3.

<sup>34</sup> [A/65/661](#).

<sup>35</sup> [General Assembly decision 65/412](#).

#### 4. *Election of judges of the International Residual Mechanism*

By resolution 1966 (2010) of 22 December 2010, the Security Council established the International Residual Mechanism for Criminal Tribunals to carry out residual functions of the International Tribunals for the Former Yugoslavia and Rwanda. In accordance with article 10 of the statute of the Mechanism, the judges of the Mechanism were elected by the General Assembly from a list submitted by the Security Council.<sup>36</sup>

In 2011, the Council for the first time dealt with the election of judges of the Mechanism. Having considered the 37 nominations for judges of the Mechanism received by the Secretary-General,<sup>37</sup> the President of the Council, by his letter dated 16 November 2011 addressed to the President of the General Assembly, transmitted 36 nominations to the General Assembly in accordance with article 10, paragraph 1 (d) of the statute.<sup>38</sup> At the 87<sup>th</sup> plenary meeting of its 66<sup>th</sup> session on 20 December 2011, the General Assembly elected 25 judges to a four-year term of office beginning on 1 July 2012.<sup>39</sup>

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<sup>36</sup> According to article 10 of the statute of the Mechanism, the election of judges requires that the judges of the Mechanism shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner: (a) The Secretary-General shall invite nominations for judges, preferably from among persons with experience as judges of the International Tribunals for the Former Yugoslavia and Rwanda, from States Members of the United Nations and non-Member States maintaining permanent observer missions at United Nations Headquarters; (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 9, paragraph 1, of the Statute; (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than 30 candidates, taking due account of the qualifications set out in article 9, paragraph 1, and adequate representation of the principal legal systems of the world; (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect 25 judges of the Mechanism. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected. Should more than two candidates of the same nationality obtain the required majority vote, the two who received the highest number of votes shall be considered elected (annex I to resolution 1966 (2010)).

<sup>37</sup> [S/2011/659](#).

<sup>38</sup> [A/66/564](#).

<sup>39</sup> [General Assembly decision 66/416](#).

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

### *Rule 40*

*Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice.*

### *Rule 61*

*Any meeting of the Security Council held in pursuance of the Statute of the International Court of Justice for the purpose of the election of members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes.*

## *STATUTE OF THE INTERNATIONAL COURT OF JUSTICE*

### *Article 4*

*1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions. [...]*

### *Article 8*

*The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.*

### *Article 10*

*1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.*

*2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction*

*between permanent and non-permanent members of the Security Council.*

*3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.*

#### *Article 11*

*If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.*

#### *Article 12*

*1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.*

*2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.*

*3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.*

*4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.*

#### *Article 14*

*Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-*

*General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.*

The election of members of the International Court of Justice requires action by the Security Council in conjunction with the General Assembly, but with both organs proceeding independently. The procedure for the election is set out in Articles 4, 8, 10 through 12 and 14 of the Statute of the International Court of Justice; rules 150 and 151 of the rules of procedure of the General Assembly;<sup>40</sup> and rules 40<sup>41</sup> and 61 of the provisional rules of procedure of the Security Council.

The Council begins the election process to fill the vacancies by fixing the date of the elections, as provided in Article 14 of the Statute of the Court. In the case of the election to replace a member whose term of office has not expired, the Council adopts a resolution to set a date of the election, after receiving a note by the Secretary-General concerning the date of an election to fill a vacancy. The Security Council and the General Assembly then proceed independently but concurrently with the elections. A candidate who obtains an absolute majority of the votes in both the General Assembly and Security Council is considered to be elected a member of the Court, in accordance with Article 10 (1) of the Statute of the Court.

During the period under review, the Council conducted two separate elections in 2010 to fill one vacancy each, owing to the resignation of a member of the Court (see table 4 for more details). Given that the proceedings were the same for those two elections, one case is drawn from the first election (case 5). The Council also held another election to fill five seats that would become vacant due to the expiry of the terms of office of the incumbents and it required nine ballots in total (case 6).

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<sup>40</sup> Rules 150 and 151 of the rules of procedure of the General Assembly provides that the election of the members of the Court shall take place in accordance with the Statute of the Court and that any meeting of the General Assembly held in pursuance of the Statute of the Court for the purpose of electing members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes.

<sup>41</sup> Rule 40 of the provisional rules of procedure is also covered in part II, section VIII with regard to decision-making and voting.

Table 4

**Concurrent elections of a member of the International Court of Justice to fill a vacancy due to the resignation of the incumbent**

<i>Note by the Secretary-General</i>	<i>Council meeting setting the date of the election and date</i>	<i>Council resolution deciding the election date</i>	<i>Council meeting for the election and date</i>	<i>General Assembly Plenary meeting for the election</i>
<a href="#">S/2010/136</a>	6285 <sup>th</sup> 18 March 2010	<a href="#">1914 (2010)</a>	6346 <sup>th</sup> on 29 June 2010	102 <sup>nd</sup> on 29 June 2010
<a href="#">S/2010/255</a>	6327 <sup>th</sup> 2 June 2010	<a href="#">1926 (2010)</a>	6381 <sup>st</sup> on 9 September 2010	118 <sup>th</sup> on 9 September 2010

**Case 5**

**Election of a member of the International Court of Justice**

By his note dated 15 March 2010 concerning the date of an election to fill a vacancy in the International Court of Justice, the Secretary-General informed the Security Council of the resignation of one of the members and requested it to set the date of the election to fill the vacancy which would occur on 28 May 2010.<sup>42</sup>

Subsequently, at its 6285<sup>th</sup> meeting, on 18 March 2010, the Council adopted resolution 1914 (2010), by which in accordance with Article 14 of the Statute of the Court, it decided that the date of the election take place on 29 June 2010 at a meeting of the Security Council and at a meeting of the General Assembly at its sixty-fourth session.

At the 6346<sup>th</sup> meeting, on 29 June 2010, the Council met to proceed with the election and one candidate obtained the required majority of votes on the first ballot. The President of the Council 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 obtained an absolute majority of votes in the General Assembly at its 102<sup>nd</sup> plenary meeting. The candidate in question was therefore elected to fill the vacancy for the remainder of the term of the predecessor, which was until 5 February 2012.<sup>43</sup>

<sup>42</sup> [S/2010/136](#).

<sup>43</sup> [S/PV.6346](#).



## Case 6

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

At the 6651<sup>st</sup> meeting, on 10 November 2011, the Security Council proceeded with the election of five members of the Court, to fill the five seats that would become vacant on 5 February 2012 on the expiry of the terms of office of the incumbents. On the first ballot, five candidates obtained the required majority of votes. The President of the Council communicated the result of the vote to the President of the General Assembly in writing. Subsequently, he informed Council members that he had received a letter from the President of the General Assembly informing him that five candidates had obtained an absolute majority of votes in the General Assembly at its 53<sup>rd</sup> plenary meeting being held concurrently with the Council. Four of them were the same candidates that had obtained the required majority of votes in the Council. Having received the requisite absolute majority of votes in both bodies, those four candidates were elected as members of the Court for a period of nine years, beginning on 6 February 2012.

Subsequently, in accordance with Article 11 of the Statute of the Court, the Council proceeded to conduct seven additional ballots at the 6652<sup>nd</sup> to 6655<sup>th</sup> and 6666<sup>th</sup> to 6667<sup>th</sup> meetings, on 10 and 22 November 2011, to fill the remaining vacancy. However, the same candidate failed to gain the requisite absolute majority of votes in both the General Assembly and the Security Council.<sup>44</sup> At the 6682<sup>nd</sup> meeting, on 13 December 2011, the ninth ballot was held, in which another candidate obtained the requisite absolute majority of votes in both bodies. Having met the requirements set forth in Article 10 (1) of the Statute of the Court, that candidate was elected as a member of the Court for a period of nine years, beginning on 6 February 2012.<sup>45</sup>

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<sup>44</sup> [S/PV.6652](#); [S/PV.6653](#); [S/PV.6654](#); [S/PV.6655](#); [S/PV.6665](#); [S/PV.6666](#); and [S/PV.6667](#).

<sup>45</sup> [S/PV.6682](#).

## **F. Annual and special reports of the Security Council to the General Assembly**

### *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.*

### *Article 24, paragraph 3*

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

### *Rule 60, paragraph 3*

*If the Security Council does not recommend the 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.*

In accordance with Articles 15 (1) and 24 (3) of the Charter, the Security Council submits annual and, when necessary, special reports to the General Assembly which “shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.”

From 2010 to 2011, the Council continued to submit annual reports to the General Assembly,<sup>46</sup> while it did not submit special reports to the General Assembly, under, for example, rule 60 (3) of the Council’s provisional rules of procedure.

Two annual reports during the period under review, covering the periods from 1 August 2009 to 31 July 2010 and from 1 August 2010 to 31 July 2011,<sup>47</sup> were prepared in accordance with the note by the President of 26 July 2010,<sup>48</sup> which had incorporated and further developed the earlier three notes by the President on working methods.<sup>49</sup> The introduction of each annual report was prepared under the leadership and responsibility of

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<sup>46</sup> [A/65/2](#) and [A/66/2](#).

<sup>47</sup> Ibid.

<sup>48</sup> [S/2010/507](#), paras. 70-75.

<sup>49</sup> Notes by the President of the Council dated 19 July 2006, 19 December 2007 and 31 December 2008 ([S/2006/507](#), [S/2007/749](#) and [S/2008/847](#), respectively).

the President of the Council for the month of July of each calendar year, i.e., Nigeria for 2010 and Germany for 2011, while the Secretariat prepared the remainder of the report.<sup>50</sup> The Council considered and adopted without a vote the draft annual reports at its 6413<sup>th</sup> and 6641<sup>st</sup> meetings, on 28 October 2010 and 27 October 2011, respectively. During those meetings, the representative of the delegation responsible for drafting the introduction stressed that in the drafting process, the monthly assessments and the views expressed by all Council members had been taken into account,<sup>51</sup> as encouraged in the said note.<sup>52</sup> The General Assembly considered the annual reports at its plenary meetings of the 65<sup>th</sup> and 66<sup>th</sup> sessions, on 11 and 12 November 2010 and 8 November 2011.<sup>53</sup>

In addition, during the period under review, two communications made explicit references to Article 24 and its paragraph 3 regarding annual and special reports of the Council.<sup>54</sup> Furthermore, one discussion in 2010 concerning the format and preparation of the annual and special reports in the context of improving the working methods of the Council contained a number of explicit references to Article 24 and its paragraph 3<sup>55</sup> and is featured as a case study below (case 7). In that context, the General Assembly, in its two resolutions adopted during the review period, welcomed the improvements that had been made in the quality of the annual reports of the Security Council to the General Assembly and encouraged the Council to make further improvements as necessary.<sup>56</sup>

## Case 7

### Implementation of the note by the President of the Security Council

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<sup>50</sup> [S/2006/507](#), [S/2007/749](#) and [S/2010/507](#).

<sup>51</sup> [S/PV.6413](#), p. 2 (Nigeria) and [S/PV.6641](#), p. 2 (Germany).

<sup>52</sup> [S/2010/507](#), para. 71 (d).

<sup>53</sup> [A/65/PV.48](#); [A/65/PV.50](#); and [A/66/PV.50](#).

<sup>54</sup> Identical letters dated 15 April 2010 and 23 November 2011 from the representative of Egypt, in his capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement (NAM), to the President of the General Assembly and the President of the Council, forwarding the position of NAM concerning the working methods of the Council as reflected in the final documents adopted at its Summits of Heads of State and Government ([S/2010/189](#), p. 4 and [S/2011/732](#), pp. 2-4, respectively).

<sup>55</sup> See, in connection with Implementation of the note by the President of the Security Council, [S/PV.6300](#), p.21 (Egypt, speaking on behalf of NAM); p. 37 (Peru); [S/PV.6300 \(Resumption 1\)](#), p. 8 (Argentina); p. 9 (Cuba); p. 10 (India); p. 19 (Kenya); and p. 20 (Namibia).

<sup>56</sup> General Assembly resolutions 64/301, para. 9 and 65/315, para. 10.

At the 6300<sup>th</sup> meeting, on 22 April 2010, under the item entitled “Implementation of the note by the President of the Security Council”, a number of speakers recognized that the annual report had improved in terms of its quality and details contained therein,<sup>57</sup> while others called for further improvement, emphasizing the need to be more substantive and analytical.<sup>58</sup> The representative of Peru stressed that non-Council members had a right to greater access to information that was substantive, not merely descriptive, as was the case in the annual reports.<sup>59</sup> The representative of Australia considered it necessary to establish qualitative and quantitative metrics, and assess progress against them with a more effective annual report.<sup>60</sup>

In terms of concrete proposals for improvement of the annual report to the General Assembly, the representative of Liechtenstein, speaking on behalf of five small countries (S-5), proposed to include in the annual report an illustration of linkages between country situations and thematic issues and a chapter on the improvement of the working methods of the Council.<sup>61</sup> The representative of India called the current annual report a statistical compilation of events and a bland summary and listing of meetings and outcome documents. He further argued that the General Assembly should be aware of not only the decisions taken by the Council but also the rational, efficacy and impact of the Council’s decisions for the general membership.<sup>62</sup> The representative of Namibia stressed that the annual report, as the most visible source of information on the work of the Council, should be analytical and provide not only an account of the matters considered by the Council in the year under review, but also an assessment of the ability of the Council to deal with the problems, while signaling difficulties and areas where improvements could be made.<sup>63</sup>

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<sup>57</sup> [S/PV.6300](#), p. 4 (Russian Federation); p. 5 (Mexico); p. 10 (Nigeria); p. 12 (United States); p. 17 (Gabon); p. 28 (Sierra Leone, on behalf of the African Group) and [S/PV.6300 \(Resumption 1\)](#), p. 6 (Australia); and p. 12 (Malta).

<sup>58</sup> [S/PV.6300](#), p. 22 (Egypt); p. 29 (Slovakia); p. 37 (Peru); [S/PV.6300 \(Resumption 1\)](#), p. 6 (Australia); p. 8 (Argentina); p. 9 (Cuba); p. 10 (India); p. 20 (Namibia); p. 21 (Czech Republic); p. 25 (Qatar); and p. 28 (Republic of Korea).

<sup>59</sup> [S/PV.6300](#), p. 37.

<sup>60</sup> [S/PV.6300 \(Resumption 1\)](#), p. 6.

<sup>61</sup> [S/PV.6300](#), p. 20.

<sup>62</sup> [S/PV.6300 \(Resumption 1\)](#), p. 19.

<sup>63</sup> *Ibid.*, pp. 20-21.

With regard to the process of preparation for and adoption of the annual report, several speakers supported the practice of holding informal meetings with the general membership, as initiated by Viet Nam in 2008.<sup>64</sup> The representative of Liechtenstein, speaking on behalf of S-5, stated that such consultations offered a good opportunity to discuss, in particular, the introductory section of the annual reports, which was the only part that included political analysis.<sup>65</sup> A few considered that the use of monthly assessments of the presidency in the preparation for the annual report would enhance its quality.<sup>66</sup> In addition, a number of speakers encouraged open discussion on the annual report in both the Council and the General Assembly, allowing a genuine exchange of views between the general membership and the Security Council.<sup>67</sup>

With regard to special reports of the Council, a few speakers held that the Council should also submit, whenever necessary, such reports to the General Assembly in accordance with Articles 15 and 24 (3).<sup>68</sup> The representative of Costa Rica opined that the submission of special reports could be a useful tool in situations such as the establishment of a new peacekeeping operation or a sanctions regime, or non-action of the Council due to the use of the veto.<sup>69</sup>

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

A number of subsidiary organs established by the General Assembly continued to play a role in the work of the Security Council. During the two-year period under review, there were four such subsidiary organs interacting with the Council: the Peacebuilding Commission, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the Human Rights Council and the Special Committee on Peacekeeping Operations. While relations with the Peacebuilding Commission, a joint subsidiary organ

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<sup>64</sup> [S/PV.6300](#), p. 7 (Austria); p. 11 (Nigeria); p. 17 (Uganda); p. 20 (Liechtenstein, on behalf of S-5); and p. 35 (Slovenia); [S/PV.6300 \(Resumption 1\)](#), p. 15 (Singapore).

<sup>65</sup> [S/PV.6300](#), p. 20.

<sup>66</sup> *Ibid.*, p. 10 (Nigeria); and p. 20 (Liechtenstein, on behalf of S-5).

<sup>67</sup> *Ibid.*, p. 20 (Liechtenstein, on behalf of S-5); and p. 29 (Slovakia); [S/PV.6300 \(Resumption 1\)](#), p. 19 (Kenya).

<sup>68</sup> [S/PV.6300](#), p. 21 (Egypt, on behalf of NAM); [S/PV.6300 \(Resumption 1\)](#), p. 8 (Costa Rica); p. 8 (Argentina); p. 9 (Cuba); p. 10 (India); p. 19 (Kenya); and p. 24 (Ecuador).

<sup>69</sup> [S/PV.6300 \(Resumption 1\)](#), p. 8.

of the Security Council and the General Assembly, are covered in section VII “Peacebuilding Commission” in part IX, including participation of the representatives of the Commission and relevant decisions of the Council referring to the Commission, relations with other subsidiary organs of the General Assembly other than the Peacebuilding Commission are examined in this subsection.

With regard to participation in meetings of the Security Council by the representatives of the subsidiary organs of the General Assembly, during the period under review, the Chairman and the Vice-Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People participated in seven meetings concerning the situation in the Middle East, including the Palestinian question.<sup>70</sup> In addition, on the occasion of the International Day of Solidarity with the Palestinian People, the President of the Security Council participated in two meetings of the Committee.<sup>71</sup>

Furthermore, several decisions adopted by the Security Council during the period under review contained references to two other subsidiary organs of the General Assembly: the Human Rights Council; and the Special Committee on Peacekeeping Operations. For example, referring to the resolutions adopted by the Human Rights Council, the Council welcomed the decision to dispatch an independent international commission of inquiry to investigate alleged violations of human rights in Cote d’Ivoire<sup>72</sup> and the Libyan Arab Jamahiriya.<sup>73</sup> The Council welcomed the work and reports by the Special Committee on Peacekeeping Operations in the context of United Nations peacekeeping operations,<sup>74</sup> women and peace and security<sup>75</sup> and protection of civilians in armed conflict.<sup>76</sup> For provisions of decisions referring to the above-mentioned subsidiary organs of the General Assembly, see table 5 below, grouped by organs.

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<sup>70</sup> 6265<sup>th</sup>, 6298<sup>th</sup>, 6363<sup>rd</sup>, 6470<sup>th</sup>, 6520<sup>th</sup>, 6590<sup>th</sup> and 6636<sup>th</sup> meetings on 27 January, 14 April and 21 July 2010 and 19 January, 21 April, 26 July and 24 October 2011.

<sup>71</sup> 329<sup>th</sup> and 337<sup>th</sup> meetings on 29 November 2010 and 2011, respectively ([A/AC.183/PV.329](#) and [A/AC.183/PV.337](#)).

<sup>72</sup> [Resolution 1975 \(2011\)](#), tenth preambular paragraph.

<sup>73</sup> [Resolution 1970 \(2011\)](#), fifth preambular paragraph.

<sup>74</sup> [S/PRST/2010/2](#), eighth paragraph and [S/PRST/2011/17](#), eleventh paragraph.

<sup>75</sup> [Resolution 1960 \(2010\)](#), fourteenth preambular paragraph.

<sup>76</sup> [S/PRST/2010/25](#), thirteenth paragraph.

During the deliberations of the Council, some speakers called for enhanced cooperation and dialogue between the Security Council and the Human Rights Council<sup>77</sup> and the Special Committee on Peacekeeping Operations.<sup>78</sup>

Table 5  
**Security Council decisions containing references to subsidiary organs of the General Assembly**

<i>Decision and date</i>	<i>Provision</i>
<b>1. Human Rights Council</b>	
<b>Peace and security in Africa (Libya)</b>	
<a href="#">Resolution 1970 (2011)</a> 26 February 2011	Welcoming Human Rights Council resolution S-15/1 of 25 February 2011, including the decision to urgently dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible (fifth preambular paragraph)
<b>The situation concerning Western Sahara</b>	
<a href="#">Resolution 1979 (2011)</a> 27 April 2011	Welcoming the establishment of the National Council on Human Rights in Morocco and the proposed component regarding Western Sahara, and the commitment of Morocco to ensure unqualified and unimpeded access to all special procedures of the United Nations Human Rights Council (twelfth preambular paragraph)
<b>The situation in Cote d'Ivoire</b>	
<a href="#">Resolution 1975 (2011)</a> 30 March 2011	Welcoming Human Rights Council resolution 16/25 of 25 March 2011, including the decision to dispatch an independent international commission of inquiry to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010 (tenth preambular paragraph) Also calls upon all parties to fully cooperate with the independent international commission of inquiry put in place by the Human Rights Council on 25 March 2011 to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010, and requests the Secretary-General to transmit this report to the Security Council and other relevant international bodies (para. 8)
<a href="#">Resolution 2000 (2011)</a> 27 July 2011	Taking note of the report and recommendations of the independent international commission of inquiry established pursuant to Human Rights Council resolution 16/25 of 25 March 2011 (sixteenth preambular paragraph) <i>Decides</i> that the United Nations Operation in Côte d'Ivoire shall have the following mandate: [...]

<sup>77</sup> For instance, in connection with implementation of note by the President of the Security Council, see [S/PV.6300 \(Resumption 1\)](#), p. 8 (Argentina); [S/PV.6672](#), p. 10 (Germany). In connection with maintenance of international peace and security, see [S/PV.6360 \(Resumption 1\)](#), p. 10 (Senegal). In connection with women and peace and security, see [S/PV.6411](#), p. 28 (Russian Federation); and p. 30 (China). In connection with protection of civilians in armed conflict, see [S/PV.6531](#), p. 16 (Colombia); [S/PV.6650 \(Resumption 1\)](#), p. 17 (Japan).

<sup>78</sup> For instance, in connection with United Nations peacekeeping operations, see [S/PV.6270](#), p. 23 (Brazil); p. 25 (Bosnia and Herzegovina); and p. 31 (Mexico); [S/PV.6603](#), p. 11 (United Kingdom); and p. 15 (Brazil).

*(g) Support for efforts to promote and protect human rights*

– To contribute to the promotion and protection of human rights in Côte d'Ivoire, with special attention to grave violations and abuses committed against children and women, notably sexual and gender-based violence, in close coordination with the independent expert whose mandate was established pursuant to Human Rights Council resolution 17/21 of 17 June 2011 (para. 7)

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**The situation in the Middle East**

[Resolution 2014 \(2011\)](#)

21 October 2011

Taking note of the Human Rights Council resolution on Yemen (A/HRC/RES/18/19), and underlining the need for a comprehensive, independent and impartial investigation consistent with international standards into alleged human rights abuses and violations, with a view to avoiding impunity and ensuring full accountability, and noting in this regard the concerns expressed by the United Nations High Commissioner for Human Rights (seventh preambular paragraph)

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**2. Special Committee on Peacekeeping Operations**

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**Maintenance of international peace and security: Impact of HIV/AIDS epidemic on international peace and security**

[Resolution 1983 \(2011\)](#)

7 June 2011

Recalling the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals and the report of the Special Committee on Peacekeeping Operation (fourth preambular paragraph)

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**Protection of civilians in armed conflict**

[S/PRST/2010/25](#)

22 November 2010

“The Council welcomes the proposals, conclusions and recommendations on the protection of civilians included in the report of the Special Committee on Peacekeeping Operations. The Council stresses the importance of ensuring engagement by senior mission leadership on the protection of civilians, with a view to ensuring that all mission components and all levels of the chain of command are properly informed of and involved in the mission’s protection mandate and their relevant responsibilities. The Council welcomes progress made by the Secretary-General in elaborating a conceptual framework, outlining resource and capability requirements and developing operational tools for the implementation of protection of civilians mandates. The Council emphasizes the importance of improving pre-deployment training for peacekeeping personnel on the protection of civilians. The Council encourages troop- and police-contributing countries to make full use of and provide feedback on these important materials (thirteenth paragraph)

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**United Nations peacekeeping operations**

[S/PRST/2010/2](#)

12 February 2010

The Council reaffirms its belief that United Nations peacekeeping is a unique global partnership that draws together the contributions and commitment of the entire United Nations system. The Council is committed to strengthening this partnership and acknowledges the key role of the Special Committee on Peacekeeping Operations of the General Assembly and the Fifth Committee of the Assembly in that regard. The Council recognizes the need for continuous review of the military planning, police, judicial, rule of law and institution-building capabilities of the Secretariat to ensure their effective utilization and coordination (eighth paragraph)

[S/PRST/2011/17](#)

26 August 2011

The Council also recognizes the important work conducted by the Special Committee on Peacekeeping Operations and the Fifth Committee of the General Assembly (eleventh paragraph)

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**Women and peace and security**

[Resolution 1960 \(2010\)](#)

16 December 2010

Welcoming the proposals, conclusions and recommendations included in the report of the Special Committee on Peacekeeping Operations on the need for adequate capabilities and clear and appropriate guidelines to enable peacekeeping missions to carry out all their mandated tasks, including prevention of and response to sexual violence; stressing the importance of ensuring engagement by senior mission leadership on protection of civilians, including the prevention of and response to instances of sexual violence in armed conflict, with a view to ensuring that all mission components and all levels of the chain of command are properly informed of and involved in the mandate of the mission and their relevant responsibilities; welcoming progress made by the Secretary-General in developing operational tools for the implementation of protection of civilians mandates; and encouraging troop- and



police-contributing countries to make full use of and provide feedback on these important materials (fourteenth preambular paragraph)

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## **H. Other Council practice bearing on relations with the General Assembly**

During the period under review, the President of the General Assembly did not participate in any meeting of the Security Council. Furthermore, there were no special sessions of the General Assembly convoked at the request of the Security Council in accordance with Article 20 of the Charter nor emergency special sessions pursuant to the General Assembly resolution 377A(V) of 3 November 1950.

A number of resolutions and presidential statements adopted by the Council in 2010 and 2011 referred to the General Assembly in connection with issues other than the admission of new members, the appointment of the Secretary-General, or the elections of members of the International Court of Justice and matters relating to judges of International Tribunals for the Former Yugoslavia and Rwanda, as described above. Among those other topics, under thematic items, the Council stressed the importance of strengthening its partnership with the General Assembly;<sup>79</sup> with regard to United Nations peacekeeping operations, supported the ongoing efforts of the General Assembly to bolster the effectiveness and efficiency of those operations<sup>80</sup> and recognized the key role of the Fifth Committee of the General Assembly;<sup>81</sup> also recognized the role and the responsibility of the General Assembly in addressing the issue of sustainable development including climate change<sup>82</sup> and HIV and AIDS;<sup>83</sup> and welcomed the adoption of a General Assembly resolution<sup>84</sup> which had established the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women).<sup>85</sup> Concerning the situation in Libya, the Council welcomed the engagement of the

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<sup>79</sup> In connection with maintenance of international peace and security, [S/PRST/2010/18](#), seventeenth paragraph and [S/PRST/2011/18](#), twelfth paragraph.

<sup>80</sup> In connection with maintenance of international peace and security, [S/PRST/2010/18](#), tenth paragraph.

<sup>81</sup> In connection with United Nations peacekeeping operations, [S/PRST/2010/2](#), eighth paragraph and [S/PRST/2011/17](#), eleventh paragraph.

<sup>82</sup> In connection with maintenance of international peace and security, [S/PRST/2010/15](#), second paragraph.

<sup>83</sup> In connection with maintenance of international peace and security, [resolution 1983 \(2011\)](#), seventh preambular paragraph.

<sup>84</sup> [General Assembly resolution 64/289](#).

<sup>85</sup> In connection with women and peace and security, [S/PRST/2010/22](#), third paragraph.

Secretary-General and the President of the General Assembly, including through their visit to Libya which had affirmed the key role of the United Nations in supporting Libyan national efforts in the post-conflict phase.<sup>86</sup>

From 2010 to 2011, the Council also discussed its relations with the General Assembly and one prominent discussion is reflected in case 8 under section II “Relations with the Economic and Social Council”.

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<sup>86</sup> [Resolution 2022 \(2011\)](#), fifth preambular paragraph.  
Part IV – Relations with other United Nations organs  
*Repertoire website:* <http://www.un.org/en/sc/repertoire>

## Section II

### Relations with the Economic and Social Council

#### *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 section concerns the relationship between the Security Council and the Economic and Social Council, with a particular focus on the practice of the Council in relation to Article 65 of the Charter. Subsection A considers briefings by the President of the Economic and Social Council to the Security Council. Subsections B and C cover decisions and deliberations of the Council concerning relations with the Economic and Social Council, respectively. In communications issued by the Security Council during the period under review, no explicit references were made to Article 65 of the Charter.

#### **A. Briefings by the President of Economic and Social Council**

From 2010 to 2011, the President of the Economic and Social Council was invited to brief the Security Council in two meetings concerning women and peace and security, in which the President stressed the importance of maintaining close dialogue between the Economic and Social Council and the Security Council in their common areas of work.<sup>87</sup>

#### **B. Decisions concerning relations with the Economic and Social Council**

From 2010 to 2011, the Security Council did not formally address any requests to the Economic and Social Council for information or assistance, but referred to the

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<sup>87</sup> [S/PV.6411](#), pp. 9-10 and [S/PV.6642](#), pp. 5-6.

Economic and Social Council in several decisions, all under the agenda item entitled “Maintenance of international peace and security”. In one presidential statement dealing with the interdependence between security and development, the Council highlighted the contributions that the Economic and Social Council could make in addressing economic, social, cultural and humanitarian issues and underlined the importance of close cooperation in accordance with Article 65.<sup>88</sup> In other decisions, the Council recognized the role and the responsibility of the Economic and Social Council in addressing the issues of the HIV/AIDS epidemic and climate change, and underlined the need to strengthen its partnership with the Economic and Social Council in the context of conflict prevention and ensuring the Council’s effective role in maintaining international peace and security. For details of the relevant provisions of Council decisions under the item entitled “Maintenance of international peace and security” see table 6 below which is organized by sub-item.

Table 6

**Decisions of the Security Council containing references to the Economic and Social Council under the agenda item entitled “Maintenance of international peace and security”**

<i>Decision and date</i>	<i>Provision</i>
<b>Conflict prevention</b>	
<a href="#">S/PRST/2011/18</a> 22 September 2011	The Security Council intends to continue to strengthen its partnerships with all other relevant players at both the strategic level and on the ground, in particular the General Assembly, the Economic and Social Council, the Peacebuilding Commission, and international financial institutions, such as the World Bank [...] (twelfth paragraph)
<b>Ensuring the Security Council’s effective role in maintaining international peace and security</b>	
<a href="#">S/PRST/2010/18</a> 23 September 2010	The Council also underlines that it should continue to strengthen its partnerships with all other relevant players both at the strategic level and on the ground, in particular the General Assembly, the Economic and Social Council, the Peacebuilding Commission, international financial institutions, such as the World Bank, and civil society (seventeenth paragraph)
<b>Impact of climate change</b>	
<a href="#">S/PRST/2011/15</a> 20 July 2011	The Council recognizes the responsibility for sustainable development issues, including climate change, conferred upon the General Assembly and the Economic and Social Council (second paragraph)
<b>Impact of HIV/AIDS epidemic on international peace and security</b>	
<a href="#">Resolution 1983 (2011)</a> 7 June 2011	Emphasizing the important roles of the General Assembly and the Economic and Social Council in addressing HIV and AIDS and the continuing need for coordinated efforts of all relevant United Nations entities, in line with their respective mandates, to assist in the global efforts

<sup>88</sup> [S/PRST/2011/4](#), para. 15.

<i>Decision and date</i>	<i>Provision</i>
	against the epidemic (seventh preambular paragraph)
<b>The interdependence between security and development</b>	
<a href="#">S/PRST/2011/4</a> 11 February 2011	The Council highlights the contribution that the Economic and Social Council can make in addressing economic, social, cultural and humanitarian issues and underlines the importance of close cooperation in accordance with Article 65 of the Charter (fifteenth paragraph)

### **C. Constitutional discussion concerning relations with the Economic and Social Council**

In deliberations of the Security Council during the period under review, speakers frequently touched upon relations between the Security Council and the Economic and Social Council, with a particular emphasis on strengthening cooperation, coordination and interaction between the two,<sup>89</sup> Article 65 of the Charter was explicitly referred to on two occasions.<sup>90</sup> Case 8 below is drawn from the discussion in connection with the working methods of the Security Council.

#### **Case 8**

##### **Implementation of the note by the President of the Security Council**

At the 6300<sup>th</sup> meeting, on 22 April 2010, under the agenda item entitled “Implementation of the note by the President of the Security Council (S/2006/507)”, many speakers emphasized the need for strengthened cooperation, coordination and interaction, including the exchange of information between the Security Council, the General Assembly and the Economic and Social Council.<sup>91</sup> In order to accomplish this, several speakers called on the Council to hold regular consultations with those three

<sup>89</sup> See, for example, in connection with maintenance of international peace and security, [S/PV.6389](#), p. 2 (President); p. 8 (Nigeria); and p. 16 (Brazil); [S/PV.6547](#), p. 13 (Russian Federation); p. 16 (Brazil); and p. 18 (Bosnia and Herzegovina); [S/PV.6479](#), p. 3 (Secretary-General); p. 10 (Colombia); p. 17 (South Africa); p. 20 (Nigeria); pp. 21-22 (Russian Federation); and p. 27 (Brazil); [S/PV.6479 \(Resumption 1\)](#), p. 2 (Thailand); p. 5 (Pakistan); p. 15 (Luxembourg); p. 25 (Chile); p. 32 (Senegal); p. 38 (Malaysia); p. 42 (El Salvador); and p. 42 (Nicaragua); in connection with post-conflict peacebuilding, see [S/PV.6299](#), p. 18 (Russian Federation); and p. 33 (China); [S/PV.6299 \(Resumption 1\)](#), pp. 6-7 (Egypt); p. 10 (Pakistan); p. 27 (Rwanda); p. 30 (Botswana); and p. 32 (Bangladesh).

<sup>90</sup> [S/PV.6300 \(Resumption 1\)](#), p. 8 (Argentina) and [S/PV.6389](#), p. 16 (Brazil).

<sup>91</sup> [S/PV.6300](#), p. 3 (Turkey); p. 10 (Lebanon); p.14 (Bosnia and Herzegovina); and p. 29 (Slovakia); [S/PV.6300 \(Resumption 1\)](#), p. 8 (Argentina); p. 10 (India); p. 18 (Columbia); p. 19 (Kenya); pp. 21-22 (Czech Republic); and p. 27 (Pakistan).

United Nations organs.<sup>92</sup> According to the representative of Colombia, such meetings among the Presidents of the three principal organs needed improvement.<sup>93</sup> The representative of Turkey suggested that the Presidents of the Economic and Social Council and the General Assembly should be invited to the Security Council’s luncheons with the Secretary-General.<sup>94</sup> Further, the representative of Argentina stated that regular and substantive dialogue should be established between the Security Council and the Economic and Social Council, reinforcing the communication provided for in Article 65 of the Charter.<sup>95</sup>

At the 6672<sup>nd</sup> meeting, on 30 November 2011, under the agenda item entitled “Implementation of the note by the President of the Security Council (S/2010/507)”, several speakers again called for increased interaction between the President of the Security Council and the Presidents of the Economic and Social Council and the General Assembly.<sup>96</sup> The representative of the Russian Federation considered it important to improve the quality of the Council’s interaction with other United Nations bodies on issues within the Council’s competence and in that regard, held that one relevant task was the future formulation of effective forms and methods for dialogue between the Security Council and the Economic and Social Council among other bodies.<sup>97</sup> Being mindful of the division of labour among United Nations organs in accordance with the Charter, the representative of China emphasized that the Security Council, the Economic and Social Council and the General Assembly should maintain communication through their Presidents.<sup>98</sup> A few speakers also stressed the need for regular discussions and interaction among the three Presidents in order to improve complementarity and increase coherence.<sup>99</sup>

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<sup>92</sup> [S/PV.6300](#), p. 3 (Turkey); [S/PV.6300 \(Resumption 1\)](#), p. 8 (Argentina); p. 10 (India); p. 18 (Colombia); and p. 19 (Kenya).

<sup>93</sup> [S/PV.6300 \(Resumption 1\)](#), p. 18.

<sup>94</sup> [S/PV.6300](#), p. 3.

<sup>95</sup> [S/PV.6300 \(Resumption 1\)](#), p. 8.

<sup>96</sup> [S/PV.6672](#), p. 4 (Russian Federation); p. 8 (Nigeria); p. 11 (Lebanon); and p. 14 (China); [S/PV.6672 \(Resumption 1\)](#), p. 7 (Luxembourg); and pp. 11-12 (Sudan).

<sup>97</sup> [S/PV.6672](#), p. 4.

<sup>98</sup> *Ibid.*, p. 14.

<sup>99</sup> *Ibid.*, p. 8 (Nigeria); and p. 25 (Egypt, on behalf of NAM).

## **Section III**

### **Relations with the International Court of Justice**

#### *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.*

### **STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

#### *Article 41*

- 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

This section concerns the relationship between the Security Council and the International Court of Justice. In accordance with Article 94, the Council may make recommendations or decide upon measures to be taken to give effect to the judgment rendered by the Court if a party to a case failed to perform its obligations under that judgment. In accordance with Article 96, the Council may request the Court to give an advisory opinion on any legal question.

During the period under review, the Council did not make recommendations or decide on measures with regard to the judgment rendered by the Court nor requested the Court to give an advisory opinion on a legal question. The President of the International Court of Justice was invited to participate in two private meetings of the Security Council under the item entitled “Briefing by the President of the International Court of Justice”.<sup>100</sup> As to elections of members of the International Court of Justice held concurrently by the Security Council and the General Assembly during the period under review, see section I. E. “Relations with the General Assembly.”

Consequently, this section is organized under two subheadings: A. Decisions and communications concerning relations with the International Court of Justice and B. Discussions concerning relations with the International Court of Justice.

### **A. Decisions and communications concerning relations with the International Court of Justice**

From 2010 to 2011, the Security Council did not adopt any decisions containing an explicit reference to Article 94 or Article 96. However, in one presidential statement under the item entitled “The promotion and strengthening of the rule of law in the maintenance of international peace and security”, the Council emphasized the key role of the International Court of Justice in adjudicating disputes among States and the value of the work of the Court.<sup>101</sup>

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<sup>100</sup> At the 6412<sup>th</sup> (closed) and 6637<sup>th</sup> (closed) meetings on 27 October 2010 and 25 October 2011, respectively.

<sup>101</sup> [S/PRST/2010/11](#), second paragraph.



Furthermore, a number of communications contained explicit references to Article 94 of the Charter.<sup>102</sup> In addition, the Council continued to exchange letters with the Secretary-General concerning the Cameroon-Nigeria Mixed Commission established to facilitate the implementation of the ruling of the Court on 10 October 2002 on the land and maritime boundary between the two countries.<sup>103</sup>

## **B. Constitutional discussion concerning relations with the International Court of Justice**

From 2010 to 2011, the Security Council, in its deliberations, touched upon the advisory opinions of the International Court of Justice of 9 July 2004 and 22 July 2010 rendered in response to the requests by the General Assembly concerning legal consequences of the construction of a wall in the occupied Palestinian territory<sup>104</sup> and the unilateral declaration of independence by Kosovo,<sup>105</sup> respectively, which did not rise to a constitutional discussion. In a thematic debate regarding the rule of law, relations between the Security Council and the Court, as well as the interpretation and the application of Articles 94 and 96 were discussed (see case 9).

### **Case 9**

#### **The promotion and strengthening of the rule of law in the maintenance of international peace and security**

In the concept paper prepared by Mexico, it was argued that advisory opinions by the International Court of Justice significantly contributed to strengthening the rule of law

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<sup>102</sup> See letter dated 18 June 2010 from the representative of Mexico addressed to the Secretary-General ([S/2010/322](#), p. 5); and letters dated 5 and 6 February 2011 from the representative of Cambodia addressed to the President of the Security Council ([S/2011/56](#), p. 2 and [S/2011/58](#), p. 2, respectively).

<sup>103</sup> [S/2010/637](#) and [S/2010/638](#).

<sup>104</sup> In connection with the situation in the Middle East, including the Palestinian question, see, for example, [S/PV.6265](#) and [S/PV.6265 \(Resumption 1\)](#); [S/PV.6298](#) and [S/PV. 6298 \(Resumption 1\)](#); [S/PV.6363](#) and [S/PV.6363 \(Resumption 1\)](#); [S/PV.6404](#) and [S/PV.6404 \(Resumption 1\)](#); [S/PV.6470](#) and [S/PV.6470 \(Resumption 1\)](#); [S/PV.6520](#) and [S/PV.6520 \(Resumption 1\)](#); and [S/PV.6636](#).

<sup>105</sup> In connection with Security Council resolutions [1160 \(1998\)](#), [1199 \(1998\)](#), [1203 \(1998\)](#), [1239 \(1999\)](#) and [1244 \(1999\)](#), see, for example, [S/PV.6264](#); [S/PV.6314](#); [S/PV.6353](#), [S/PV.6367](#); and [S/PV.6422](#).

at the international level, as did respect for the Court's decisions, a matter in which the Council was called upon to play a critical role under Article 94 (2) of the Charter.<sup>106</sup>

The Council held its 6347<sup>th</sup> meeting on 29 June 2010 under the item entitled "The promotion and strengthening of the rule of law in the maintenance of international peace and security". The Deputy Secretary-General emphasized the special role of the International Court of Justice in the peaceful settlement of disputes before intractable conflict and post conflict situations arose and held that strengthening the relationship between the Court and the Council would fortify the rule of law.<sup>107</sup> The Under Secretary-General for Legal Affairs similarly referred to a system of settling disputes peacefully as envisaged in the Charter and underlined that the General Assembly, the Security Council and the Court all had a responsibility to contribute to the peaceful settlement of disputes. She noted that the fullest use had not always been made of the organic link between those bodies, as well as the procedural means made available to them by the Charter, to coordinate and complement their respective actions.<sup>108</sup> Many speakers during the debate acknowledged the role of the Court in the peaceful settlement of disputes and maintenance of international peace and security.<sup>109</sup> In that regard, the representative of Germany stressed that the Council should further encourage States to make use of the Court.<sup>110</sup> The representative of the Russian Federation opined that the Court was a unique organ with the final say on the most ambiguous international legal issues.<sup>111</sup>

The representative of the Solomon Islands was of the view that advisory opinions of the Court should be respected and upheld. The representative of Mexico reminded the Council that it had the power to request advisory opinions on any legal matter which would lead to strengthening international law in its daily work, in cases where that was required.<sup>112</sup> According to the representative of South Africa, the Council could play a

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<sup>106</sup> [S/2010/322](#), p. 5.

<sup>107</sup> [S/PV.6347](#), p. 3.

<sup>108</sup> *Ibid.*, p. 5.

<sup>109</sup> *Ibid.*, p. 10 (Bosnia and Herzegovina); p. 13 (Nigeria); p. 14 (France); p. 16 (Brazil); p. 18 (United Kingdom); p. 19 (Lebanon); p. 22 (Russian Federation); p. 23 (Japan); p. 25 (United States); p. 26 (Turkey); p. 28 (Gabon); [S/PV.6347 \(Resumption 1\)](#), p. 2 (Denmark); p. 10 (Argentina); p. 13 (Norway); p. 14 (Peru); and p. 19 (Germany).

<sup>110</sup> [S/PV.6347 \(Resumption 1\)](#), p. 19.

<sup>111</sup> [S/PV.6347](#), p. 23.

<sup>112</sup> *Ibid.*, p. 8.

role in promoting rule of law through regular recourse to advisory opinions from the Court. He encouraged the Council to follow the General Assembly's practice and to request advisory opinions when faced with questions of legal complexity, giving an example of such a request resulting in the 1971 Namibia opinion. At the same time while recognizing that advisory opinions of the Court were not binding in and of themselves, in the sense of Article 94, he considered that non-compliance with them was not without legal consequence and a violation of whatever rule the Court might have deemed to be at issue in that opinion. He further called upon the Council, in the interests of promoting the rule of law, to take appropriate action to ensure the implementation of the advisory opinions on Western Sahara and legal consequences of the construction of a wall in the occupied Palestinian territory.<sup>113</sup>

Regarding the role of the Security Council in the execution of a decision of the Court in accordance with Article 94 (2) of the Charter which the representative of South Africa highlighted, the representative of Mexico stated that in cases of non-compliance, Article 94 (2) set out the path to follow although States rarely activated that mechanism.<sup>114</sup> The representative of Bosnia and Herzegovina stressed that since the enforcement of the Court's judgments lay ultimately with the Security Council, the Council, through its own actions, should give stronger emphasis and "exploit" the Court more as one of the central tools in maintaining peace and security.<sup>115</sup>

At the meeting, the Council adopted a presidential statement by which the Council emphasized the key role of the Court, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work.<sup>116</sup>

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<sup>113</sup> [S/PV.6347 \(Resumption 1\)](#), pp. 16-17.

<sup>114</sup> [S/PV.6347](#), p. 8 (Mexico); [S/PV.6347 \(Resumption 1\)](#), p. 16 (South Africa).

<sup>115</sup> [S/PV.6347](#), p. 10.

<sup>116</sup> [S/PRST/2010/11](#), second paragraph.