

The Emergency Special Session on Ukraine

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On March 2nd 2022, the UN General Assembly (GA), [convened](#) by the Security Council (SC) for an Emergency Special Session on Ukraine, adopted a [resolution](#) that, *inter alia*, demanded the Russian Federation to refrain from its unlawful use of force against Ukraine. Nevertheless, if indeed GA resolutions are considered to be [not legally binding](#), this would leave us with some questions. What is the purpose of adopting such a resolution? Does it have a special character or nature when adopted in order to “*maintain international peace and security*”? This article will briefly examine whether the discussed GA resolution possesses such a character or nature and whether it is likely to influence the situation in Ukraine.

Distinct Legal Value and Character

The starting point is to consider that an Emergency Special Session constitutes a *sui generis* procedure that was established in the [“Uniting for Peace” resolution](#). In an Emergency Special Session, the GA can address an alleged threat to international peace and security or act of aggression whenever the SC has failed to discharge its duties. Additionally, the General Assembly can “*make recommendations... for collective measures*”. Certainly, during an Emergency Special Session, considering Articles 11(2), 12(1) and 14 of the [UN Charter](#) altogether, the GA can exercise the function attributed to the UN of “*maintaining international peace and security*”. Whereas the SC is the UN organ that in normal times exercises this function, the Emergency Special Session procedure allows the GA to invoke it and act under its scope ([Certain Expenses of the United Nations](#), International Court of Justice – ICJ, Advisory opinion, 1961, p. 163).

When the GA acts based on the “Uniting for Peace” resolution, its recommendations possess a “*coercive*” nature. The recommendations derive this legal nature from taking action under the purpose of “*maintaining international peace and security*” ([Certain Expenses](#), ICJ, p. 164). Indeed, “*coercive*”, as understood by the ICJ, refers to an action that is to be enforced and not merely declaratory or hortatory (*Ibid.*, p. 163). This interpretation is supported by the following reasons:

First, the aforesaid purpose under which the GA is taking action falls into the “*important question*” criterion established in Article 18(2) of the UN Charter. Second, the GA is addressing a specific situation related to international peace and security referred by the SC ([Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), ICJ, Advisory opinion, 2004, para 26); Third, the GA can, for instance, with the consent or request of the involved Member States in the particular dispute, organise peacekeeping operations ([Certain Expenses](#), ICJ, pp. 164-5). Thus, when the GA adopts a resolution under the “Uniting for Peace” resolution, the purpose pursued in the action adopted possesses

a transcendental legal value in contrast to other resolutions that do not intend to “*maintain international peace and security*”.

Although GA resolutions adopted in Emergency Special Sessions may possess a distinct legal value, what is the nature or character under international law of the “Uniting for Peace” resolution? As a GA resolution, and the source of the power of the GA to act within an Emergency Special Session, one needs to ask: Does it possess normative value? Do legal obligations under international law arise from its content? ([Legality of the Threat or Use of Nuclear Weapons](#), ICJ, Advisory opinion, 1996, para 70). To answer these questions, based on the jurisprudence of the ICJ, it is relevant to bear in mind the context in which the resolution was voted. Recalling the voting record, the “Uniting for Peace” resolution was [adopted](#) by 52 favourable votes with 5 against and 1 abstention in a total number of 60 votes. Consequently, there was no substantial number of negative votes and abstentions that would preclude the finding of *opinio juris* (*Ibid.*, para 71). Moreover, the aforesaid finding is further supported when observing the clear [pattern](#) of being invoked and applied in a manner consistent to follow and fulfil the purposes and objectives of the UN as enshrined in the Charter (Legal Consequences, ICJ, para 27). Hence, under Article 38(1)(b) of the [ICJ Statute](#), it may be argued that the “Uniting for Peace” resolution can be a source of international obligations vis-à-vis the international community in the particular context of taking actions to “*maintain international peace and security*” and only when the SC fails to do so.

Not a “Mere” Recommendation?

Having established the special legal character of the GA resolutions adopted in Emergency Special Sessions, it can be contended that the resolution on Ukraine is not a “*mere*” recommendation. Firstly, the resolution was adopted due to the failure of the SC to act in the specific situation because of the negative vote of a permanent member. Secondly, at the time the GA resolution was adopted there was an apparent threat to peace or act of aggression against a Member State -Ukraine- by another -Russia-. These two considerations reaffirm the validity of the GA resolution that thereby enables the GA to adopt actions “*by means of recommendations to States or the SC*” (Certain Expenses, ICJ, p. 165) to the situation in Ukraine. Although the actions to be taken are in the form of “*recommendations*”, they are only precluded from adopting the form of “*coercive action against an aggressor*” (*Ibid.*, p. 163). In that sense, nothing prevents the GA from taking actions to either peacefully resolve the dispute (Legal Consequences, ICJ, para 26) or restoring international peace and security in that particular situation ([Accordance with international law of the unilateral declaration of independence in respect of Kosovo](#), ICJ, Advisory opinion, 2010, para 42). Thus, despite the fact that the actions recommended in the GA resolution cannot be imposed against any Member State, this does not entail a prohibition for a specific action to be carried out related to the situation in Ukraine.

Furthermore, the GA Emergency Special Session resolution concerning the situation in Ukraine contains enforceable actions compatible with the functions entrusted to the GA. To start with, the UN was endowed with the aim of fulfilling certain purposes and objectives that include to “*maintain international peace and security*” (Article 1(1) of the UN Charter). Accordingly, to affirm the GA recommendations made to fulfil

this specific purpose cannot be enforced or carried out would render void the ability of the GA to “*effectively discharge its functions*” ([Reparation for Injuries Suffered in the Service of the United Nations](#), ICJ, Advisory opinion, 1949, p. 179). To that extent, the resolution in question addresses two types of parties, on one hand, the Russian Federation, on the other, all parties related to the conflict. When addressing the specific State, the GA made recommendations that, regardless of the lack of power to impose them against this State, do not entail a lack of normative value vis-à-vis the Russian Federation. These recommendations are observed in the following aspects:

(1) when the resolution uses the verb “*demands*” with respect to Russia in the following actions; the cessation of the use of force (paragraph 3), the withdrawal of its military forces from the territory of Ukraine (paragraph 4), the immediate and unconditional reversal of the decision to recognise the sovereignty and independence of the self-proclaimed republics of Donetsk and Luhansk (paragraph 6), and

(2) when the resolution uses the verb “*calls upon*” to recommend Russia to abide by the Friendly Principles on International Relations (paragraph 7).

Therefore, seeking not to deprive the GA from exercising its functions and powers in the context of international peace and security, the resolution adopted in the Emergency Special Session on Ukraine possesses an enforceable nature, although it cannot be imposed by the GA against Russia.

In the contribution, I contend that the recommendations adopted by the GA in its Emergency Special Session are not deprived of any legal value. When interpreting the UN Charter, the ICJ declared that the GA can take action to organise a peacekeeping operation, an action mostly seen as pertaining to the SC powers. Following the previous interpretation, the GA does not need to impose its measure against a State for its actions to produce legal effects. For that reason, the legal effects of the recommendations of the GA whose compliance does not depend on coercion cannot be opposed or denied by the State they were addressed to. Considering that the GA enjoys the power to determine the consequences and effects that would apply to this resolution (Accordance with International Law, ICJ, para 44), the text is able to deploy its effects in the real world and even have the potential to serve as a basis to prove the breach of an international obligation (in the present case, Article 2(4) of the UN Charter (paragraph 2)). As a result, it may be argued that there is no impediment to carrying out the actions recommended by the GA related to the situation in Ukraine. Finally, the GA resolution, considering its special legal nature and effects under international law, has the potential to constitute the basis to determine the existence of an internationally wrongful act.

