# The role of the United Nations General Assembly in advancing accountability for atrocity crimes: legal powers and effects

Ramsden, M.P.

# CHAPTER 5: GENERAL ASSEMBLY RECOMMENDATIONS TO PROMOTE ACCOUNTABILITY FOR ATROCITY CRIMES

## 1. Introduction

Where the Assembly makes a quasi-judicial finding it will often accompany this with a series of recommendations for action to be taken to bring the deviant behaviour to an end. In this regard, the following Chapter considers the range and effect of recommendations that have been adopted by the Assembly for the purpose of promoting accountability for atrocity crimes. 'Promote' is used here because, as is readily accepted, only the Security Council is vested with the power in the UN Charter to take 'enforcement action' against a deviant state.[887] By contrast, the Assembly is limited (at least textually) to making 'recommendations' to Member States and the Security Council for them to take action, including of a nature for the 'peaceful adjustment of any situation'. [888] The limited legal function of the Assembly in securing the enforcement of international justice is underlined further, as noted previously, given the orthodox understanding that the Assembly's resolutions are not generally binding. Despite these limitations, it remains instructive to consider the Assembly's recommendation practice as it relates to international justice. Doing so allows an evaluation to be made, alongside that from the previous Chapter, as to the record of the Assembly in seeking accountability action for atrocity crimes. This record can be reflected not only in the recommendations that the Assembly adopts but the influence of these recommendations on the actions of others.

Accordingly, the focus of enquiry here is on the practice of the Assembly in recommending action to advance accountability in atrocity situations. Having surveyed all Assembly resolutions relevant to the field of international justice, the following Chapter focuses on the four most common forms of action that has been sought by the Assembly: to investigate or prosecute; to cooperate; to explain or account; and to provide reparations to victims. These recommendations have been primarily directed towards Member States but also the Security Council, to the effect that it ought to exercise Chapter VII authority to implement what was recommended. Under the UN Charter, both of these subjects are the contemplated recipients of Assembly recommendations; for good reason. It is, fundamentally, through Member States that accountability for atrocity crimes will be achieved or at least enabled, be that in prosecuting suspects within its borders, or in cooperating with other States or entities in their criminal justice processes. The Security Council also possesses significant power to secure accountability for atrocity crimes, including (at its most extreme) to authorise the use of force, impose sanctions, establish *ad hoc* tribunals, or to refer situations to the ICC Prosecutor.[889] The extent to which the Assembly has sought to mobilise Member States and the Security Council into action to secure accountability, or otherwise support their responses to these crimes, is therefore a worthwhile enquiry.

While this recommendations practice can be readily discerned from Assembly sessions, a more challenging matter is seeking to identify the 'effects' of these

[887] UN Charter, arts 5, 11(2), 41, 42, 50, 53(1).
[888] ibid, arts 10, 14.
[889] See generally Roscini (n 3).

recommendations. The most direct effect is that a Member State or the Security Council implements the recommendation; however, such causality is often difficult to establish even where these actors take action following such recommendation. Equally problematic is that attempts to secure accountability for atrocity crimes often fail despite multilateral efforts, as some Member States have lamented.[890] Nonetheless, a recommendation might produce certain effects internal to the Assembly. At the very least, it might lead deviant Member States to justify its conduct within the Assembly and other UN processes, thereby offering some form of accountability. A Member State's failure to implement a recommendation could lead in particular to a condemnation and a strengthening of language in later recommendations. A hardening stance might not change the behaviour of a recalcitrant Member State but it could support a collective narrative in the UN that contributes towards an institutional position and the marginalisation of this deviant Member's position. The same can also be said about Security Council failures to implement Assembly recommendation; while the Council is not obliged to, not doing so allows the Assembly to form a judgment that the Council and their Members have failed to perform the functions entrusted to it. Repeated failings of both Member States and the Security Council might in turn prompt the Assembly to consider creative solutions to secure accountability. In this regard, Chapter 4 already noted the inventive use of the credentials-approval power as a means for the Assembly to sanction a Member State, which in turn has imposed 'symbolic damage to a regime'.[891] Other creative solutions open to the Assembly in response to recalcitrance, as Chapters 6 and 7 develop, might include the establishment of subsidiary organs with quasi-prosecutorial or judicial powers, or resolutions that provide legal authority for sanctions.

Finally, although the orthodox view is that Assembly recommendations are not binding, it nonetheless remains instructive to consider whether they entail some form of a requirement on Member States to meet. Blaine Sloan famously argued that even a recommendation entails mandatory elements and can acquire a binding character through practice.[892] It has already been noted that Assembly resolutions can contribute towards the 'established practice' in the interpretation of the UN Charter; yet, there has been no attempt in the scholarly literature so far to consider practice into any perceived mandatory force of recommendations, not least in the context of the present study into international justice. It is therefore useful to consider whether, in the present context, the Assembly has developed its recommendatory powers to entail any form of legal requirement of compliance, or whether there are at least any signs of latent potential in this regard. Yet, even if recommendations practice has not developed in the direction of imposing requirements, it is useful to re-examine the arguments made by scholars and jurists that there are some minimum requirements on Member States to act upon recommendations, grounded in the text of the UN Charter and the principle of good

[890] UNGA 80th plenary meeting (1999) (n 80), 17 (Jordan).
[891] Matthew Griffin, 'Accrediting Democracies: Does the Credentials Committee of the United Nations Promote Democracy through its Accreditation Process, and Should It' (2000) 32 NYU J Intl L & Policy 725, 732 ('The international community will likely take steps to isolate the regime. International organisations may withhold financial assistance. The loss of accreditation may result in the loss of jurisdictional immunities and the right to sue in the name of the Member State in domestic as well as international tribunals. Other states can freeze assets of the Member State abroad and provide assistance to the opponents of the regime. The momentum generated by delegitimating a government may prompt the Security Council and individual Member States to impose sanctions. Regional organisations may take actions pursuant to the General Assembly vote. In sum, disaccreditation is powerful medicine.') See also Chinkin, 'Opinion' (n 863), 5.
[892] Sloan, 'Binding Force' (n 31), 50.

faith.

## 2. Practice of Recommendations to Member States

The Assembly frequently makes recommendations to Member States to take steps to address atrocity crimes; these have been directed at the territorial State in which the alleged violations occurred, or to all States to take measures against recalcitrant States.

### 2.1 Investigate and Prosecute

A common form of recommendation made is for relevant Member States, or the respective parties to a conflict, to conduct an investigation and to prosecute those responsible for atrocity crimes. Recommendations of this nature have occurred since the first session, where the Assembly called for the prosecution (and extradition) of Nazi fugitives in 1946.[893] It has since called for the investigation and prosecution of a variety of relevant violations of international law. Sometimes this has been expressed in general terms in a situation, other times a recommendation has been focused on a particular violation (such as crimes against women), or in relation to specific incidents (e.g. the excessive use of force against 'eleven Africans' by the South African authorities in South West Africa).[894] The Assembly has also called for repeal of laws that inhibit effective prosecutions, such as legislation granting immunity from prosecution for international crimes in Cambodia.[895] That said, the Assembly has recognised modest latitude for domestic prosecutions to embrace 'participatory justice', provided that this is in conformity with international law.[896] Other resolutions are more wide ranging in calling for reform or strengthening of the basic State apparatus to make an effective investigation possible, particularly the efficacy of the judicial system; it thus 'demanded' that Iraq 'restore the independence of the judiciary' during the height of the repressive practices of the Saddam Hussein regime.[897] In instances where the territorial State has failed to comply, the Assembly has also invited other Member States to conduct investigations where feasible: for example, it encouraged states to 'prosecute crimes within their jurisdiction committed in the Syrian Arab Republic'.[898]

The duty to prosecute or investigate alleged violations can be found in multiple treaties, including custom; it has also found expression in Assembly declarations as discussed in Chapter 2 (including Resolution 3074 (XXVIII) (1973)).[899] To those seeking to strengthen international responses to impunity, it might therefore be hoped that these underlying obligations would be integrated and emphasised in Assembly recommendations. There is some evidence that recommendations have done so,

[893] UNGA Res 3(1) (1946).
[894] UNGA Res 1567 (XV) (1960), [1].
[895] UNGA Res 52/135 (1997), [9]. Conversely, it has also called for the non-prosecution of crimes related to conflict except for crimes against humanity, war crimes and other crimes covered by international law: UNGA Res 53/164 (1998), [15] (Kosovo).
[896] UNGA Res 54/188, [11] (Rwanda).
[897] UNGA Res 50/191 (1995), [8]. For similar iterations, see UNGA Res 55/112 (2000), [21] (Myanmar); UNGA Res 53/160 (1998), [2] (DRC); UNGA Res 41/161 (1986), [9] (Chile).
[898] UNGA Res 72/191 (2017), [36].
[899] See Chapter 2; Kai Ambos, 'Principle 19: Duties of States with Regard to the Administration of Justice' in Frank Haldemann and Thomas Unger (eds), *The United Nations Principles to Combat Impunity* (OUP 2018), 208-210; UNGA Res 3074 (XXVIII) (1973), preamble ('declares', war crimes and crimes against humanity 'shall be subject to investigation' and suspects 'shall be subject to tracing, arrest, trial, and if found guilty, to punishment').

although not always consistently and precisely. Many recommendations in a country situation simply 'recall' a series of generally applicable laws in the preamble and do not apply specific provisions from them in the operative paragraphs, nor in the specific context here of investigation or prosecution.[900] Sometimes phrases that derive from the treaty obligations are used without reference to the source.[901] Resolution 3074 (XXVIII), an Assembly declaration that underscores the importance of investigation and prosecution, has also seldom been referenced in later recommendations.[902] More specificity can be seen in relation to the Myanmar situation, where Resolution 74/246 (2019) reminded Member States of their responsibility 'to comply with their relevant obligations, to prosecute those responsible for violations of international law, including international humanitarian law, international human rights law, international criminal law'.[903] An even more specific formulation can be found in the Syria situation, where Resolution 74/169 (2019) called upon 'all States parties to the Convention [Against Torture] to comply with any relevant obligations under the Convention, including with respect to the principle of extradite or prosecute contained in article 7 of the Convention'.[904]

All of this raises the question whether the incorporation of these underlying obligations to investigate and prosecute has led to a strengthening of language in recommendations. For example, there are numerous instances in which the Assembly has 'demanded' a Member State to comply with an enumerated international obligation.[905] However, this is generally absent in relation to the subject of investigation and prosecution. In the context of the conduct of Mandatory powers, the Assembly has 'request[ed] that steps be taken to investigate and prosecute violations.[906] The use of 'request' here might have been underpinned by the obligations a Mandatory Power generally had to the UN, although this was unstated.[907] This context aside, even where obligations have been noted in general terms, the Assembly's most common formulation has been to 'call upon', 'urge' or 'encourage' the Member State concerned

[900] See eg UNGA Res 49/198 (1994), preamble (Sudan) ('Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms and to comply with the obligations laid down in the various instruments in this field…'); UNGA Res 49/206 (1994), preamble (Rwanda).

[901] UNGA Res 50/189 (1995), [6] (Afghanistan) ('Calls upon the Afghan authorities to investigate thoroughly the
fate of those persons'); Additional Protocol I (n 225), art 32 (right to families to 'know the fate' of their relatives).

[902] For one such example, see: UNGA Res 49/205 (1994), preamble, [8] ('recalling' UNGA Res 3074 (XXVIII) (1973) and urging Member States to 'bring to justice' suspected perpetrators of international crimes).

[903] UNGA Res 74/246 (2019), preamble. See also commission of inquiry report: DPRK Report (n 70), [1199] (DPRK authorities were unwilling to investigate and prosecute crimes against humanity 'as required by international law'). See also an earlier formulation: UNGA Res 54/186 (1999), [15] ('Strongly urges the Government…to fulfil its obligation to end the impunity of perpetrators of human rights violations, including members of the military, and to investigate and prosecute alleged violations committed by government agents in all circumstances').

[904] UNGA Res 74/169 (2019) (Syria), [18].

[905] See, for example, UNGA Res 49/205 (1994), [3] ('Demands that those involved immediately cease those outrageous acts, which are in gross violation of international humanitarian law, including the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977').

[906] UNGA Res 1567 (XV) (1960), [5] (South West Africa). 'Request' being common institutional parlance for an expectation of compliance often directed at the secretariat or subsidiary organs.

[907] As to the nature of these obligations, see eg *Namibia* (Advisory Opinion) (n 108).

to investigate and prosecute the violations of international law.[908] Even in the Syria situation, where the Assembly made specific 'demands' for compliance with international obligations in other areas (such as civilian protection), the imperative for investigation and prosecution was 'emphasize[d]'.[909] On other occasions, such a failure to investigate and prosecute has only been expressed as a 'concern' without any clear reference to underlying international obligations.[910] That being said there are instances in which a failure to investigate and prosecute has been recognised as conduct that would be inconsistent with international obligations; thus, in the context of 'crimes against women', an Assembly recommendation noted that Member States 'have an obligation to exercise due diligence' to investigate and punish; conversely, 'not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms'.[911] Similarly, it expressed its 'alarm' at the 'continuing failure of the Sudanese authorities to investigate human rights violations and abuses brought to their attention over the past years'.[912]

In short, although there is considerable practice of the Assembly recommending investigation and prosecution, the language used and the stress placed on underlying international obligations has not always been so consistent. This inevitably reflects the priorities of the drafters of the recommendation, although there might be other rationale for not emphasising investigation and prosecution. It might be that, on occasions, the Assembly does not want to be confrontational so avoids specifying particular obligations that a Member State must observe within its jurisdiction; this is especially so where the Assembly has already commended a Member State for commencing an investigation or otherwise being cooperative.[913] There might also be a preference to emphasise other obligations in recommendations that might be considered more pressing, for example, where there is an escalating humanitarian crisis. Nonetheless, this section has shown there to be room for more specific incorporation of the international obligations to investigate and prosecute in future recommendations, with a corresponding strengthening of language in the recommendation to convey the importance of this obligation.

## 2.2 Cooperate

The creation of commissions of inquiry and international criminal tribunals - within the UN and elsewhere – has prompted the Assembly to recommend Member States to cooperate and assist the work of these mechanisms. The Assembly has adopted recommendations that Member States cooperate with the ICC, including to refer a

[908] 'Call upon': UNGA Res 50/189 (1995), [6] (Afghanistan); UNGA Res 57/230, (2002), [4] (Sudan); UNGA Res 56/173 (2001), [4] (DRC). 'Urge': UNGA Res 74/9 (2019), preamble (Afghanistan); UNGA Res 74/166 (2019), [17] (DPRK); UNGA Res 50/197 (1995), [2] (Sudan)); UNGA Res 37/185 (1982), [10] (El Salvador); UNGA Res 53/163 (1998), [35] (former Yugoslavia); 'Encourage': UNGA Res 49/199 (1994), [10] (Cambodia); UNGA Res 49/206 (1994), [7] (Rwanda).

[909] In UNGA Res 74/169 (2019) compare [32] with [1], [2], [9], [27], [28], [29], [30], [31], [42], [47], and [53]. See also UNGA Res 67/262 (2013) (Syria), [4] ('demands' to end violations of international humanitarian law, contrast with, in the same paragraph a 'call' for investigation and prosecution).

[910] UNGA Res 38/79 H (1983) (Palestine), [1] (expresses 'deep concern' that Israel 'has failed for three years to apprehend and prosecute the perpetrators of the assassination attempts').

[911] UNGA Res 57/179 (2002), preamble.

[912] UNGA Res 50/197 (1995), preamble (Sudan).

[913] UNGA Res 49/206 (1994) (Rwanda), [7] ('encourages the Government of Rwanda to ensure investigation and prosecution of those responsible…and welcomes the commitments of the [Government] in this regard').

situation to the Prosecutor or to accept the Court's jurisdiction on an *ad hoc* basis.[914] The Assembly has demanded that Member States cooperate with the *ad hoc* tribunals established by the Security Council, including to transfer indicted persons to these tribunals.[915] A particular focus of recommendations has been in exhorting the membership to assist the work of commission of inquiries. Such recommendations have included to allow 'unfettered access' to UN investigators to the territory where crimes have allegedly been committed,[916] permitting witnesses to appear before an inquiry,[917] and to provide relevant information and documentation.[918] Member States have also been recommended to supply relevant evidence in their possession to UN investigations.[919]

The language used in recommendations to cooperate, and the extent to which they convey an underlying obligation, has also varied. There are resolutions that employ terminology proximate to the ordinary meaning of 'recommendation', such as to 'call upon', 'encourage', 'urge', or 'strongly urge'.[920] But there are also numerous instances where the Assembly frames a cooperation recommendation in much stronger terms, 'requests' or 'demands', with such cooperation stated to arise 'fully and immediately' and 'unreserved[ly]'.[921] Some of these 'demands' have been consistent across sessions on a situation, as upon Syria over many sessions to provide 'unhindered' or 'unfettered access' to a commission of inquiry.[922] However, language is not always consistent, even on the same situation: what was a 'demand' in one recommendation could be later diluted to a 'call' to cooperate in the next, or even dropped entirely as priorities in the Assembly change.[923] Nor can much predictability on the use of mandatory language be

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[914] See eg UNGA Res 70/264 (2016), [2], [10]; UNGA Res 71/253 (2017), [17]. Relatedly, the UNHRC has called upon the 'parties concerned to cooperate fully with the preliminary examination' of the ICC into the Palestinian situation: UNHRC Res 34/L.38 (2017), [6].

[915] See eg UNGA Res 50/200 (1995), [8] (Rwanda); UNGA Res 54/184 (1999), [6], [37] (Former Yugoslavia).

[916] UNGA Res 67/262 (2013), preamble, [7] (Syria).

[917] UNGA Res 38/79 D (1983), [16] (Occupied Palestinian Territories) (here the Assembly did not request that Israel allow witnesses to appear before the UN mechanism, but did 'condemn' its refusal to permit persons from the occupied territories to so appear).

[918] UNGA Res 72/191 (2017), [33] (Syria).

[919] See eg UNGA Res 385 (V) (1950), [5] (Bulgaria, Hungary and Romania).

[920] UNGA Res 74/177 (2019), [17]; UNGA Res 71/205 (2016), [4]; UNGA Res 71/202 (2016), [14]; UNGA Res 70/233 (2015), [18]; UNGA Res 54/171 (1999), [11]; UNGA Res 33/172 (1978); UNGA Res 1454 (XIV) (1959), [2].

[921] UNGA Res 67/262 (2013), preamble, [7] (*'Demands'* that Syria provide *'unfettered access'* to the COI); UNGA Res 49/205 (1994) (Former Yugoslavia), [5] ('demands that immediate and unimpeded access be granted' to various UN investigators); UNGA Res 49/204 (1994), [4] (*'Demands'* the authorities of the Federal Republic of Yugoslavia to *'cooperate fully and immediately with the Special Rapporteur…'*); UNGA Res 49/198 (1994), [12] (Sudan); UNGA Res 3114 (XXVIII) (1973), [3] *('Requests Portugal to cooperate with the Commission of Inquiry and to grant it all necessary facilities to enable it to carry out its mandate'* in Mozambique) – check citation; UNGA Res 1628 (XVI) (1961), [5] (*'Requests'* all parties concerned to *'extend their full co-operation and assistance'* to the Commission established to investigate the death of former UN Secretary General, Dag Hammarskjold); UNGA 1596 (XV) (1961), [6] ('requests' State members of the UN to extend to the Committee on South West Africa such assistance as it may require in the discharge of its tasks); UNGA Res 1130 (XI) (1956), [4] (Hungary) ('Requests' Member States to cooperate with the SG's named representatives 'and providing such facilities as may be necessary for the effective discharge of their responsibilities.')

[922] UNGA Res 74/169 (2019), [27]; UNGA Res 73/182 (2018), [23]; UNGA Res 72/191 (2017), [26]; UNGA Res 71/203 (2016), [22]; UNGA Res 70/234 (2015), [12]; UNGA Res 69/189 (2014), [10]; UNGA Res 68/182 (2013), [8]; UNGA Res 67/262 (2013), preamble, [7]; UNGA Res 67/183 (2013), [7]; UNGA Res 66/253 B (2012), [10]; UNGA Res 66/253 A (2012), [3]; UNGA Res 66/176 (2011), [5].

[923] See eg the climbdown in the Hungarian situation in 1956: UNGA Res 1004 (ES-II) (1956), [5]; UNGA Res 1130 (XI) (1956), [2]; UNGA Res 1131 (XI) (1956), preamble, [2]; UNGA Res 1132 (XI) (1957),

gauged based upon the scale or gravity of the alleged crimes committed. In Syria the alleged crimes have been noted to be of particular gravity, as they have in Myanmar; yet the language used in respective recommendations has been quite different.[924] Despite the Assembly noting the possibility of genocide occurring in Myanmar, it still has only 'urge[d]' the authorities there to cooperate with a commission of inquiry.[925]

Leaving this inconsistency aside, the instances in which ostensible mandatory language has been used raises the question whether it is designed to reflect any underlying obligation, or indeed has served to develop interpretive practice towards a general agreement amongst the membership on such an obligation under the UN Charter. The use of mandatory language in some recommendations can indeed be reasonably explained as reflecting an underlying obligation in the UN Charter, such as to cooperate with *ad hoc* tribunals established by the Security Council under Chapter VII.[926] However, there are numerous instances where the Assembly has 'demanded' Member States to cooperate with UN commissions of inquiry established outside the framework of Chapter VII, often in instances where there has been repeated failure to cooperate.[927] The basis for such a 'demand', to the extent that it reflects an underlying obligation, would be questionable to many, the orthodox view being that cooperation with non-Chapter VII mechanisms is voluntary under the UN Charter.[928] Nonetheless, there is one instance in which the connection between 'demand' and an underlying legal obligation was made explicit: numerous resolutions have 'demanded' Israel to cooperate with the Assembly's Special Committee as required 'in accordance with its obligations as a State Member of the United Nations'.[929] Although this might be used to support the evolution of a Charter duty to cooperate with UN inquiries in the future, it is unlikely to support a precise duty as of yet. These resolutions specifying 'demands' on Israel continue to receive a large number of abstentions meaning it is unlikely to be considered to reflect the 'general agreement' of the membership on a duty to cooperate.[930]

There is also a general lack of recognition or awareness of an underlying legal obligation in explanation of votes on recommendations that address cooperation with non-Chapter VII commissions.[931] An interesting example of where some Member

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[2]. See also UNGA Res 3114 (XXVIII) (1973), preamble, [3]; UNGA, 'Decision of the General Assembly' (13 December 1974) UN Doc A/9631, 117.

[924] In relation to Syria, 'demands' for cooperation have been fairly consistent over several sessions: UNGA Res 74/169 (2019); UNGA Res 73/182 (2018); UNGA Res 67/262 (2013), preamble, [7]; UNGA Res 72/191 (2017), [26]; UNGA Res 71/203 (2016), [22]; UNGA Res 70/234 (2015); UNGA Res 69/189 (2014), [10]; UNGA Res 68/182 (2013), [8]; UNGA Res 67/262 (2013), [7]; UNGA Res 67/183 (2013), [7]; UNGA Res 66/253 B (2012), [10]; UNGA Res 66/253 A (2012), [3]; UNGA Res 66/176 (2011), [5]

[925] See UNGA Res 74/246 (2019), [4] ('urging' Myanmar to cooperate); UNGA Res 73/264 (2018), [1] (expressing grave concern about the credible allegations of genocide occurring in Myanmar).

[926] See eg UNGA Res 54/184 (1999), [6] (ICTY); UNGA Res 50/200 (1995), [8] (ICTR); UNGA Res 49/204 (1994), [4] (Special Rapporteur on Kosovo).

[927] Consider the ostensibly mandatory language used in relation to cooperating with the following (non-Chapter VII) entities: UNGA Res 67/262 (2013), preamble, [7] (UNHRC-established COI on Syria); UNGA Res 62/169 (2007), [3] (HRC on Belarus); UNGA Res 49/204 (1994), [4] (Special Rapporteur on Kosovo); UNGA Res 42/160(D) (1987), [3] (Special Committee on Israel); UNGA Res 38/79 D (1983), [3] ('Demands' that Israel allow access to the Palestinian occupied territory). See also UNGA Res 1627 (XVI) (1961), [2] ('Requests' COI to visit scene in Burundi immediately).

[928] See analysis in Ramsden, 'Accountability for Crimes Against the Rohingya' (n 704).

[929] UNGA Res 74/87 (2019), [2]; UNGA Res 73/96 (2018), [2]; UNGA Res 72/84 (2017), [2] (Special Committee on Israel).

[930] For example, UNGA Res 74/87 (2019) was adopted by 83 votes to 10, with 77 abstentions.

[931] Indeed, Security Council involvement in establishing commissions and also to threaten sanctions for non-cooperation have had an impact, see: UN, 'Security Council Declares Intention to Consider

States sought to push a legal obligation came following the USSR's repeated failure to permit observers into Hungary after its intervention in 1956. After numerous recommendations, an impatient Assembly made a specific 'request' in Resolution 1130 (XI) to the USSR that it 'communicate to the Secretary-General, not later than 7 December 1956, their consent to receive United Nations observers'.[932] The tone of this resolution, in setting a deadline and carrying an expectation of compliance, was highly aberrant in Assembly practice at that point (and indeed since); Members requested a vote specifically on this paragraph (which passed with 44 votes to 13, with 13 abstentions).[933] The deadline paragraph also caught the attention of the international media; the *New York Times* indicated that more drastic measures would be taken if not met.[934]

The text of Resolution 1130 (XI) (1956) prompted some discussion prior to its adoption. Uruguay considered it 'undeniable that this world parliament possesses full authority to cross the borders of any Member State for the purpose of finding out whether or not crimes have been committed against international law and order'.[935] A corollary of this argument might be that granting entrance to an Assembly-mandated inquiry was obligatory. India, too, suggested there to be some duty to accept the presence of an inquiry, but stated this as 'not a legal, but a moral duty'.[936] The Dominican Republic asserted that the USSR was both 'legally and morally' bound to cooperate.[937] China regarded the Secretary-General's entrance into Hungary to conduct an inquiry was 'part of the minimum obligations of the United Nations towards the Hungarian people'.[938] In focusing on the consequence of non-cooperation, Nepal also observed that the USSR's failure to 'comply' with Assembly resolutions 'shows their lack of faith and trust in the Purposes and Principles of the Charter'.[939] India, similarly, felt Soviet recalcitrance was a 'lack of courtesy' and a 'violation of the spirit of the Charter'.[940] However, the fruits of this interesting discussion, even if some of it was lacking in legal precision, did not inform subsequent recommendations; in fact, the Assembly soon backed down from its demand and used weaker language in subsequent recommendations exhorting the USSR to cooperate.[941]

Another vantage point to assess the force of recommendations to cooperate is the response by the Assembly in instances where the Member State fails to take the recommended course of action. Such failures have prompted the Assembly to 'strongly regret', 'deplore', 'condemn', or express a 'deep concern'.[942] This disapprobation,

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Sanctions to Obtain Sudan's Full Compliance with Security, Disarmament Obligations on Darfur' (18 September 2004) UN Doc. SC/8191 <http://www.un.org/press/en/2004/sc8191.doc.htm>.

[932] UNGA Res 1130 (XI) (1956), [2]. See earlier calls that were weaker in tone: UNGA Res 1004 (ES-II) (1956), [5].

[933] UNGA, Eleventh session, 608th plenary meeting (4 December 1956) UN Doc A/PV.608, 526.

[934] ibid 518.

[935] ibid 520.

[936] ibid 522 (India).

[937] ibid 529 (Dominican Republic).

[938] ibid, 517 (China).

[939] ibid, 521 (Nepal).

[940] ibid, 522 (India).

[941] See n 923.

[942] See eg UNGA Res 74/246 (2019), preamble ('Condemning' the 'ongoing non-cooperation' of Myanmar with UN mechanisms); UNGA Res 73/264 (2018) ('Strongly regretting' the Myanmar government's discontinuance of cooperation); UNGA Res 62/169 (2007), [1] ('Expresses deep concern' that Belarus failed to cooperate with all HRC mechanisms); UNGA Res 53/160 (1998), [14] ('Regrets the lack of cooperation' of the DRC); UNGA Res 49/196 (1994), [5] ('Condemns the continued refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb authorities to

however, is generally not tied to an underlying violation of the UN Charter or other source of legal obligation.[943] The exceptions are some resolutions on South Africa and Portugal, in the colonial context, where the Assembly condemned repeated failure to comply with Assembly resolutions, which included a failure to cooperate with inquiries, as 'inconsistent with its membership' of the UN.[944] Repeated failures ultimately led the Assembly to recommend Member States to impose sanctions (see Chapter 7). Nonetheless, the Assembly's condemnatory practice in this respect is inconsistent; sometimes failures to cooperate, given emphasis in one session, receive little or no attention in the next, despite the failures being ongoing. An opportunity to consider this issue more closely arose following the release of the DPRK commission of inquiry report in 2014. It reasoned that the DPRK, in refusing to cooperate, was acting in 'open defiance of the United Nations' which justified the Security Council in taking enforcement action.[945] Despite endorsing the report and drawing upon some of its findings (e.g. on crimes against humanity), no Assembly recommendation sought to elucidate upon the proposition that the DPRK, in refusing to cooperate, had acted inconsistently with its obligations under the UN Charter.[946]

### 2.3 Explain or Account

There are also some recommendations that specifically call upon Member States to explain their conduct or to account for a situation to the Assembly or another UN organ.[947] This can be seen in the 1946 'request' that South Africa and India 'report' to the next session on 'measures adopted' to give effect to the recommendation.[948] Similarly, the failure of prospective UN members (Bulgaria, Hungary and Romania) in 1950 to explain alleged occurrence of atrocities led the Assembly to conclude in a resolution that these States did not offer a 'satisfactory refutation' of accusations.[949] In the context of alleged atrocities in Angola, the Assembly also 'requested' Portugal to submit a report to a designated future plenary session 'on the measures it has undertaken in the implementation of the present resolution'.[950] There are a group of

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permit the Special Rapporteur to conduct investigations in territories under their control'); UNGA Res 33/113 C (1978), [2] ('Deplores the continued refusal by Israel to allow the Special Committee access to the occupied territories'); UNGA Res 31/124 (1976), [3] ('deplores' the fact that Chile refuse entry to the *Ad Hoc* Working Group); UNGA Res 1742 (XVI) (1962), preamble ('deplor[ed]' Portugal's failure to cooperate with a subcommittee it established to look into 'recent disturbances and conflicts in Angola'); UNGA Res 1603 (XV) (1961), preamble; UNGA Res 1312 (XIII) (1958), [3] *('Deplores the* continued refusal' of the USSR to cooperate); UNGA Res 1312 (XIII) (1958), [3]; UNGA Res 917 (X) (1955), [2] ('Notes with regret' that South Africa 'again refused to cooperate').

[943] Although Member States have not regarded the use of strong language to condemn non-cooperation - 'deploring' – to amount to an interference in the relevant state's internal affairs, see UNGA, Fiftieth session, 99th plenary meeting (22 December 1995 UN Doc A/50/PV.99, 12 (Sudan, invoking internal affairs, unsuccessfully sought a vote against UNGA Res 50/197 (1995), [12] that deplored their non-cooperation with a commission).

[944] UNGA Res 1819 (XVII) (1962), [8].

[945] DPRK Report (n 70), [1672].

[946] UNGA Res 69/188 (2014), preamble, [2] ('very serious concern' at non-cooperation); UNHRC Res 25/25 (2014), preamble ('deeply regretting' the refusal to cooperate).

[947] This burden of explanation has arisen in other areas: UNGA Res 1536 (XV) (1960), [4] (on the administration of non-self governing territories); UNGA Res 1402 (XIV) B (1959), [2] (on outcome of nuclear disarmament negotiation).

[948] UNGA Res 44 (I) (1946), [3] (treatment of Indians in South Africa).

[949] UNGA Res 385 (V) (1950), [4]. Indeed, their membership of the UN did not occur until 1955: UNGA Res 995 (X) (1955).

[950] UNGA Res 1742 (XVI) (1962) (Portugal), [9].

recommendations, in the enforced disappearance context, where the Assembly has 'requested' or 'called upon' the Member States concerned to 'clarify the fate' of those who disappeared or were unaccounted for.[951] Citing Article 27 of the Fourth Geneva Convention, concerning the protection of civilians, the Assembly also 'demanded' that Israel inform the Secretary-General of the 'results of the investigations' with respect to political assassination attempts.[952]

There are three brief points worth noting about the nature of recommendations to 'explain or account'. First, a recommendation to cooperate with a UN organ (above) would also implicitly entail an expectation that Member States would explain or account for events in their territory. Similarly, it seems reasonable to imply that a recommendation to conduct an investigation or prosecution will also bring with it a need to explain the outcome.[953] The Assembly's 'explain or account' practice is therefore more extensive where this related practice is also taken into account. Second, this type of recommendation is of particular use where access to evidence is problematic, or where the substantiation of an allegation turns upon establishing an understanding as to the intention underlying the Member State's conduct. The Assembly's recommendation that Sudan 'explain without delay the circumstances of the repeated air attacks on civilian targets in southern Sudan', is one example of this.[954] Third, the Assembly has generally failed to articulate any legal basis for a duty that underpins its 'explain or account' recommendations. Where it has used mandatory language (see the paragraph immediately above), it has seldom sought to connect this to an underlying legal requirement. It has sometimes condemned Member States for 'ignoring' Assembly recommendations as inconsistent with the UN Charter, although this practice is not widespread.[955] Despite lacking recognition in the text of recommendations to date, it is arguable that there exists some requirement in the UN Charter for Member States to explain their conduct where the Assembly recommends that they should do so, as developed in section 4 below.

### 2.4 Reparations

Another major category of recommendations directed towards Member States in the field of international justice concern reparations for internationally wrongful acts. A call to provide reparations, in this respect, might include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[956] As the Assembly's Reparation Principles make clear, upholding the interests of victims of international crimes and gross human rights abuse requires the availability of adequate, effective, prompt and appropriate remedies, including reparations.[957] The Assembly has further

[951] UNGA Res 38/100 (1983), [6] (Guatemala); UNGA Res 37/183 (1982), [5] (Chile). See also UNGA Res 49/203 (1994), [5]; UNGA Res 40/140 (1985), [6] (Chile); UNGA Res 33/175 (1978), [2] (Chile). A duty to clarify the fate of victims would be enshrined in Enforced Disappearances Convention art 24(2).
[952] UNGA Res 38/79 H (1983), [2] (repeated in UNGA Res 39/95 H (1984), [1]).
[953] Sometime the link is made explicit, see eg UNGA Res 48/147 (1993), [11] (Sudan) (called upon Sudan 'to investigate and explain without delay the circumstances behind the air attacks on 12 and 23 November 1993').
[954] UNGA Res 49/198 (1994), [6].
[955] See eg UNGA Res 1663 (XVI) (1961), preamble (South Africa); UNGA Res 1662 (XVI) (1961), [2] (South Africa); UNGA Res 1593 (XV) (1961), preamble (South Africa); UNGA Res 1179 (XII) (1957), [2] (South Africa).
[956] 'Reparations' here means that described in ARSIWA (n 861), art 34 ('restitution, compensation and satisfaction, either singly or in combination…').
[957] UNGA Res 60/147 (2005), [18].

underlined the need for reparations in the abstract in relation to specific violations of international law, including enforced disappearances,[958] torture,[959] sexual violence,[960] and extrajudicial killings.[961] Despite these abstract commitments, Assembly recommendations addressing an atrocity situation have not always included a call to secure reparations for victims, or if they have, this has not tended to be given much emphasis.

Nonetheless, there is a body of reparations recommendation practice that can be discerned from Assembly sessions. At its most general, this has included a call to provide 'redress for the victims of human rights abuses',[962] or stressing the importance of facilitating 'the provision of efficient and effective remedies to the victims'.[963] At its most specific, the Assembly has called for 'the immediate closure of all detention facilities not in compliance with the Geneva Conventions' in the former Yugoslavia and 'demand[ed]' that South Africa release prisoners of war forthwith.[964] The plight of forcibly displaced persons has also garnered attention, with the Assembly noting, for example, the right of victims of 'ethnic cleansing' in the former Yugoslavia to receive 'just reparation for their losses'.[965] In this regard, a major component of this practice concerns compensation for internationally wrongful acts. The Assembly thus 'demand[ed] that Israel 'in view of its international responsibility for its act of aggression, pay prompt and adequate compensation for the material damage and loss of life suffered as a result of that act'.[966] Citing the ICJ's *Wall* opinion, the Assembly has similarly 'demand[ed] Israel 'make reparation for all damage caused by the construction of the wall'.[967] It also 'request[ed]' South Africa, when a mandatory power, to 'provide adequate compensation to the families of the victims'.[968] Other variations on this language in other country situations has been to 'declare', 'reaffirm' and 'affirm the right of' victims to receive appropriate compensation.[969] The Assembly has also acted in tandem with Security Council mechanisms on the topic of reparations for victims, for example, in calling for Iraq to 'pay appropriate compensation' to those prisoners who died in its custody and to which it bears responsibility.[970]

A couple of general points can be made about this practice. Firstly, while the Assembly has, in the abstract, noted reparations to arise as a matter of international obligation, these obligations have not tended to be incorporated into the Assembly's

[958] UNGA Res 59/200 (2004), [6]
[959] UNGA Res 65/205 (2010), [19].
[960] UNGA Res 62/134 (2007), [1].
[961] UNGA Res 65/208 (2010), [3].
[962] UNGA Res 58/238, [15] (Guatemala).
[963] UNGA Res 64/11, [34] (Afghanistan).
[964] UNGA Res 48/153 (1994), [15]; UNGA 33/182 (A) (1982), [17]. See also UNGA Res 44/143 (1989), [4]; UNGA Res 40/161 A (1985), [4] (Israel/Occupied Palestinian Territories); UNGA Res 40/64 B (1985), [7] (South Africa); UNGA Res 36/137 (1981), [2] (Israel/Occupied Palestinian Territories); UNGA Res 35/227(A) (1981), [20] (South Africa/Namibia); UNGA Res 32/122 (1977), [4] (Israel and South Africa); UNGA Res 1600 (XV) (1961), [4] (Rep Congo).
[965] UNGA Res 48/153 (1994), [13]. See also UNGA Res 74/83 (2019), [1] (repatriation or compensation of Palestinian refugees).
[966] UNGA Res 37/27 (1981), [6]. See also UNGA Res 38/144 (1983), [7]; UNGA Res 37/68 (1982), [8] ('demands' that South Africa 'pay full compensation to Angola and other independent African States for the damage to life and property caused by its acts of aggression').
[967] UNGA Res 70/90 (2015), [11].
[968] UNGA Res 1567 (XV) (1960), [5].
[969] UNGA Res 50/193 (1995), [12] (former Yugoslavia); UNGA Res 41/39 A (1986), [7], [59] (South Africa/Namibia); UNGA Res 41/38 (1986), [4] (Libya); UNGA Res 41/12 (1986), [3] (Iraq).
[970] UNGA Res 49/203 (1994), [5]. Still, there is nothing in this resolution about holding the perpetrators criminally responsible; victim satisfaction meant monetary compensation.

specific recommendations towards Member States to provide reparations.[971] Nonetheless, the Assembly has tended to use mandatory language, 'demanding' or 'requesting' reparations, where it has made a prior finding that a Member State has committed an internationally wrongful act.[972] This connection is logical given that an obligation to make reparations flows from an internationally wrongful act.[973] Secondly, as already alluded, the Assembly has not been consistent in recommending that a responsible Member State provide reparations in atrocity situations, even in instances where it has noted the 'ongoing suffering' of victims.[974] This reflects the context of each situation, including other immediate priorities in a situation and the feasibility of achieving reparations on the ground. Some recommendations to secure the interests of victims are therefore not directed at the responsible Member State but more generally at the international community.[975] In this regard, some jurists have suggested that the Assembly could play a greater role in facilitating and coordinating reparations schemes, such as in establishing a victim compensation fund, with the responsible Member State being required to pay such amounts into the fund.[976] However, this proposal has yet to receive any traction in the Assembly.

## 2.5 Effectiveness of Recommendations to Member States

Having considered four types of Assembly recommendations in the field of international justice, this section will now briefly analyse their possible 'effects'. Given the extensiveness of this practice, it is impossible to provide a comprehensive analysis of their effects here. Rather, the purpose of this section is to identify broad fields of enquiry in which to assess the influence of the Assembly's recommendations, and in which to provide a focal point for future research, drawing upon the existing literature and primary materials in which such effects have been observed.

Most directly, this would take the form of the Member State concerned implementing the recommendation. The likelihood of this occurring will depend upon various factors, including perceptions as to the UN's authority in a particular situation, the extent of support for a recommendation, and the emphasis given to this issue by the Assembly.[977] Recommendations directed towards a 'friendly' Member State will have a much higher chance of being implemented compared to one that challenges the legitimacy of the Assembly's inquiry into their internal affairs.[978] The prospects of a

[971] GA Res 60/147 (2005), annex, [15].
[972] However, the language used is not always mandatory, see eg UNGA Res 52/147 (1997), [7] ('calls for the perpetrators of rape to be brought to justice'); UNGA Res 52/141, [3] ('calls upon' Iraq to pay compensation); UNGA Res 48/147 (1993), [10] ('calls upon' Sudan to provide compensation).
[973] See ARSIWA (n 861).
[974] UNGA Res 51/114 (1996), [3] (Rwanda).
[975] See eg UNGA Res 48/159 (1993), [13] ('Appeals to the international community to increase humanitarian and legal assistance to the victims of apartheid, to the returning refugees and exiles and to release political prisoners'; UNGA Res 62/96 (2007); UNGA Res 51/115 (1996), [7]; UNGA Res 41/123 (1986), [2].
[976] UNHRC, 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict' (25 September 2009) UN Doc A/HRC/12/48, [1971(b)]. Pursuant to UNGA Res 36/151 (1981), the Assembly has also established the 'Voluntary Fund for Victims of Torture', with a mandate to support torture survivors and their families; it does so by awarding grants to civil society organisations to deliver medical, psychological, legal, social and other assistance.
[977] Igor Lukashuk, 'Recommendations of International Organisations in the International Normative System' in William Butler (ed), *International Law and the International System* (Springer 1987), 40.
[978] See eg DPRK Report (n 70) [11], [25]. The overthrow of a friendly government with one hostile to Assembly pressure has also been noted to affect the extent of compliance with recommendations: Robert

recommendation being implemented also turn upon the Assembly's own commitment to this cause; as noted in Chapter 4, the Assembly's interest sometimes waned or their priorities in a given situation changed from ones that emphasised accountability towards other broader imperatives such as peace and reconciliation. While there are a lack of detailed studies into the direct influence of recommendations on Member State action, the speeches of many delegations in the Assembly have noted that their recommendations have 'moral force' or exert 'political pressure'.[979] There are also instances in which delegates have explained the measures that their State have taken to implement a recommendation.[980] Even where a Member State has not attributed the action it has taken to a recommendation, scholars have sometimes noted the important role such recommendations have played in exerting pressure on national authorities.[981] On the other hand, there are situations where recommendations were repeatedly ignored, as in the South African and Israeli situations, showing the lack of effectiveness of recommendations in 'hard cases'.[982] In these situations, some Member States have regarded recommendations to be a 'dead letter' without the ability to impose binding sanctions. [983]

Even if Assembly recommendations are not implemented by the Member State concerned this does not discount their value in contributing towards the international discourse on a situation. Assembly condemnations, as a 'mobiliser of shame', can contribute towards the delegitimating and marginalising of an abusive regime; a regime's failure to comply with a recommendation contributes towards the legitimacy narrative. Some Member States have noted that Assembly recommendations have served to allow the membership to articulate with a 'universal voice' an institutional position on a crisis, ensuring that the UN remains engaged and meets the expectations incumbent upon them.[984] The anticipation has been that Assembly recommendations have a deterrent effect in sending a 'clear warning' to perpetrators and would-be perpetrators; conversely a failure to support a recommendation has been noted in debate to be tantamount to 'active support for the regime's brutal policies'.[985] Some Member States have also emphasised the importance of Assembly recommendations in reviving an inclusive political dialogue and providing a basis for the cessation of hostilities.[986] Others have emphasised the utility of recommendations in ensuring that perpetrators

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Miller, 'United Nations Fact-Finding Missions in the Field of Human Rights' (1970-1973) 40 Aust YBIL 40, 42; UNGA, Eighteenth session, 1239th plenary meeting (11 October 1963) UN Doc A/PV.1239, 18 (South Vietnam).

[979] See Sloan, 'Changing World*'* (n 54*)*, 42 (and UN speeches cited there). UNGA, 73rd plenary meeting (2017) (n 588), 27 (Russia); UNGA, Sixty-second session, 76th plenary meeting (18 December 2007) UN Doc A/62/PV.76, 35 (Belarus); UNGA, 71st plenary meeting (n 646), 18 (Hungary).

[980] See eg UNGA, Seventy-third session, 65th plenary meeting (21 December 2018) UN Doc A/73/PV.65, 10 (Myanmar); UNGA, 1196th plenary meeting (n 662), [81]-[83] (Portugal).

[981] Yihdego (n 644), 53.

[982] See eg UNGA, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People' (9 November 2018) UN Doc A/73/499, [6], [89]. See also UNGA Res 74/168 (2019), [1] ('deplores the failure' of Russia 'to comply with the repeated requests and demands' of the Assembly).

[983] UNGA, Sixtieth session, 58th plenary meeting (30 November 2005) UN Doc A/60/PV.58, 27 (Libya). On the extent of the Assembly's power to authorise sanctions, see Chapter 7.

[984] See eg UNGA, Seventy-first session, 58th plenary meeting (9 December 2016) UN Doc A/71/PV.58, 14 (US) (Assembly 'must stand with' the people of eastern Aleppo); UNGA, 76th plenary meeting (2011) (n 649), 9 (Hungary) (Assembly has sent a 'powerful message to the world' on Libya); UNGA, 71st plenary meeting (n 671), 21 (Iran).

[985] ibid (76th plenary meeting), 7 (US), 5 (Mauritius); UNGA 80th plenary meeting (2013) (n 646), 7 (US).

[986] UNGA 66th plenary meeting (n 642), 32 (Indonesia).

'do not go unnoticed in history'.[987] Some might reject dialogue of this kind as having no extrinsic effect. However, the building of an international consensus on what should be done is by no means inaction.[988] It has led Member States under scrutiny to either defend alleged crimes that have occurred in their territory, or to acknowledge the need for action to be taken.[989] Obtaining small concessions over time might be constructive towards the eventual implementation of the recommendations in some form. Even if the Member States defies recommendations this itself can supply the imperative for the Assembly to respond with creative solutions, such as to create quasi-prosecutorial organs (see Chapter 6).[990]

## 3. Recommendations to the Security Council

The Assembly has sought to interact with the Security Council in the exercise of their powers in various ways. First, the Assembly has supported Chapter VII action by calling upon Member States to observe Security Council resolutions.[991] Second, the Assembly has made recommendations to the Security Council to exercise its enforcement powers under Chapter VII powers, as indeed is envisaged in the UN Charter.[992] It has recommended that the Security Council take various forms of enforcement action, such as to establish an *ad hoc* tribunal, impose sanctions and to make a referral to the ICC.[993] It has also recommended that the Security Council consider 'all the measures laid down in Article 41 of the Charter', including to impose 'mandatory oil and arms embargoes' and 'comprehensive and mandatory sanctions'.[994]

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[987] GA 80th plenary meeting (2013) (n 646), 6 (Saudi Arabia).
[988] UNGA 58th Plenary Meeting (2016) (n 984), 12 (Brazil).
[989] Compare UNGA, 65th plenary meeting (2018) (n 980), 10 (Myanmar) with previous debates on proposed resolutions on Myanmar. See also eg UNGA 62nd plenary meeting (n 698), 4 (Saudi Arabia); UNGA, Fifth session, 303rd plenary meeting (3 November 1950) UN Doc A/PV.303, [23] (Poland, defending the human rights records of Hungary, Bulgaria and Romania); UNGA, 1196th plenary meeting (n 662), 1163 (Portugal, in relation to alleged atrocities in Angola); UNGA, 1183rd plenary meeting (n 642), 965-972 (Portgual).
[990] Assembly recommendations in international justice can serve as a precedent for other international bodies; they are also frequently referred to in commission of inquiry reports and observance of them is sometimes part of the list of recommendations in such reports: See eg DPRK Report (n 70), [1220]; UNHRC, 'Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory' (6 March 2019) UN Doc A/HRC/40/74, [125] (to implement UNGA Res 60/147 providing effective remedies to victims).
[991] UNGA Res 71/130 (2016), [5] (Syria). See also UNGA Res 2054 (XX) A (1965), [8] (South Africa); UNGA Res 2506 (XXIV) (1969), [6] (South Africa).
[992] UN Charter, art 11(3) entitles the Assembly to call to the Security Council's attention a matter that endangers peace and security. This provision is occasionally invoked: eg UNGA Res 1663 (XVI) (1961), [4]. See also Higgins, 'Oppenheim's International Law' (n 414), 961 (noting that 'the number of General Assembly resolutions directed at the Security Council, or its members, has increased exponentially between the UN's early years and now.')
[993] UNGA Res 74/246 (2019) (on Myanmar, 'call[ing] the continued attention of the Security Council to the situation … with concrete recommendations for action'); UNGA Res 71/202 (2017), [9] (DPRK); UNGA Res 71/203 (2017), preamble (Syria); UNGA Res 69/189 (2014), preamble (Syria); UNGA Res 47/121 (1992), [10] (FRY); UNGA Res 31/61 (1976), [6] (requested the Security Council to 'take effective measures' for the 'implementation of all relevant resolutions of the Council and the General Assembly on the Middle East and Palestine'). If not containing a recommendation for a particular course of action to be taken, some Assembly resolutions merely draw a situation to the attention of the Security Council, see eg UNGA Res 2022 (XX) (1965), [13].
[994] See UN Charter, art 11(2), (the Assembly shall refer any question 'on which action is necessary' to the Security Council). Scholars have noted that a recommendation of this nature pertains to mandatory enforcement action: Klein (n 8), 473; Higgins, 'Oppenheim's International Law' (n 414), 972; Andrassy

The Assembly has also recommended the Security Council to consider exercising their power under Article 6 so as to support the expulsion of South Africa's UN membership.[995] Assembly recommendations have even extended to the Security Council's subsidiary organs; one recommendation encouraged the ICTY to give 'due priority' to the prosecution of the crime of rape in armed conflict.[996] It might also be imagined that the Assembly's detailed explication of evidence in a country situation (as a quasi-judicial resolution), in promoting a narrative that is collectively supported by Member States, has also served a purpose of exerting pressure on the Security Council to take enforcement action in light of these documented atrocities. The Assembly has sought to exert pressure on the Security Council to take action by pointing out that it has been reticent in addressing a particular issue, or that one of its permanent members has misused its veto power or failed to properly exercise its functions.[997] For example, the Assembly encouraged the Security Council to consider a referral to the ICC of the situations in the DPRK and Syria, in the latter situation 'regretting' that a draft resolution was not adopted despite 'broad support from Member States'.[998]

Judge Lauterpacht once observed that Assembly recommendations offer 'a measure of supervision' over the Security Council.[999] However, measuring the effect of Assembly recommendations on Security Council action, as with Member States (above), is not easy to establish. Nonetheless, there are certain instances where the Security Council has taken action in situations where the Assembly had recommended them to do so. For example, in regard to apartheid in South Africa, the Security Council imposed a mandatory arms embargo after more than a decade of sustained pressure in the Assembly for Chapter VII measures to be adopted.[1000] Outside of the context of atrocity crimes accountability, the Security Council established a no-fly zone in Bosnia and Herzegovina, following the Assembly's call for Chapter VII measures to be taken

(n 77) 567-8. As to some of this practice, see: UNGA Res 41/35 H (1986), [6] (South Africa); UNGA Res 38/39A-K (1983); UNGA Res 36/172 A-O (1981); UNGA Res 32/116 B (1977); UNGA Res 2508 (XXIV) (1969), [14] (South Africa).

[995] UNGA Res 1761 (XVII) (1962), [8].

[996] UNGA Res 49/205 (1994), [7].

[997] See eg UNGA Res 66/253 B (2012), preamble ('deploring the failure of the Security Council to agree on measures to ensure the compliance of Syrian authorities with its decisions'); UNGA Res 42/14 A (1987), preamble (noting with 'grave concern that the Security Council has been prevented, on account of vetoes cast by two if its Western permanent members, from carrying out its responsibility under Chapter VII of the Charter'); UNGA Res 41/38 (1986), preamble ('[n]oting with concern that the Security Council has been prevented from discharging its responsibilities owing to the negative votes of certain permanent members'); UNGA Res 37/123 A (1982), [8] ('strongly deplores the negative vote by a permanent member' to prevent action against Israel); UNGA Res ES-9/1 (1982), preamble ('noting with regret and concern that the Security Council…failed to take appropriate measures against Israel'); UNGA Res 36/172 A (1981) ('noting with indignation' the vetoes of western permanent members on mandatory sanctions against apartheid South Africa); UNGA Res 3116 (XXVIII) (1973), [9] (vetoes 'continued to obstruct the effective and faithful discharge by the Council of its responsibilities under the relevant provisions of the Charter' in relation to the situation in Southern Rhodesia); UNGA Res 2506 (XXIV) (1969), preamble (Security Council 'has not considered the problem of apartheid since 1964'); UN, *Yearbook of the United Nations* (1974), 113 (African National Congress described Security Council permanent members as 'accomplices of a regime which had committed atrocities and crimes against humanity').

[998] UNGA Res 71/203 (2017), preamble; UNGA Res 71/202 (2017), [9]; UNGA Res 69/189 (2014), preamble.

[999] See observations in *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa* (Advisory Opinion) [1955] ICJ Rep 67 (Separate op Judge Lauterpacht), 119.

[1000] UNSC Res 418 (1977).

to establish safe areas in this territory.[1001] Relatedly, the Security Council even endorsed a quasi-judicial resolution of the UNHRC, that detailed the possible occurrence of atrocity crimes in the Libyan situation, as a basis to support a referral to the ICC Prosecutor.[1002] Still, these examples of successful cooperation are countered by the limitations of plenary influence at the sharp end of permanent member politics; despite a campaign in the Assembly to secure a referral of the situation in Syria to the ICC Prosecutor, it failed because of the negative votes of the PRC and Russia in the Security Council.[1003] In such 'hard cases', the best that can be hoped for is that Assembly resolutions help build momentum towards the eventual consideration of the issues in the Security Council. For example, Resolution 69/189 (2014) drew upon findings in a commission of inquiry report that called for the Security Council to refer the situation in DPRK to the ICC Prosecutor.[1004] Although no resolution was drafted or vote taken, the Assembly's call to address impunity there prompted the Security Council to meet in closed session to consider it, being a small but necessary step for it broadening consideration of enforcement action in relation to the DPRK from disarmament to humanitarian issues.[1005]

Finally, even if recommendations are ignored by the Security Council this does not mean that they are therefore irrelevant or ineffective. Such recommendations allow the membership to take an institutional position which, if blocked in the Security Council, would supply the imperative to explore creative solutions. Once the Security Council failed to act upon an Assembly recommendation to consider action under Article 6 of the UN Charter to expel South Africa, the Assembly creatively used their power to reject credentials so as to deprive this State of some of its rights of membership.[1006] One of the boldest creative solutions, action under Uniting for Peace, considered in Chapters 6 and 7, is itself premised upon showing Security Council 'failure'. Where the Security Council fails to implement an Assembly recommendation this in turn can be used to trigger powers under the Uniting for Peace mechanism.[1007]

## 4. 'Recommendations' to Member States: A Minimum Legal Requirement?

The previous section provided a survey of Assembly recommendations that have addressed the imperative of accountability for atrocity crimes. Even though some of these recommendations used language that appeared to be mandatory in its terms ('demand' or 'request'), this practice has not developed anywhere near to the point that it would support the proposition that a recommendation is capable of being legally binding on Member States.[1008] While the orthodox position as to the non-binding character of recommendations is accepted in this dissertation, and is evident in the practice surveyed above, it still remains instructive to consider whether recommendations, or more accurately the legal framework that underpins them,

[1001] See UNSC Res 819 (1993); UNSC Res 781 (1992); UNGA Res 47/121 (1992).
[1002] UNSC Res 1970 (2011), preamble, [4] (citing UNHRC Res S-15/1 (2011)). See also UNSC Res 2040 (2012), preamble; UNSC Res 2000 (2011), preamble. The Security Council has also endorsed the work of commission of inquiries established by the UNHRC: UNSC Res 2140 (2014), [6]; UNSC Res 2134 (2014), [19]; UNSC Res 1975 (2011), [8].
[1003] UNSC, Sixty-ninth year, 7180th meeting (2 May 2014) UN Doc S/PV.7180, 4.
[1004] UNGA Res 69/189 (2014).
[1005] Ramsden and Hamilton (n 4), 900; Schmidt, 'UN General Assembly' (n 8), 27–80.
[1006] See Chapter 4.
[1007] Carswell (n 76).
[1008] See Chapter 4.

produce any legal requirements upon Member States. The practice above alluded to a general expectation that Member States at least engage with the Assembly on a situation; in numerous situations, as noted, a failure to do so has been characterised as incompatible with UN membership. The purpose of this section therefore is to consider the nature and extent of legal requirements that arise under the UN Charter from the Assembly's adoption of a recommendation. The general nature of the argument here not only supports recommendations enjoying a stronger legal impetus in the specific field of atrocity crime accountability, but in other fields too.

### 4.1 Consider and Explain

There is authority to support a requirement that Member States give a good faith consideration to the contents of a recommendation and to furnish reasons where it is minded to reject it. This principle finds roots in domestic systems of administrative law, which impose a requirement upon a public authority to take into account all relevant considerations before making a decision and to furnish reasons.[1009] This administrative law concept shares the same normative root with the 'good faith' principle, being a general principle of treaty interpretation.[1010] Article 2(2) of the UN Charter defines this duty to apply to the fulfilment of 'obligations assumed by them in accordance with the present Charter'. It might be said that as recommendations are not 'obligations' there is no duty to act in good faith. But it is reasonable to consider the good faith principle as applying to all aspects of the Member States' relations with the UN, including in its consideration of Assembly recommendations.

Even without a great deal of Assembly practice, there are good reasons to support the view that such a duty to 'consider and explain' is concomitant of the duty to act in good faith under the UN Charter. There are hints of this reasoning in the Assembly's Fact-Finding Declaration, which notes that any 'request' for a Member State to receive a mission 'should' be given 'timely consideration' and 'reasons' where they refuse entry.[1011] ICJ judicial opinions have been more explicit. In 1955, Judge Lauterpacht, when considering the duty in administering trust territories, observed that '[a] Resolution recommending to an Administering State a specific course of action creates *some* legal obligation which, however rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision.'[1012] While it is inherent in the notion of a 'recommendation' to respect the subject's freedom to accept it, according to Judge Lauterpacht the good faith principle shows that this is 'not a discretion tantamount to unrestricted freedom of action'.[1013] The relevant Member was 'bound to give it due consideration in good faith' and 'reasons' where it disregards the recommendation.[1014] Echoes of this reasoning can also be seen in the ICJ's 2014 decision in *Whaling*, in the context of the International Whaling Convention.[1015] There the ICJ noted that Japan was under 'an obligation to give due regard to…recommendations' adopted by the International Whaling Commission (IWC).[1016]

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[1009] These principles recur in comparative administrative law studies, for example: Swati Jhaveri and Michael Ramsden (eds), *Judicial Review of Administrative Action across the Common Law World: Origins and Adaptations* (CUP 2020).
[1010] VCLT (n 108), art 26.
[1011] UNGA Res 46/59 (1991), [19], [20].
[1012] *South West Africa* (Advisory Opinion) (Separate op Judge Lauterpacht) (n 999), 119.
[1013] ibid 120.
[1014] ibid.
[1015] *Australia v Japan* (Merits) (n 448).
[1016] ibid 269-270.

The ICJ did not explicate upon the basis of such a duty, except to note that Japan accepted it and that it flowed from a 'duty to co-operate'.[1017] *Ad hoc* Judge Charlesworth was more explicit in noting that IWC resolutions 'when adopted by consensus or a large majority vote…represent an articulation of the shared interests at stake'; parties are 'thus required to consider these resolutions in good faith'.[1018] In the context of the UN Charter, the same can be said about Assembly recommendations.

It might be queried whether this is a rule of much content. It is a principle that cannot be easily enforced against a Member State in a UN judicial forum, given the limitations of the ICJ's jurisdiction (although it would be open to the Assembly to request an advisory opinion on this legal question).[1019] Furthermore, Member States on the receiving end of recommendations will also often explain the reasons as to why they reject it. Member States condemned for failing to address atrocity crimes will often, for example, challenge the veracity of these accusations and therefore why it will not heed to specific recommendations.[1020] In this regard, the Assembly is the ultimate judge as to whether a Member State has given a good faith consideration to its recommendations. But it seems plain that a persistent disregard of recommendations would support a conclusion by the Assembly that the Member State concerned has failed to act in good faith. As Judge Lauterpacht opined, 'the cumulative effect of the persistent disregard of the articulate opinion of the Organization is such as to foster the conviction that the State in question has become guilty of disloyalty to the Principles and Purposes of the Charter'.[1021] The Judge went on to note that where the recommendation approximates unanimity, the Member State at the wrong side of it 'may find that it has overstepped the imperceptible line between impropriety and illegality, between discretion and arbitrariness, between the exercise of the legal right to disregard the recommendation and the abuse of that right.'[1022] In these instances, the Assembly is entitled to take action to remedy such recalcitrance, be that in rejecting the credentials of the State's representatives or in exploring other creative solutions for compliance.[1023] At the very least, a closer and more sustained articulation of this duty to consider and explain in Assembly resolutions would serve to exert more pressure on the Member State concerned to engage or take the suggested action, or otherwise serve to marginalise their position within the UN system.

### 4.2 Cooperate

Cooperation is one of the UN Charter's organising concepts, raising an issue whether this concept supports more specific requirements upon the membership to act upon the adoption of Assembly recommendations. Article 1 explicates that, amongst the UN purposes, is to 'achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character…' and to be a 'centre for harmonizing the actions of nations in the attainment of these common ends'. Pursuant to Article 56, '[a]ll Members pledge themselves to take joint and separate action in co-

[1017] ibid 257. The relevant provision at issue, art VIII of the Convention, was also not so explicit.
[1018] ibid (Separate op Judge Ad Hoc Charlesworth), 457-458.
[1019] See Akande, 'Judicial Control of the Political Organs' (n 484), 334; Tzanakopoulos, 'Disobeying the Security Council' (n 484), 59.
[1020] See, for example, allegations against Myanmar in relation to crimes against its Rohingya population: UNGA 65th plenary meeting (2018) (n 980), 10; Ramsden, 'Accountability for Crimes Against the Rohingya' (n 704).
[1021] *South West Africa* (Advisory Opinion) (Separate op Judge Lauterpacht) (n 999), 120.
[1022] ibid.
[1023] See further Chapter 4.

operation with the Organization' to achieve a myriad of human rights and socio-economic purposes set out in Article 55. Furthermore, specific forms of cooperation are also envisaged whenever 'action' is taken. Under Article 2(5), all Member States shall give 'every assistance in *any* action' the UN takes 'in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action'.[1024] Although in general terms, these principles have been used to support arguments in favour of more specific requirements for Member States to cooperate with the Assembly and its subsidiary organs.

Blaine Sloan in particular has argued that this cooperation imperative entails a duty to 'consult together' with the UN in good faith.[1025] If a Member State, after considering a recommendation, concludes in good faith that it is unable to comply, it has a duty to consult with the UN on ways to achieve the Organization's object and purpose, the fulfilment of which is the aim of the Assembly recommendation.[1026] Support for this principle can be seen in the ICJ's advisory opinion concerning the regional office agreement between the WHO and Egypt.[1027] There the ICJ noted a requirement for Member States and the UN to 'consult together in good faith', not only grounded in the WHO-Egypt agreement but based on the 'very fact' of membership of an international organization that 'entails certain mutual obligations of co-operation and good faith'.[1028] The same can also reasonably be said about the UN Charter and the role of Assembly recommendations as an expression of action to be taken by Member States that is necessary to achieve the purposes and objectives of the Organization. If the Member State is minded to reject the recommendation then the duty to 'consult together in good faith' nonetheless requires further cooperation to find a means for the Organization's object and purpose to be met. This principle might govern Assembly-Member State interactions in many different ways in the atrocity crimes accountability context, including, for example, for Member States to consider domestic prosecutions where it rejects a recommendation to cooperate with a UN commission of inquiry. The 'consult together' principle therefore requires the Member State concerned to continue to remain engaged in dialogue to find a solution to that which has prompted Assembly attention, even where it disagrees with a particular recommendation. That all said, the Assembly has not expressly sought to supervise Member State conduct according to this 'consult together' principle, there being room for a more sustained practice to develop in the Assembly in the future.

## 4.3 Legal Significance of Reference to Pre-Existing Obligations

If the good faith and cooperation principles in the UN Charter support some requirements upon Member States to engage with Assembly recommendations, the question is whether a recommendation can ever be regarded as legally binding. As the recommendations practice considered above indicated, sometimes the Assembly has expressed recommendations in language that would suggest its implementation to be mandatory. Similarly, there have been occasions in which the Assembly has condemned non-compliance with its recommendations in strong terms and also tied such

[1024] Emphasis added.
[1025] Sloan, 'Changing World' (n 54), 31.
[1026] ibid.
[1027] *Interpretation of the Agreement between the WHO and Egypt* (Advisory Opinion) [1980] ICJ Rep 73, 95, 97.
[1028] ibid 93, 95.

recalcitrance to an underlying incompatibility with the UN Charter. On the one hand, this use of muscular language does not seem to be particularly consistent with a mere 'recommendatory' function and suggests something more. Yet, on the other hand, this practice is not sufficiently consistent to support the proposition that there has been an institutional shift in position from the orthodox understanding as to the non-binding nature of Assembly recommendations. It is always possible for the Assembly to aggregate to itself over time more significant powers in monitoring atrocity crime accountability, but any attempt to do so would come up against the significant objection that a binding function is not reflected in the Charter or in a significant enough body of UN practice.[1029]

Nonetheless, it is theoretically possible for Assembly recommendations pertaining to atrocity crime accountability to have a legal effect within distinct treaty regimes outside of the UN Charter; provided that these distinct regimes recognise this legal effect. One such example is the Peace Treaty with Italy, the major post-War powers agreeing that, in the event that they were unable to arrive at agreement on the future of Italian colonies, then the matter should be 'referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it'.[1030] The Peace Treaty in turn formally recognised the competence of the Assembly to make a determination (i.e. quasi-judicial) and to recommend measures that the parties agreed to implement. The inclusion of an Assembly role to monitor State compliance with a treaty and to furnish binding recommendations under that particular regime offers a potential means to strengthen treaty commitments by endowing an oversight function in the Assembly. The obvious difficulty here is that none of the existing treaty regimes concerned with atrocity crimes recognise a monitoring role for the Assembly, nor its recommendations as authoritative. Nor does the text of proposed future conventions, such as the Draft Convention on Crimes Against Humanity.[1031]

Even so, the Assembly has still regularly, in its recommendations, drawn from international obligations and called for Member States to observe these obligations (what are labelled *norm-implementing* recommendations here for convenience). Where the Assembly incorporates and specifies obligations in its recommendations this is often accompanied by language that expresses a greater expectation of compliance ('demand' or 'request') compared to those recommendations that are not so clearly anchored in an underlying international obligation. One prominent example is South Africa's 'failure to comply with repeated requests and demands' of the Assembly to 'revise its racial polices' meant that it was disregarding both applicable resolutions *and* its obligations

[1029] The ICJ has appeared to endorse the proposition that the Assembly may enjoy authoritative competencies, noting that 'it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operation design.': *Namibia* (Advisory Opinion) (n 108), 50 (emphasis added).

[1030] Annex XI, Peace Treaty (emphasis added). The Four Powers being the USSR, UK, US and France. The Assembly resolutions that bound the Four Powers included UNGA Res 1418(XIV) (1959) (Somalia); UNGA Res 617(VII) (1952) (Eritrea); UNGA Res 515 (VI) (1952) (Libya); UNGA Res 442 (V) (1950) (Somalia); UNGA Res 390 (V) (1950) (Eritrea); UNGA Res 387(V) (1950) (Libya); UNGA Res 289 (IV) (1949). Another potential basis not explored here is based upon the principle of estoppel, in instances where a Member State declares a clear intention to observe an Assembly recommendation: Lassa Oppenheim and Hersch Lauterpacht, *International Law, Vol 1* (Longmans 1948), 139 (referring to League of Nations Assembly resolutions, but the same principle applies); Oscar Schachter, 'Towards a Theory of International Obligation' (1968) 8 Va J Intl L 300; Bleicher (n 23) 457.

[1031] 'Draft articles on Crimes Against Humanity' (n 246), 21.

under the UN Charter.[1032] This view is reflected in a 1957 report of the Secretary-General, noting that a recommendation seeking the implementation of the Charter 'would have behind it the force of the Charter'.[1033] Even so, this does not make the recommendation binding. Nor has a norm-implementing recommendation expressly claimed to be binding.[1034] Rather, the value of a norm-implementing recommendation is its interpretive claim that, within the view of the Assembly at least, a particular Member needs to take the recommendation steps to meet its international obligations.[1035] This in turn provides the foundation for the Assembly to take future measures within its powers or to recommend the Security Council to do so. But it also supports the generalisation of the view within international affairs that the State concerned does not respect its international obligations, as defined and monitored in Assembly recommendations.

## 5. Conclusion

This Chapter has provided an overview of Assembly recommendations practice in international justice. It has shown that the Assembly has been active in recommending Members to investigate or prosecute crimes, cooperate with UN mechanisms, explain or account for their actions, and to provide reparations to victims. The Assembly has also attempted to influence the Security Council by recommending that it takes action to secure accountability for atrocity crimes, while denouncing their failures to act. However, Assembly practice is by no means consistent, both as to the selection of situations in which recommendations are made and the form in which they are made. Inconsistencies in approaches were also noted whereby a recommendation would not always be followed up in subsequent sessions or where the imperative for accountability would give way to other imperatives. There is also inconsistency in the integration and application of pre-existing legal obligations in recommendations. Despite the Assembly adopting many relevant declarations on the enforcement of international justice (see Chapter 2), these also do not tend to feature at a level of specific application in country situation recommendations. There are likely to be many different reasons for this, not least the preferences of the drafters, but it would certainly support the advancement of international law if the Assembly sought to underpin its recommendations with pre-existing obligations and the norms that it has previously articulated in its declarations.

Nonetheless, it was observed that Assembly recommendations are capable of producing effects that advance international justice. Even if this has not resulted in implementation by the Member States or the Security Council, recommendations have

[1032] See eg UNGA Res 1663 (XVI) (1961), preamble (South Africa); UNGA Res 1662 (XVI) (1961), [2] (South Africa); UNGA Res 1593 (XV) (1961), preamble (South Africa); UNGA Res 1179 (XII) (1957), [2] (South Africa).

[1033] UNSG, 'Question Concerned by the First Emergency Special Session of the General Assembly from 1 to 10 November 1956', Report of the Secretary-General in pursuance of the resolution of the General Assembly of 2 February 1957, (A/Res 461)' (11 February 1957) UN Doc A/3527, [20]. See also White, 'Law of International Organisations' (n 41), 179 (noting that because norm-implementing recommendations 'were clearly based on principles of international law, there was no doubt about their legal effect'); Schachter, 'Quasi-Judicial Role' (n 30), 961.

[1034] See also UNGA 50th plenary meeting (n 744), 17-18 (in addressing the invocation of obligations in recommendations, the US delegate observed: 'We understand that these texts and resolutions adopted in the General Assembly are non-binding documents that do not create rights or obligations under international law').

[1035] This interpretive claim is often expressed in explanations of vote, of which see eg UNGA, 80th plenary meeting (2013) (n 646), 34 ('It is important that a clear message be sent today to demand that the Syrian authorities strictly observe their obligations under international law').

been appreciated as having influence in different ways, including as a means to articulate a common institutional position; in serving a deterrent function where a conflict is ongoing; in burdening a Member State to explain their position and cooperate; and in building an international consensus towards particular enforcement measures being taken. The Assembly's practice also supports the general proposition that recommendations are not binding, despite some of them using mandatory language and drawing upon pre-existing legal obligations. It might be that, over time, a set of recommendations support the development of an obligation, as an 'established practice' under the UN Charter. There might be support for movement in this direction particularly in relation to cooperation with UN commissions of inquiry; many Assembly cooperation recommendations increasingly use mandatory language ('demand' or 'request'), although this language is not so clearly anchored in a belief (at least insofar as the explanations of vote reveal) that there is a legal obligation to cooperate, as yet. While not binding, the application of legal norms in recommendations serves to exert greater pressure on Member States to comply, having behind them 'the force' of international obligations.

Despite the orthodox view being that Assembly recommendations are non-binding, it was also shown that they do entail some minimum requirement on Member States. Rooted in the UN Charter good faith principle, Member States are still required to give due consideration to a recommendation and to consult with the Assembly on the attainment of its object and purpose. While these are quite minimal legal requirements, they do provide the Assembly with a measure of supervision over the implementation of their recommendations by Member States. In this regard, some Assembly practice evaluated in this Chapter corresponds with the proposition that a Member State's persistent disregard of recommendations supports the conclusion that this Member has acted in bad faith or inconsistently with the UN Charter. Although this practice is quite limited, linking a failure to comply with a recommendation with a violation of the UN Charter can serve not only to impose reputational costs on deviant Member States, but it might also provide the foundation for the Assembly to take future action. This might come in various forms, from a strengthening of language in future recommendations to the consideration of creative solutions to exert greater pressure on Member States to comply. Two possible solutions of this nature, the creation of subsidiary investigatory machinery and the authorisation of sanctions, are considered in the Chapters that follow.