

The Unmapped Road of the Security Council: Exaggeration vs. Factuality

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“Peace is not made at the council table or by treaties, but in the hearts of men”.

—Herbert Hoover, the 31st president of the United States (1929-1933).(1)

Abstract:

International chaos destroys livelihoods, economies, and a civilized world order that took centuries to form; the result of such phenomena is almost always catastrophic. This is one reason given for its criminalization. One compelling rationale for criminalizing international chaos is the threat it presents to international relations. The questions that rise are whether international chaos is on its way to decline and decay, or is the rise of international chaos so relentless that we are unfortunate to experience different versions of it in coming years? There is ample evidence to reinforce the idea that international chaos is declining through the work and legislation of the Security Council. The Security Council in its current international form is not on a road leading to a greater freedom of rights. Thus, there is a clear map of hope that instability in the world will gradually lose its ideological appeal, and will hence, lose the admiration of some groups and nations.

However, the structure and competence of the Security Council will continue to be a complex feature of international law due to the conflicting interests of nation states. The growth of international breach of peace and security is the result of oppression and the various standards of international social values; this has been evidenced by the militias and resistance movements demonstrating impulses of

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(1) Grant, George, *The Pocket Patriot: An Introduction to the Principles of Freedom* (ed., Kelly Nickell), Cumberland House Publishing, p. 178 (2000).

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aggression against injustice. To that end, strengthening of the Security Council is one of the key elements of re-mapping the international path and to determine parameters for establishing a stable and prosperous world without violence and wars, and to find collective responses to the most complicated challenges.

One of those challenges is the frustration and exaggeration of the role of the Security Council, which was divided since its creation along ideological lines on the one level. The Security Council's lack of action and factual resolutions can sometimes be frustrating and devastating on the other level. Nevertheless, history has solemnly shown that the world order is better served by working through the great powers rather than by alienating them.

Keywords:

The Security Council, Chaos, Legislations, Factuality, UN, Peace, Security.

1. Introduction

Ironically, in the absence of international justice⁽²⁾ and under the continued dominance of the five powers⁽³⁾ with international oppression a standard practice, the voices of citizens in any given state demand their representatives to respond and confront this injustice.

The representatives in the Security Council, often coming under significant psychological stress, find themselves caught between the will of the people and a choice to engage in war and destruction⁽⁴⁾ Furthermore, they must contend with pressure from the international community. Concerning the matter of international chaos⁽⁵⁾ human rights, and democracy as components related to the work of the Security

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- (2) Further reading in this regard see, Charney, J., "Is International Law Threatened by Multiple International Tribunals?", 271 *Recueil des Cours*, pp. 101–382 (1998). Hafner, G., "Should one Fear the Proliferation of Mechanisms for the Peaceful Settlement of Disputes?", in Caflisch, L., (ed.), *Règlement pacifique des différends entre Etats*, The Hague, Kluwer, pp. 25–41 (1998). Boyle, A., "The Proliferation of International Jurisdictions and Its Implications for the Court", in Bowett, D., et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, London, British Institute for International and Comparative Law, pp.124–130 (1997). Thirlway, H., "The Proliferation of International Judicial Organs and the Formation of International Law", in Heere., W., (ed.), *International Law and the Hague's 750th Anniversary*, The Hague, pp. 433–441 (1999). Treves, D., *Le controversie internazionali: Nuove tendenze, nuovi tribunali*. Milano: Giuffrè (1999). Pinto, M.C.W., "Judicial Settlement of International Disputes: One Forum or Many?", in Anghie, D., (ed.), *Legal Visions of the 21st Century*, The Hague, pp. 465–475 (1998).
- (3) While some nations are widely considered to be great powers, there is no definitive list of them. Sometimes the status of great powers is formally recognized in conferences such as the Congress of Vienna or the United Nations Security Council (China, France, Russia, the United Kingdom, and the United States serve as the body's five permanent members). Paul, T.V., Wirtz, James, Fortmann, Michel, "Great+Power" Balance of Power, State University of New York Press, pp. 59, 282 (2005).
- (4) No decision is more fateful than the decision of a government to employ military force. Except in the most clear-cut cases, such decisions are also difficult. As a result, just war theory has for centuries provided useful guidance to policymakers, clergy, citizens, and soldiers alike. But just war theory is too subjective and confining for today's real-world threats.
- (5) The theory of chaos is technically a means of explaining the operation of non-stable, highly dynamic, nonlinear and sensitive systems. At the turn of the 21st century, there appear to be enormous challenges facing an international legal posture. At stake is the construction of a fully-fledged world legal order and, ultimately, nothing less than securing the future of humanity as a whole. If the world community fails to provide efficient and fair rules and structures for dealing with the numerous problems facing it, the consequences will indeed be dire. Alshammari, M., Pavlovic, M., & Qaied, B. A. A., *Chaos Theory in Strategy Research*, American Journal of Business and Management, 5(1), 1-13 (2016).

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Council,⁽⁶⁾ there is a conflict between the challenges of maintaining global peace and security on the one hand and the need to respect state sovereignty,⁽⁷⁾ on the other hand. The complexity of this dilemma is clear; the twentieth century was replete with interventions ostensibly justified on humanitarian grounds.⁽⁸⁾ In retrospect, it seems that while ‘great powers’⁽⁹⁾ may have claimed that military intervention served a humanitarian goal.⁽¹⁰⁾ However, the overwhelming and irrefutable reality was that their objectives for intervening were rarely, if ever, the claimed humanitarian one.⁽¹¹⁾

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- (6) As part of its mission, the international community has been actively engaged in a peace process aimed at ending the fighting and forming a unity government for protecting the rights of humans. However, accountability for countless chaotic incidents throughout the world and other serious human rights abuses are still elusive. In chaos related to human rights and democracy see Alshdaifat, Shadi, Silverburg, Sanford, “Strategic Chaos”: The Role of International Law, Saudi Journal of Humanities and Social Sciences, Scholars Middle East Publishers, p. 741 (2017).
- (7) Sovereignty is a necessary and inalienable political and legal property of any state, its constant attribute. Manelis, B. L. a Soviet legal scholar wrote: “[s]overeignty should be considered as a social phenomenon, which is closely connected with the state, its role in international relations and the regularities of its development. “Just as the very international law, sovereignty arose with the emergence of states. For further readings see Manelis B.L. Problems of Sovereignty, Moscow, p. 9 (1966). Levin D.B., History of International Law, Moscow, p. 33 (1962).
- (8) Modern just war guidance involves both the decision to go to war (*jus ad bellum*) and how to fight one (*jus in bello*). This latter set of criteria focuses on proportionality (how much force is used), targeting (avoiding non-combatants), and means (avoiding certain classes of weapons). Interventions justified on humanitarian grounds such as the following cases: Operation Provide Comfort (Iraq, 1991), Unified Task Force (Somalia, 1992), Operation Uphold Democracy (Haiti, 1994), UNAMIR (Rwanda, 1994), UNTAET (East Timor, 1999), NATO bombing of Yugoslavia (1999), British military intervention in the Sierra Leone Civil War (2000), Coalition military intervention in Libya (2011), Military intervention against the Islamic State of Iraq and the Levant (2014–present).
- (9) China, France, Russia, the United Kingdom and the United States are often referred to as great powers by academics due to “their political and economic dominance of the global arena”. These five nations are the only states to have permanent seats with veto power on the UN Security Council. In this regard see Danilovic, Vesna, “When the Stakes Are High – Deterrence and Conflict among Major Powers”, University of Michigan Press, p. 27 (2002). T. V., Paul, James, Wirtz, Fortmann, Michel, “Great+Power” Balance of Power, State University of New York Press, pp. 59, 282 (2005). The Routledge Handbook of Transatlantic Security, Routledge, 2010. (See section on ‘The G6/G7: great power governance’).
- (10) “Humanitarian intervention is not only an activity; it is also a concept. Indeed, the humanitarian idea occupies an important place in the current debate about the changing nature of crisis management, conflict resolutions, and international military action to enforce human rights.” Siebert, Sara, ‘Humanitarian’ Intervention: Evolving Theory and Praxis, 6 Trinity C.L. Rev. 59 (2003).
- (11) Alshdaifat, Shadi, International Law and the Use of Force against Terrorism, UK: Cambridge Scholars Publishing, p. 173 (2017).

The complexity that is facing the Security Council is very massive,⁽¹²⁾ certain issues must be examined by the Security Council as the ignorance among individuals, groups, and even the leadership of the state exercising such chaos.

However, the injustice, aggression, and the use of cruelty against human beings, especially in the totalitarian regimes that have abolished fundamental human rights are some other issues that appear in the international community. The spoken words and violent acts – to a certain degree – of people on their demand of self-determination, faces rejection by closed political systems due to the lack of an institutional system and the absence of civil societies.

Identifying the real purpose of the Security Council will, to a significant degree, help determine the appropriate structure of it. Most contemporary chaos arises when a cultural or ethnic group perceives itself to have been unjustly deprived of certain rights. Therefore, the Security Council must take more responsibility to conduct investigations to stand against violations of human rights principles caused by chaos.

2.The Question of the Security Council as a Global Legislature

As has been suggested and noted, the Security Council has entered its legislative phase.⁽¹³⁾ Nevertheless, as recently as 1995, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY)⁽¹⁴⁾ held in the *Tadić* case:⁽¹⁵⁾ “There is . . . no legislature, in the

(12) In the security and reform, see Blum, Y.Z., *Proposals for UN Security Council Reform*, *The American Journal of International Law*, 99:3, pp. 632-649 (2005). O’Neill, B., *Power and Satisfaction in the United Nations Security Council*, *The Journal of Conflict Resolution*, 40:2, pp. 219-237 (1996). Schrijver, N., *Reforming the UN Security Council in Pursuance of Collective Security*, *Journal of Conflict & Security Law*, 12:1, pp. 127-138 (2007).

(13) Alvarez, José, *Hegemonic International Law Revisited*, 79 *AJIL* 873, 874 (2003).

(14) The Court was established by Resolution 827 of the United Nations Security Council, which was passed on 25 May 1993. It had jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991, grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. For further reading in the ICTY see Vohrah, L.C., “Some Insights into the Early Years”, *Journal of International Criminal Justice*, 2: 388 (2004).

(15) *Rape and Abuse of women in the areas of armed conflict in the former Yugoslavia*, Fifty-second session, Agenda item 112 (c). Human rights questions, human rights situations and reports of special rapporteurs and representatives.

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technical sense of the term, in the United Nations system . . . That is to say, there exists no corporate organ formally empowered to enact laws directly binding on international legal subjects.”⁽¹⁶⁾

Heretofore, it is a complicated issue on deciding whether the Security Council is a true global legislature;⁽¹⁷⁾ it may be useful to ask what is meant by “international legislation”⁽¹⁸⁾ in the context of the Security Councils’ actions. The term “international legislation” has been used in a variety of ways by the writings of the most highly qualified publicists⁽¹⁹⁾ in the field of international law.

Scholars have employed it in a broad sense to cover “both the process and the product of the conscious effort to make additions to, or changes in, the law of nations.”⁽²⁰⁾ They have also used it to describe the conclusion of lawmaking treaties (i.e., multilateral treaties on matters of general interest), the making of customary international law, and the adoption of binding decisions by international organizations.

To that extent, the obligations imposed in the Security Council resolutions are akin to obligations entered into by states in international treaties. However, it is worthy to mention that international organizations resolutions are part of the sources of public international law.⁽²¹⁾ The growth of international organizations since WWI has been

(16) Talmon, S. The Security Council as World Legislature, *American Journal of International Law*, 99 (1), 175-193 (2005). For further reading see *Prosecutor v. Tadić*, Appeal on Jurisdiction, No. IT-94-1-AR72, para. 43 (Oct. 2, 1995), 35 ILM 32 (1996).

(17) The concept of legislation is rather unfamiliar in international law. If legislation implies a normative act promulgated unilaterally by an authorized organ and containing general, abstract and directly binding legal norms. Brunnée, J., ‘International Legislation’, *Max Planck Encyclopedia of Public International Law*, 2nd ed, vol.11, Rüdiger Wolfrum (2012).

(18) In the context of international law, international legislation forms a substantial part of treaties and international agreements among nations, such legislation only binding on the parties.

(19) Most highly qualified publicists in the field of international law is considered to be as a subsidiary source of international law, such as the Helsinki Rules of the International Law Association, the Bellagio Draft Treaty, or, to a certain extent, the Convention of the International Law Commission (ILC) of the United Nations do fall into this category as do all studies, books and articles in Law Journals and other similar publications contributed by scholars of international Law.

(20) *International Legislation: A Collection of Texts of Multipartite International Instruments of General Interest*, At Xiii (Manley O. Hudson Ed., 1931).

(21) The only clear example of binding decisions is the resolutions which the Security Council of the United Nations are authorized to take under Chapter Seven (VII) of the Charter of the

accompanied by suggestions that the acts of these organizations should be recognized as a source of international law.⁽²²⁾

Resolutions and declarations of the General Assembly⁽²³⁾ may also provide a basis for the progressive development of the international law and the speedy adaptation of customary law to the conditions of modern life.⁽²⁴⁾ Furthermore, in some instances, a resolution or declaration may have direct legal effects as an authoritative interpretation and application of the principles stated in the Charter of the United Nations.⁽²⁵⁾

Returning to the question of whether the Security Council possesses legislative powers, an affirmative answer is supported by the pervading teleological interpretation of powers explained previously, and an interpretation that derives powers from objectives and purposes.⁽²⁶⁾ Support can also be found in specific provisions⁽²⁷⁾ in the Charter.⁽²⁸⁾

United Nations dealing with actions related to threats to the peace, breaches of the peace, and acts of aggression related to threats to the peace. See U.N. Charter arts. 39-51. Article 25 of the U.N. Charter provides: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

(22) Malanczuk, P., *Akehurt's Modern Introduction to International Law*, 7th revised ed, Routledge: NY, p. 52 (1997).

(23) While the Assembly is empowered to make only non-binding recommendations to States on international issues within its competence, it has, nonetheless, initiated actions—political, economic, humanitarian, social and legal—which have affected the lives of millions of people throughout the world.

(24) Brownlie, I., *Principles of Public International Law*, James Crawford (ed), OUP: Oxford, p. 15 (2012).

(25) *Id.*

(26) According to the Charter of the United Nations, the General Assembly may: Consider and make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament; discuss any question relating to international peace and security and, except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it.

(27) Article 10 of the UN Charter states: "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

(28) The Charter of the United Nations ('Charter'), as a constitutive treaty instrument, has profound significance in creating a normative framework for the maintenance of international peace and security.

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According to Article 39, the Security Council can adopt 'measures' to maintain or restore the peace if it determines that a threat to the peace, a breach of the peace or an act of aggression, exists. Such measures can be military, according to Article 42, or non-military, according to Article 41.⁽²⁹⁾

The reference in Article 41 of specific measures is however indicative and not exhaustive. Thus, depending on the circumstances, the Security Council can adopt under Article 41 a variety of measures of executive or of general character, such as legislation.⁽³⁰⁾

For instance, faced with a specific terrorist act, the Security Council may adopt specific and expeditious measures in order to maintain or restore the peace;⁽³¹⁾ but faced with terrorism as a state of affairs, it may adopt legislative measures in order to suppress or eradicate it. It is in this vein that Security Resolution 1373 (2001) was adopted, to deal in a general manner with certain aspects of terrorism.

In practice, however, the Security Council legislation is coupled with problems,⁽³²⁾ the most significant being the lack of clarity and conciseness of the legislative acts,⁽³³⁾ and the question of implementation.⁽³⁴⁾ This discrepancy demonstrates that international legislation by the Security Council can be effective only with the full repose and communion of the wider UN membership. The Security Council would be well-advised to legislate only to an extent that reflects the general will of the member states.

(29) See in general Boyle, A., Chinkin, C., *The Making of International Law*, Oxford, Oxford University Press (2007). Schermers, H.G., Blokker, N.M., *International Institutional Law: Unity within Diversity*, 4th rev. ed., Boston/Leiden, Martinus Nijhoff, pp. 209-210 (2003).

(30) Tsagourias, N., *Security Council Legislation, Article 2(7) of the UN Charter, and the Principle of Subsidiary*, *Leiden Journal of International Law*, 24 (3), pp. 539-559 (2011).

(31) Here reference is made in particular to SC Resolution 1373 (2001) and SC Resolution 1540 (2004).

(32) The term 'resolution' as used in UN practice has a generic sense, including recommendations and decisions, both of which have a vague and variable meaning in the Charter.

(33) Therefore, one cannot rely on Charter terminology to identify the legal effects of a given resolution. See Castañeda, J., *Legal Effects of UN Resolutions*, New York, Columbia University Press, p. 14 (1969). Johnson, D., 'The Effect of Resolutions of the General Assembly of the United Nations', 32 *British Year Book of Int'l L.*, 97(1955-56).

(34) Several States find it difficult to meet their reporting and implementation obligations, perhaps because of their need to address other pressing concerns.

Aside from a number of internal institutional matters where the General Assembly is given a full decision-making competence, and certain questions relating to the Trust territories, the text of the Charter clearly shows that the resolutions of the General Assembly were intended to be recommendatory in character.⁽³⁵⁾ Indeed, a proposal at the San Francisco Conference to give the General Assembly the competence to develop international law was rejected overwhelmingly, with only a single State voting in favor of the suggestion. It seems abundantly clear, then, that the intention of the drafters of the Charter was to provide a degree of insulation for international law from the political pronouncements of the General Assembly. Nevertheless, in certain circumstances the General Assembly can, indeed, make law.⁽³⁶⁾

On occasion, however, the General Assembly has played a more direct role in the creation of customary law – one that appears more akin to legislation than to the painstaking and incremental process that typifies custom-formation. A significant example of the General Assembly's role in creating what has come to be described as 'instant custom' is the Declaration of Legal Principles Governing the Activities of State in the Exploration and Use of Outer Space ('Space-Law declaration'). The Declaration, which was adopted by consensus, proclaims a number of principles.⁽³⁷⁾

(35) Schwebel, Stephen, *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, 73 *Proceedings of the Annual Meeting, American Society of International Law*, 301 (1979).

(36) Schwebel, *supra* note 35, at 301.

(37) Further reading on original academic thought on the subject: Schwebel, Stephen, 'The Effect of Resolutions of the U.N. General Assembly on Customary International Law' (1979) 73, *Proceedings of the Annual Meeting (American Society of International Law)* 301, Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, UN General Assembly Resolution 1962(XVIII)., Scharf, Michael, 'Accelerated Formation of Customary International Law' (2013-14) 20 *ILSA J. Int'l & Comp. L.* 305, esp. p.324-328., Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, UN General Assembly Resolution 2749(XXV)., Summary Record of the 109th Plenary meeting of the Third United Nations Conference on the Law of the Sea, Resumed Seventh Session, Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume IX, A/CONF.62/SR.109 [20-37, et seq.], Declaration on the Granting of Independence to Colonial Countries and Peoples, UN General Assembly Resolution 1514(XV)., Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance =

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Notable examples of resolutions in this category include the Declaration on the Granting of Independence to Colonial Countries and Peoples (UNGA Res 1514(XV)), and the Declaration on Friendly Relations (UNGA Res 2625(XXV)). The Friendly Relations Declaration was confirmed to be customary law by the ICJ in its Nicaragua decision and, more than that, was confirmed to be new law – that is to say, more than merely an expansion of the Charter. Similarly, the Arbitrator in *Texaco* conducted a review of the status of resolution 1803(XVII), on Permanent Sovereignty over Natural Resources, concluding that it was customary law.⁽³⁸⁾

3.The Dialectic of Success and Failure of the Security Council

Any analysis of the effectiveness,⁽³⁹⁾ success and failure of the Security Council would be incomplete and vague without mention of its membership and whether it continues to be, or ever was, representative of the world as a whole.

There have been calls for the reformation of the Council⁽⁴⁰⁾ for as long as there has been a Council. There are also calls for an expansion of the Council⁽⁴¹⁾ beyond its current permanent five and rotating 10

= with the Charter of the United Nations, UN General Assembly Resolution 2526(XXV), Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgement, (1986) I.C.J. Rep 14 [187-188], Permanent Sovereignty over Natural Resources, UN General Assembly Resolution 1803(XVII), *Texaco Overseas Petroleum Company and California Asiatic Oil Company v. the Government of the Libyan Arab Republic*, Award on the Merits (1978) 17 I.L.M. 1, 26 et seq., Cançado Trindade, Antônio Augusto, *International Law for Humankind: Towards a New Jus Genitum (I)* (2005). And *Collected Courses of the Hague Academy of International Law* 316, Part III, Chapter V-VI, p.147-176.

(38) Higgins, Rosalyn, *The Development of International Law through the Political Organs of the United Nations* (Oxford University Press 1963).

(39) A 2005 Rand Corporation Study compared eight UN and US nation-building operations. It found that the UN operations were more successful, more cost-effective and achieved greater international legitimacy. *America's Role In Nation-Building: From Germany to Iraq*, Dobbins et al, RAND 2003, *The UN's Role In Nation-Building: From the Congo to Iraq*, Dobbins et al, RAND 2005, *The Beginner's Guide to Nation-Building*, Dobbins et al, RAND 2007.

(40) The calls mostly suggested the following: 1- The Security Council is unequal as the (P-5) enjoy veto powers. 2- A huge level of power into the hands of five states 3- The (P-5s) are outdated in that it is made up of the allies from a post-1945 world which is now 73 years ago. For further reading see <https://www.globalpolicy.org/security-council/security-council-reform/49885.html?itemid=1321>

(41) Regarding the expansion of the membership of the Security Council see General Assembly, =

members.⁽⁴²⁾ One is struck first of all by the sheer magnitude of all that has happened relating to the Security Council's role in peace and security during these past years.⁽⁴³⁾ The Security Council has its share of success and failures in its pursuit of world peace, yet the dialectic of that matter still unclear.⁽⁴⁴⁾ The world has not experienced another world war for eight decades can be seen as a significant success of the Council.⁽⁴⁵⁾

The success can also be attributed to all the member states that have invested their political and economic resources in order to enhance and improve the Security Council.⁽⁴⁶⁾ To look at the text of the Charter,⁽⁴⁷⁾ the Security Council has the capability itself to provide collective security, if necessary by enforcing the peace.

= Calling for Security Council Reform, General Assembly President Proposes Advisory Group to Move Process Forward, Sixty-eighth General Assembly, 46th & 47th Meetings, GA/11450, 7 November 2013. <https://www.un.org/press/en/2013/ga11450.doc.htm>

(42) The so-called 'veto' is in fact a label given to the phenomenon set out in article 27(3) of the UN Charter, in which substantive decisions of the Security Council cannot be made in the absence of the concurring votes of the P-5. Such decisions require affirmative votes from nine of the Council's 15 members—in other words, the votes of the P-5 in addition to at least four of the 10 non-permanent members elected to two-year terms by the General Assembly in accordance with article 23. Decisions on procedural matters require nine affirmative votes, and are not subject to the veto.

(43) Some key UN Security Council Resolutions setting out these major shifts in policy were: Iraq (Security Council Resolutions 678, 687 and 688), Somalia (Security Council Resolution 794), Haiti (Security Council Resolutions 841, 862 and 867).

(44) See Higgins, R., *The New United Nations and the Former Yugoslavia*, 69 *International Affairs*, 465 (1993). See also Zemanek, K., 'Peace-keeping or Peace-making', in N. Blokker and S. Muller (eds), *Essays in Honour of Henry G. Schermers, Volume II – by D. Curtin & T. Heukels* (Eds.), Martinus Nijhoff Publishers, Dordrecht Boston/London, 1994.

(45) For further reading see Doyle, M., *Ways of War and Peace*. New York: Norton. Gurr, T.R. (1997). *Minorities at Risk: A Global View of Ethnopolitical Conflicts*. Washington, D.C.: United States Institute of Peace Press (1993). Held, D., McGrew, A., Goldblatt, A., Perraton, J., *Global Transformations: Politics, Economics, and Culture*, Stanford, California: Stanford University Press (1998).

(46) Waldock, C., *The Regulation of the Use of Force by Individual States in International Law*, Académie de Droit International de la Haye Recueil des Cours 81, Librairie du Recueil Sirey, 492 (1952).

(47) The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following Principles: '... 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' The United Nations Charter, Article 2, para 4.

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Chapter VI of the Charter indicates the appropriate methods of settling international disputes, and gives the Security Council certain powers. Whether or not decisions taken by the Security Council under Chapter VI⁽⁴⁸⁾ can be binding,⁽⁴⁹⁾ it has been subject of some controversy.⁽⁵⁰⁾ However, it is agreed that generally speaking, resolutions under Chapter VI will be recommendatory, rather than decisions that bind the membership at large, by reference to Article 25.⁽⁵¹⁾

The International Court of Justice⁽⁵²⁾ in the Namibia case⁽⁵³⁾ made an important observation (which has implications for other chapters of the Charter as well) that resolutions may in any event have operative effect - that is to say, the findings of fact, or applications of law within an organ's own competence, are determinative.⁽⁵⁴⁾ Some peacekeeping operations of the UN were met with success in Angola, Liberia, Nicaragua, El Salvador and Haiti.⁽⁵⁵⁾

The Security Council also proved critical in the negotiations between the United States and the USSR during the Cuban Missile Crisis, with the efforts led by Secretary-General U Thant.⁽⁵⁶⁾

(48) Chapter VI of the United Nations Charter deals with peaceful settlement of disputes. It requires countries with disputes that could lead to war to first of all try to seek solutions through peaceful methods such as "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

(49) Sarooshi, D., *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers*, OUP: Chapters 1 and 4 (2009).

(50) Leurdijk, D., *The United Nations and NATO in the Former Yugoslavia*, Netherlands Atlantic Commission in cooperation with Netherlands Institute of International Relations 'Clingendael', 7 (1994).

(51) Article 25 "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

(52) The International Court of Justice is the judicial organ of the United Nations, and the only international court with general subject matter jurisdiction over international legal disputes.

(53) *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16. Under a claim of right to annex Namibia, South Africa occupied its territory in violation of a United Nations (U.N.) Security Council Mandate which though later terminated due to South Africa's breach, empowered the Security Council to enforce its terms.

(54) ICJ Reports (1971) at para. 105.

(55) Higgins, R., *Peace and Security Achievements and Failures*, 6 EJIL, 445-460 (1995).

(56) United Nations Foundation, *What We Do About The UN*, United Nations Foundation. <http://www.unfoundation.org/what-we-do/issues/united-nations/about-the-un.html>

However, there are those that criticize the Council for its failure on a number of occasions. The Council is often criticized for its inability to prevent inter-state conflicts.

Its failure eventually led to a number of mass killings of civilians and operational disasters, these examples include: the Cambodian genocide (1975-1979),⁽⁵⁷⁾ Rwandan genocide (1994),⁽⁵⁸⁾ Battle of Mogadishu during the Somali Civil War (1993),⁽⁵⁹⁾ Srebrenica massacre (1995),⁽⁶⁰⁾ and closing years of the Sri Lankan civil war (2009).⁽⁶¹⁾

(57) Khmer Rouge forces took over Cambodia on 17 April 1975. They forcibly evacuated the nation's cities, emptied hospitals and Buddhist monasteries, closed schools and factories, abolished money and wages, and scattered libraries. Alvarez, Alex, "The Prevention and Intervention of Genocide During the Cold War Years", 2007. In Samuel Totten, *The Prevention and Intervention of Genocide*, pp. 7–30 (2004). Barron, John, Anthony, Paul, *Murder of a gentle land: the untold story of a Communist genocide in Cambodia*, Reader's Digest Press, 1997.

(58) The Rwandan genocide, also known as the genocide against the Tutsi, was a genocidal mass slaughter of Tutsi in Rwanda by members of the Hutu majority government. An estimated 500,000 to 1,000,000 Rwandans were killed during the 100-day period from 7 April to mid-July 1994. Akhavan, Payam, "The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment", *American Journal of International Law*, 90 (3): 501–510, 1996. Aptel, Cicile, "Closing the U.N. International Criminal Tribunal for Rwanda: Completion Strategy and Residual Issues", *New England Journal of International and Comparative Law*, 14 (2): 169–188, 2008.

(59) The Battle of Mogadishu, or Day of the Rangers (Somali: Maalintii Rangers), was part of Operation Gothic Serpent. It was fought on 3–4 October 1993, in Mogadishu, Somalia, between forces of the United States—supported by UNOSOM II—and Somali militiamen loyal to the self-proclaimed president-to-be Mohamed Farrah Aidid, who had support from armed fighters. Robert, M., *Peacekeeping in the Abyss: British and American Peacekeeping Doctrine and Practice After the Cold War*, Greenwood Publishing Group, p. 157, 2004. Karcher, Timothy, "Understanding the 'Victory Disease,'" *From the Little Bighorn to Mogadishu and Beyond (Global War on Terrorism, Occasional Paper 3)*, Fort Leavenworth, Kansas: Combat Studies Institute Press, p. 34, 2004.

(60) The Srebrenica massacre, also known as the Srebrenica genocide was the July 1995 genocide of more than 8,000 Muslim Bosniaks, mainly men and boys, in and around the town of Srebrenica during the Bosnian War. Michas, Takis, *Unholy Alliance: Greece and Milosevic's Serbia in the Nineties*, Texas A&M University Press, 2002. Ramet, Sabrina, *The Three Yugoslavias: State-Building and Legitimation, 1918–2005*, Indiana University Press, 2006.

(61) The conflict between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) has lasted nearly three decades and is one of the longest-running civil wars in Asia. More commonly known as the Tamil Tigers, the LTTE wants an independent state for the island's Tamil minority. Following a fierce, year-long military offensive, the Sri Lankan government claimed in May 2009 that it had defeated the separatist group (NYT) and killed its leader Vellupillai Prabhakaran. Balasingham, Adele, *The Will to Freedom – An Inside View of Tamil Resistance*, Fairmax Publishing Ltd, 2nd ed. (2003). Deegalle, Mahinda (ed.), *Buddhism, Conflict and Violence in Modern Sri Lanka*, Routledge, London (2006). Dissanayaka, T., *War =*

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In many instances, critics have pointed out that had not the Security Council been lethargic in intervening in these conflicts, it could have prevented unnecessary deaths and displacement of civilians. Also, during the Cold War, the Security Council became paralyzed and has resulted in a number of failures to pass substantive resolutions.⁽⁶²⁾ After the Cold War, power politics continued to be a problem in the Council and the usage of veto powers by P-5 members when it comes to taking actions on ongoing conflicts.

Beyond doubts, most experts and scholars have proposed opinions in reforming the Security Council in order to adapt to the changing international security landscape.

In today's international community, the Security Council remains to be the main organ and has primary responsibility for the maintenance of international peace and security.

Although the Council is faced with a number of criticisms over its inability to prevent some conflicts and its mechanism for collective defense, there are still opportunities for the Council to evolve. While it is true that there are cases in which the Security Council cannot compel a state to cease its aggression against another state or to its population through traditional means, i.e. force or economic sanctions,⁽⁶³⁾ it still has a certain degree of authority in the international community.

As a matter of seriousness, the Council cannot be labeled entirely as a failure since at times it is able to resolve international disputes. It cannot also be said that it is successful in attaining world peace, because there were critical moments in history in which the Council failed or were too slow to intervene.

Thus, it can be said that it has a mixed track record in fulfilling its

= or Peace in Sri Lanka, Vol. II, Swastika, Colombo (1998). Dixit, J.N., Assignment Colombo. (Dixit was the Indian High Commissioner during the 1980s negotiations that led to the IPKF presence). Gamage, S., Watson, I.B., Conflict and Community in Contemporary Sri Lanka: Sage, New Delhi (1999).

(62) Mats, Berdal, The Security Council, Peacekeeping and Internal Conflict After the Cold War, 7 Duke Journal of Comparative & International Law, 71-92 (1996).

(63) Since 1966, the Security Council has established 26 sanctions regimes, in Southern Rhodesia, South Africa, the former Yugoslavia, Haiti, Iraq, Angola, Sierra Leone, Somalia, Eritrea, Liberia, DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya, Guinea-Bissau, CAR, Yemen, South Sudan and Mali, as well as against ISIL (Da'esh), Al-Qaida and the Taliban.

mandate to maintain global peace and security.⁽⁶⁴⁾ Despite the results of its actions and inactions, the resolutions and recommendations made by the Security Council are still able to influence international law, international relations and their governance. The Council still has a possibility in achieving global peace albeit in an incremental manner as it evolves over time. So there will never be a definitive answer to the question of whether it has been a success or a failure.

While the structure and operational mechanisms of the UN Security Council have been criticized for many years, they have recently come under heightened attack given the inability of the United Nations Security Council to intervene effectively in the conflict in Syria. Particular attention has been paid to the veto mechanism, which can be enacted only by the United Nations Security Council's permanent member states.⁽⁶⁵⁾ While the probability of reforming the United Nations Security Council remains low,⁽⁶⁶⁾ the newly energized debate, along with the centrality of the United Nations Security Council in the international arena, warrants a fresh reflection on the veto mechanism.

4. Success v. Failure

I- SC Successes:

1- Peace

The Security Council throughout the years has provided resolutions for conflicts and peacekeeping initiatives; the number of deaths has

(64) For further reading see Butler, R., Reform of the United Nations Security Council, Penn State Journal of Law & International Affairs 1(1), pp. 23-39 (2012).

(65) Three new proposals to reform the United Nations Security Council veto mechanism are assessed and extensively detailed in a report published recently by the independent non-profit Security Council Report.

(66) Since the UN General Assembly began debating Security Council reform in 1993, several models have been put forward as viable options and several countries have put themselves forward as candidates for permanent membership. The Security Council is not representative of the geopolitical realities of the modern world. Both Africa and Latin America lack a permanent seat on the Council, while Europe is overrepresented and Asia is underrepresented. These problems are not easily addressed because the Permanent Five members (P5) of the Council do not want to see their power diminished. As a result, little progress has been made since 1993 in spite of the number of proposals that have been suggested. The central issues in Council reform are membership, transparency and working methods, and the veto. For further reading see <https://www.globalpolicy.org/security-council/security-council-reform/49885.html?itemid=1321>

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declined rapidly since the establishment of the global organization – worldwide, fewer people died in conflict in the first decade of the 21st century than any decade of the 20th century.⁽⁶⁷⁾

2- Prosecutions of Charles Taylor and Slobodan Milosevic

The Liberian and Serbian leaders were both prosecuted for war crimes by tribunals set up by the United Nations, with Taylor sentenced to 50 years' imprisonment.⁽⁶⁸⁾

Slobodan Milosevic⁽⁶⁹⁾ died of a heart attack before a verdict was reached, but the precedent that dictators can face impartial, rather than victors', justice has been established.

3- Ending Famine

The world is an unequal place, with large parts beset by poverty and hunger, and thousands still die of malnourishment every year. As with war, the numbers have fallen from the 20th century, when more than 70 million died from famine.⁽⁷⁰⁾

Again, intervention by the UN's World Food Programme, Food and Agriculture Organization and UN-sponsored emergency aid management can take some of the credit.

4- South Africa and Kazakhstan, the Case of Nuclear Weapons

Never before in history have countries voluntarily decided to give up

(67) MacDonal, Margaret, *Early Childhood Education and Sustainability: A Living Curriculum*, *Childhood Education*, 91:5, 332-341 (2015).

(68) Taylor was accused of war crimes and crimes against humanity as a result of his involvement in the Sierra Leone Civil War (1991–2002). Domestically, opposition to his regime grew, culminating in the outbreak of the Second Liberian Civil War (1999–2003). By 2003, Taylor had lost control of much of the countryside and was formally indicted by the Special Court for Sierra Leone. Onadipe, Abiodun, *Liberia: Taylor's first year report card*, (President Charles Ghankay Taylor), *Contemporary Review*, 1998. Ellis, Stephen, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of African Civil War*, London, UK: Hurst & Company, pp. 1–16 (1999). Sawyer, Amos, *Violent Conflicts and Governance Challenges in West Africa: the case of the Mano River basin area*, *Journal of Modern African Studies*. 42: 437–463, 2004.

(69) Armatta, Judith, *Twilight of Impunity: The War Crimes Trial of Slobodan Milosevic*, Durham: Duke University Press, 2010.

(70) LaHaye, Tim, Hindson, Edward, *Global Warning*, Harvest House Publishers, p. 76 (2007).

weapons⁽⁷¹⁾ because they were too efficient. South Africa did this at the end of apartheid, and Kazakhstan when the Soviet Union fell apart. A number of other countries have committed to ending nuclear weapon research programs and submit to inspections by the UN International Atomic Energy Agency.

5-Protecting the Galápagos Islands

Since the Islands became one of 12 initial sites named by the UN cultural organization UNESCO in 1978,⁽⁷²⁾ its listings have become the international benchmark for protection of the world's most important natural and historic places. That has allowed tourism and its economic benefits to develop in step with conservation.

II. SC Failures

1- Rwanda Genocide

The UN had an “Assistance Mission” for Rwanda in 1994,⁽⁷³⁾ which knew about the impending genocide, but its peacekeepers failed to stop the majority Hutus going on a murderous rampage and killing almost a million members of the Tutsi minority.⁽⁷⁴⁾

2- Rape and Child Sex Abuse in the Congo

The UN peacekeepers were accused of paying women and young girls they were supposed to be protecting for sex, and sometimes raping them, in the Democratic Republic of Congo in early 2005.⁽⁷⁵⁾ Subsequent

(71) More countries gave up nuclear bombs such as, Brazil, Argentina, Ukraine, Taiwan, South Korea, Belarus, Libya, and Sweden.

(72) The Galapagos Islands are truly unique. They have more endemic species—species that can only be found there—than any other cluster of islands in the world.

(73)The United Nations Assistance Mission for Rwanda (UNAMIR) was established by United Nations Security Council Resolution 872 on 5 October 1993. It was intended to assist in the implementation of the Arusha Accords, signed on 4 August 1993, which was meant to end the Rwandan Civil War. UN Security Council (5 October 1993). Resolution 872 (1993) adopted by the Security Council at its 3288th meeting, Security Council, p. 1., Department of Public Information (DPI), Rwanda-UNAMIR Mandate, Peace and Security Section of DPI in cooperation with the Department of Peacekeeping Operations, United Nations.

(74) Orriss, Matthew, Indicators and warnings: Case studies in genocide, Small Wars Journal, 2009. <http://smallwarsjournal.com/blog/2009/04/case-studies-in-genocide/>

(75)“United Nations Secretary General Kofi Annan has said there is clear evidence that UN staff sexually abused refugees in the Democratic Republic of Congo... He added: “I am afraid there =

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reports found there had been similar allegations in countries ranging from Cambodia to Bosnia to Haiti.

3- Spreading Cholera in Haiti

Genome testing showed that the most likely source of the world's worst recent outbreak of cholera, which swept through Haiti after the 2010 earthquake, was a Nepali peacekeeping force. Although more than 700,000 were infected and 8,000 died, the UN claimed immunity from a subsequent law suit.⁽⁷⁶⁾

4- Iraq Oil for Food Program

This was the program where Iraq could gain relief from international sanctions by selling oil through the UN, which would supervise the delivery of food and medicine with the resulting assets.⁽⁷⁷⁾ However,

= is clear evidence that acts of gross misconduct have taken place. This is a shameful thing for the United Nations to have to say, and I am absolutely outraged by it." Annan admits UN DR Congo abuses, <http://news.bbc.co.uk/2/hi/africa/4027319.stm> Gilliard, N., Peacekeepers of perpetrators? An Analysis of Sexual Exploitation and Abuse (SEA) by UN personnel in the Democratic Republic of the Congo, Mapping Politics, 3, 2010-2011, Citizens for Global Solutions (2005). The United Nations responds to sexual abuse by peacekeepers in the Democratic Republic of Congo, Global Solutions, 2005. www.globalsolutions.org Aoi, C., de Coning, C., Thakur, R. (Eds), Unintended Consequences of Peacekeeping Operations, United Nations University Press 2007.

(76) On January 12, 2010, a catastrophic 7.0 magnitude earthquake struck Haiti, affecting 3,500,000 people. This severely damaged an already marginal public sanitation system, creating ideal conditions for outbreaks of major infectious diseases. In October 2010, nine months after the earthquake, an outbreak of cholera started, which quickly spread all across the country. United States Geological Survey (2010). Magnitude 7.0 - Haiti region, USGS Earthquake Hazards Program. Reston: United States Geological Survey. <http://earthquake.usgs.gov/earthquakes/eqinthenews/2010/us2010rja6/us2010rja6.php> Farmer, P., Key Statistics - facts and figures about the earthquake, cholera, and development challenges in Haiti. Manhattan: United Nations Office of the Secretary-General's Special Adviser for Community-Based Medicine and Lessons from Haiti, 2013. <http://www.lessonsfromhaiti.org/relief-and-recovery/key-statistics> Delva, JG., Quake-hit Haiti battles cholera epidemic, 150 dead. Reuters US. New York City: Thomson Reuters, 2010. <http://www.reuters.com/article/2010/10/22/us-haiti-cholera/idUSTRE69L21520101022>

(77) The Oil-for-Food Programme (OIP) was established by the United Nations in 1995 (under UN Security Council Resolution 986). It was established to allow Iraq to sell oil on the world market in exchange for food, medicine, and other humanitarian needs for ordinary Iraqi citizens without allowing Iraq to boost its military capabilities. The UN committee's fifth and final 623-page report released October 27, 2005, accused nearly half of the 4,500 participating companies of paying kickbacks and illegal surcharges to win lucrative contracts, and allowing Saddam Hussein to pocket \$1.8 billion at the expense of Iraqis suffering under UN economic sanctions. United Nations Security Council Resolution 986, S/RES/986 (1995) 14 April 1995.

large sums of money were channeled into private pockets through the program – with some even being used to buy influence at the UN itself. It is regarded as the worst financial scandal in the UN's history.⁽⁷⁸⁾

5- Srebrenica

The massacre of more than 8,000 Bosnian Muslim men at the hands of Serb forces in Srebrenica in 1995⁽⁷⁹⁾ was an even more specific failure for the UN than Rwanda in that the town had been declared a “safe zone” and given its own Dutch protection force precisely to stop this happening.

6- The Syrian Crisis

The Syrian crisis has caused approximately 2.7 million Syrians to leave their country since 2011 and double that many are expected to have fled Syria by the end of 2015. The Syrian displacement of what will be the refugee aspect of the crisis that has received very little attention: that is, the implications of international law at the international, regional and domestic level affecting the rights and status of the refugees flooding out of Syria.⁽⁸⁰⁾ Countries currently hosting the vast majority of the refugee flow out of Syria are stretched to the limits of their resources. Jordan, Lebanon, Egypt, and Turkey have huge refugee population pre-dating the Syrian Influx. Many if not most, of these preexisting refugee groups live in desperate conditions, and host countries cannot

(78) Spencer, Richard, UN at 70: Five Greatest Successes and Failures, 2015. www.telegraph.co.uk/news/worldnews/europe/switzerland/11700969/UN-at-70-Five-greatest-successes-and-failures.html

(79) The term Bosnian genocide refers to either genocide at Srebrenica and Žepa committed by Bosnian Serb forces in 1995 or the wider ethnic cleansing campaign throughout areas controlled by the Army of Republika Srpska that took place during the 1992–1995 Bosnian War. Thackrah, John, *The Routledge Companion to Military Conflict Since 1945*, Routledge Companions Series, Taylor & Francis, pp. 81, 82 (2008). “Bosnian genocide can mean either the genocide committed by the Serb forces in Srebrenica in 1995 or the ethnic cleansing during the 1992–1995 Bosnian War”. Mojzes, Paul, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century*, Rowman & Littlefield, p. 178, 2011. Peterson, Roger, *Western Intervention in the Balkans: The Strategic Use of Emotion in Conflict*, Cambridge University Press, p. 121 (2011). Toal, Gerard, *Bosnia Remade: Ethnic Cleansing and Its Reversal*, Oxford University Press, p. 136 (2011).

(80) Alshdaifat, Shadi, Silverburg, Sanford, *Syrians Displaced by Civil Conflict: What are the Implications from International Law?* CJIL, Vol. 31, (2), pp. 141-161 (2016).

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meet all the refugees' assistance and protection needs.

The question is from whom can Syrian expect support? And what to do when the UN Security Council –so far– failed⁽⁸¹⁾ to act in the face of ongoing mass atrocity crimes?

After more than seven years of the conflict, the scale of the Syrian crisis rivals the worst humanitarian tragedies of the past two decades. The Syrian issue is salient, because the real problem is not that the United Nations would intervene too often, but that the Security Council has abstained from authorizing military activities even in situations where the qualitative threshold for triggering what later became called responsibility to protect had been reached. It is a historical fact that the Security Council has failed to prevent and to stop the ongoing crisis i.e., in Rwanda and the recent failure in Syria.

The first time a Security Council resolution failed to pass came just six months after the start of the crisis in October 2011. The council drafted a statement “expressing grave concern at the situation in Syria.” The only solution to the crisis was “through an inclusive and Syrian-led political process with the aim of effectively addressing the legitimate aspirations and concerns of the population.” The draft resolution was vetoed by Russia and China. In order to be passed, a resolution needs nine votes in favor and no vetoes by anyone of the five permanent members - the US, France, Russia, China and the UK.

7-The Israeli-Palestinian Conflict

The United Nations Security Council's inability to mount an effective

(81) A political transition is certainly a condition that has been discussed in the halls of the UN Security Council and amongst legalists. Rick Gladstone, U.N Council Backs Plan for Ending Syrian Conflict, N.Y. Times, March 22, 2012, at A12; United Nations News Centre, UN Envoy Announces Start of Talks Aimed at Achieving Return to Political Talks on Syria, May 5, 2015, available at: <http://www.un.org/apps/news/story.asp?NewsID=50773#>; United Nations, Dept. of Pol. Aff., 29 July 2015, Security Council Briefing on the Situation in Syria, Special Envoy for Syria Staffan de Mistura, July 29 2015, available at: <http://www.un.org/undpa/speeches-statements/29072015/syria>; European Union, Joint Statement: Final Declaration on the Results of the Syria Talks in Vienna as Agreed by Participants, Oct. 30, 2015, available at: http://eeas.europa.eu/statements-eeas/2015/151030_06.html. See also Radwan Ziadeh, Time for a Transitional Justice Process in Syria, in GLOBAL COOPERATION IN TRANSITIONAL JUSTICE: AMBIGUITIES, PARADOXES AND POSSIBILITIES, AND LIMITS 61-68 (Noemi Gal-Or & Birgit Schwellung eds., 2015).

response to the Israeli-Palestinian conflict and to the recurring crises according to Chapter V11 of the UN charter for the reason of the US veto,⁽⁸²⁾ and its unlimited support to Israel. Just as Russia's interests in Ukraine have hindered effective engagement on that issue, the United Nations Security Council action on the Israeli-Palestinian conflict is considered constrained by the US, which traditionally protects Israel's interests, thus making the adoption of resolutions critical of Israeli conduct hard to achieve.

Between 1945 and (April) 2018, the United States has vetoed a total of 49 United Nations Security Council resolutions related to Israel and the Palestinians.⁽⁸³⁾ This by far amounts to the largest number of resolutions vetoed by a United Nations Security Council permanent member on one specific issue. Next in line is the United States veto of United Nations Security Council resolutions on the situation between Israel and Lebanon (10 vetoes, a tie with 10 vetoes enacted by the US on the situation in South Africa). Examples of the highest number of United Nations Security Council resolutions enacted by other permanent members on any one issue are the UK, with nine vetoes on the situation in South Africa and the situation in Rhodesia (each); and China, with four vetoes on the situation in Syria.⁽⁸⁴⁾

(82) Global Policy Forum (2008): "Changing Patterns in the Use of the Veto in the Security Council", and Teixeira, Pascal, *The Security Council at the Dawn of the Twenty-First Century: To What Extent Is It Willing and Able To Maintain International Peace and Security*", United Nations Publications, 2003.

(83) Professor Hans Köchler, who argues that the total absence of a balance of power has become the fundamental predicament of the United Nations Organization in the 21st century. He locates that problem in the veto power of the permanent five members, saying that it creates an irreconcilable normative contradiction with the doctrine of sovereign equality.

(84) For further reading in this regard see Teodora, Todorova *Reframing Bi-nationalism in Palestine-Israel as a Process of Settler Decolonisation*, *Antipode*, 2015, Volume 47, Number 5, Page 1367., Abigail B. Bakan and Yasmeen Abu-Laban, *Israel/Palestine, South Africa and the 'One-State Solution': The Case for an Apartheid Analysis*, *Politikon*, 2010, Volume 37, Number 2-3, Page 33., Bisharat, George, *Mobilizing Palestinians in Support of One State*, *Contemporary Arab Affairs*, 2009, Volume 2, Number 4, Page 552., Mavroudi, Elizabeth, *Imagining a Shared State in Palestine-Israel*, *Antipode*, 2010, Volume 42, Number 1, Page 15., *Transitional Justice and the Right of Return of the Palestinian Refugees* by Yoav Peled, Nadim N. Rouhana (2011), *The Palestinian Right of Return and the Justice of Zionism* by Chaim Gans (2011)., and Szydzisz, Marcin, «Israeli-Palestinian conflict – a catalog of problems to solve» *Review of Nationalities*, 6.1, pp. 147-159 (2017).

5. Must the Security Council Authorize Force?

This section examines the question whether it is with the Security Council's powers to adopt resolutions,⁽⁸⁵⁾ which authorize member states to use force.⁽⁸⁶⁾ If to re-map the road of the Council, this question has gained importance since the 70s.⁽⁸⁷⁾ The most important authorization resolutions subsequently adopted by the Council are:

- Resolutions: 770, 787, 816, 836, 908, 1031, 1088, 1174, 1244, 1247;
- Resolution 794 (Somalia);
- Resolution 875 (Haiti);
- Resolution 929 (Rwanda);
- Resolution 940 (Haiti).⁽⁸⁸⁾

(85) Szasz, P. C., *The Security Council Starts Legislating*, *American Journal of International Law*, 96, 901(2002). See e.g., Hulsroj, P., *The legal Function of the Security Council*, *Chinese Journal of International Law*, 1, 59 (2002). For this aspect see Happold, M., *Security Council Resolution 1373 and the Constitution of the United Nations*, *Leiden Journal of International Law*, 16, 599 (2003). Fassbender, B., *The United Nations Charter as Constitution of the International Community*, *Columbia Journal of Transnational Law*, 36, 574 (1998). On the possible characterizations of the UN see Ross, A., *Constitution of the United Nations—Analysis of structure and function*, Copenhagen, 189–200 (1950). Also see Wright, Q., *International law and the United Nations*, Bombay, p. 7 (1960). Schermers, H. G., Blokker, N., *International Institutional Law*, Leiden, 176 (2003). See e.g., *Certain Expenses opinion*, ICJ Reports, 1962. Khan, R., *Implied powers of the United Nations*, Delhi, p. 41 (1970).

(86) Hendrickson, Ryan, "Clinton's Military Strikes in 1998: Diversionary Uses of Force?" *Armed Forces & Society*, vol. 28, pp. 309–332 (2002). Stevenson, Charles, "The Evolving Clinton Doctrine on the Use of Force." *Armed Forces & Society*, vol. 22, pp. 511–535 (1996). Hendrickson, Ryan, "NATO's Secretary General and the Use of Force: Willy Claes and the Air Strikes in Bosnia", *Armed Forces & Society*, vol. 31, pp. 95–117 (2004).

(87) Kemp, Robert, *Operation Iraqi Freedom II*, 10 N.C. St. B.J. 21 (2005). *Authorization for Use of Military Force against Iraq*, 107th Congress, 2nd Session, H. J. RES. 114 (2002). In the use of force see Alshdaifat, Shadi, *International Law and the Use of Force Against Terrorism*, Cambridge Scholars Publishing: UK, pp. 367-371 (2017). In the Cold War era and the use of force see for e.g., *Defining Moment: The Threat and Use of Force in American Foreign Policy Since 1989*, National Research Council, 2000. *International Conflict Resolution After the Cold War*, Washington, DC: The National Academies Press. There is a rich literature on the use of force in world affairs and a considerable body of writing on the particular problems of the use of American military power in the post-Cold War period. Some voices in this debate include Gacek, C., *The Logic of Force*, New York: Columbia University Press (1995). And Damrosch, L.F., ed, *Enforcing Restraint: Collective Intervention in Internal Conflicts*, New York: Council on Foreign Relation Press (1993).

(88) Glennon, Michael, "Why the Security Council Failed," *Foreign Affairs*, vol. 82, No. 3, pp. 23-24 (2003). Groom, A.J.R., "The Question of Peace and Security," in Paul Taylor and Grome,

These resolutions were adopted to permit the use of force for a wide variety of purposes.⁽⁸⁹⁾ It is, however, implied in the Charter of the United Nations that the Council is empowered to adopt such resolutions.⁽⁹⁰⁾ Under Article 51 of the UN Charter, the unilateral or collective use of force is permitted to repel an armed attack. Defensive war,⁽⁹¹⁾ in other words, can be waged without prior approval from the UN Security Council. The Security Council can also authorize the use of international armed force pursuant to Articles 39-49 in order to combat “any threat to the peace, breach of the peace, or act of aggression,” where measures short of force have failed.

Given all this, the questions arise, when does the Security Council vote to intervene? It appears that most or all of the following conditions must be satisfied:

- 1) A very serious act of aggression against either another state or an internal social group;⁽⁹²⁾
- 2) There must not be protection for the aggressor from one of the

A.J.R. eds., *International Institutions at Work*, London: Pinter Publishers, p. 79 (1988). Berdal, Mats, “The UN Security Council: Ineffective but Indispensable,” *Survival*, vol. 45, No. 2, pp. 10-11 (2003). Goulding, Marrack, “The Evolution of United Nations Peacekeeping,” *International Affairs*, vol. 69, No. 3, pp. 451-464 (1993).

(89) United Nations resolutions are formal expressions of the opinion or will of United Nations organs. They generally consist of two clearly defined sections: a preamble and an operative part. The preamble generally presents the considerations on the basis of which action is taken, an opinion expressed or a directive given. The operative part states the opinion of the organ or the action to be taken.

<http://www.un.org/en/sc/documents/resolutions/>

(90) Sonnenfeld, Renata, *Resolutions of the United Nations Security Council*, Nijhoff Publishers, p. 17 (1988).

(91) A defensive war is one of the causes that justify war by the criteria of the Just War tradition. It means a war where at least one nation is mainly trying to defend itself from another, as opposed to a war where both sides are trying to invade and conquer each other. Lackey, D., *The Morality of Defensive War*, Cécile Fabre & Seth Lazar (eds), Oxford: Oxford University Press, p. 272 (2014).

(92) Dinstein, Y., *War, Aggression and Self-defence*, 3rd ed, Cambridge University Press, Cambridge (2001). Dupuy, PM., Anzilotti, Dionisio, *The Law of International Responsibility of States*, EJIL 2:139–148 (1992). Ferencz, BB., *Defining Aggression: where it stands and where it's going*, AJIL 66, 491–508 (1992). Garvey, JI., *The UN Definition of “Aggression”: Law and Illusion in the Context of Collective Security*, Va J Int Law 17:177–194 (1976–1977). Stone, J., *Hopes and Loopholes in the 1974 Definition of Aggression*, AJIL 71:224–246, (1977). Stowell, EC., *Humanitarian Intervention*, AJIL 33:733–736, (1939).

permanent members of the Security Council;

3) One country, preferably a Security Council permanent member, that champions the intervention;

4) A fair prospect that the type of military intervention that can be stomachable politically will have the sought-after strategic impact;

5) Support for the action from the major regional powers.⁽⁹³⁾

6. The Source of Authority and Power of the Security Council

The Security Council is a principal organ of the United Nations,⁽⁹⁴⁾ vested with primary,⁽⁹⁵⁾ though not exclusive, responsibility for the maintenance of international peace and security.⁽⁹⁶⁾ The source of its powers⁽⁹⁷⁾ is the ever-developing Charter of the United Nations.⁽⁹⁸⁾ The Security Council is empowered to make recommendations,⁽⁹⁹⁾ and to adopt decisions that are binding upon all Member States of the United Nations.⁽¹⁰⁰⁾

(93) In regional powers, see for e.g., Jordan, Eduard, The Concept of a Middle Power in International Relations: Distinguishing between Emerging and Traditional Middle Powers, in: *Politikon* 30/1, 165–181, 2003. Krapohl, Meissner, Katharina, Johannes, Regional Powers as Leaders or Rambos? The Ambivalent Behaviour of Brazil and South Africa in Regional Economic Integration, *Journal of Common Market Studies* 52/4, 879–895, 2014. Nel, Philip, Redistribution and Recognition: What Emerging Regional Powers Want? *Review of International Studies*, 36, 4, 951–974, 2010. Nolte, Detlef, How to Compare Regional Powers: Analytical Concepts and Research Topics, *Review of International Studies* 36, 4, 881–901, 2010.

(94) Though sometimes described as a “parliament of nations”, the United Nations is neither a supra-State nor a government of governments. It does not have an army nor does it impose taxes. It depends on the political will of its Members to have its decisions implemented and relies on contributions of its Members to carry out its activities. See Fact Sheet: This is the United Nations, The Six Main Organs, Public Inquiries, UN Visitor Centre United Nations Headquarters, https://visit.un.org/sites/visit.un.org/files/FS_This_is_the_UN_2017.pdf

(95) The creators of the UN Charter conceived that they would continue to play important roles in the maintenance of international peace and security.

(96) UN Charter art. 24, para. 4, opened for signature June 26, 1945 (entered into force October 24, 1945). (“In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”)

(97) In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

(98) See Sir Michael Wood, The UN Security Council and International Law: The Legal Framework of the Security Council, Hersch Lauterpacht Memorial Lectures, 1, 7, available at http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/lectures/2006_hersch_lecture_1.pdf

(99) UN Charter, supra note 96, art. 39.

(100) Id. art. 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”).

In this latter sense, it enjoys powers not conferred upon any other organ of the global organization or indeed any other international organ.⁽¹⁰¹⁾ The Security Council's wide range of powers is prescribed in Chapters VI, VII, VIII, and XII of the Charter.⁽¹⁰²⁾

The key —though not the only— powers of the Security Council are those powers relating to the establishment and maintenance of international peace and security. In article 39, the first provision in Chapter VII,⁽¹⁰³⁾ lays down two essential functions that define the scope of the Council's powers that fall within the ambit of maintaining or restoring international peace and security. First is the Council's power to determine the existence of any threat to the peace, breach of the peace, or act of aggression.⁽¹⁰⁴⁾ Second—which follows the making of such determination—is the Council's power to make recommendations, or decide what measures shall be taken to maintain or restore international peace and security,⁽¹⁰⁵⁾ including but not limited to,⁽¹⁰⁶⁾ the use of armed force.⁽¹⁰⁷⁾

In acting under Chapter VII of the Charter, the Security Council may take a broad range of measures.⁽¹⁰⁸⁾ These measures, intended to bind all Member States, vary from the establishment of international criminal tribunals, to the seemingly abstract and general measures for combating international terrorism. For instance, in 1991, the Security

(101) See Wood, Michael, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. UNITED NATIONS L. 73, 77 (1998).

(102) In fact, the Security Council is supreme in the hierarchy of international organizations. No other institution can overrule its determinations and there is no judicial review for the mandatory decisions it takes under Chapter Seven. See para 9 of Millennium Declaration, The Declaration was adopted on 18 September 2000 by the General Assembly as Resolution 55/2 (UN – doc: A/RES/55/2), at the Fifty-fifth session, under Agenda item 60 (b).

(103) The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

(104) UN Charter, *supra* note 28, art. 39.

(105) UN Charter, *supra* note 28, art. 39.

(106) *Id.* art. 41.

(107) *Id.* art. 42.

(108) This process has been generally accepted as it concerns the first main purpose of the United Nations, according to Article 1 (1) of its Charter: —to maintain international peace and security.

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Council created a UN Compensation Commission,⁽¹⁰⁹⁾ which is responsible for processing claims and paying compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait.⁽¹¹⁰⁾

The Security Council previously reminded Iraq of its liability under international law for any loss, damage, or injury arising from its invasion.⁽¹¹¹⁾ It also relied upon this rather broad liability principle as the basis for establishing the Compensation Commission.⁽¹¹²⁾

Likewise, the Council imposed disarmament obligations on Iraq,⁽¹¹³⁾ and determined or "guaranteed" an international boundary between Iraq and Kuwait.⁽¹¹⁴⁾

On other occasions, the Council declared the applicability of the Fourth Geneva Convention to the occupied Palestinian territories.⁽¹¹⁵⁾ It established two ad hoc war crimes tribunals for the former Yugoslavia,⁽¹¹⁶⁾ and Rwanda.⁽¹¹⁷⁾

Under resolution 1373, the Security Council adopted a range of abstract measures for all States to combat international terrorism and prevent and suppress the financing of terrorism.⁽¹¹⁸⁾ Also adopted were a range of general obligations on states to keep weapons of mass destruction and their means of delivery out of the hands of non-state actors by resolution 1540.⁽¹¹⁹⁾

Accordingly, other scholarly literature discusses the notion of legislative acts by the Security Council before the adoption of these latter

(109) S.C. Res. 692, U.N. Doc. S/RES/692 (May 2, 1991).

(110) See, e.g., S.C. Res. 855, 1, U.N. Doc. S/RES/855 (Aug. 9, 1993).

(111) See, e.g., S.C. Res. 746, 9, U.N. Doc. S/RES/746 (Mar. 17, 1992).

(112) See, e.g., S.C. Res. 855, *supra* note 110.

(113) See, e.g., S.C. Res. 687, U.N. Doc. S/RES/687 (Apr. 8, 1991).

(114) See *id.* See also S.C. Res. 773, U.N. Doc. S/RES/773 (Aug. 16, 1992); S.C. Res. 806, U.N. Doc. S/RES/806 (Feb. 5, 1993).

(115) See, e.g., S.C. Res. 681, U.N. Doc. S/RES/681 (Dec. 20, 1990); S.C. Res. 799, U.N. Doc. S/RES/799 (Dec. 18, 1992); S.C. Res. 904, U.N. Doc. S/RES/904 (Mar. 18, 1994).

(116) S.C. Res. 827, U.N. Doc. S/RES/827 (Sept. 25, 1993).

(117) S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994).

(118) S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

(119) S.C. Res. 1540, U.N. Doc. S/RES/1540 (Apr. 28, 2004).

resolutions i.e., resolutions 1373 and 1540⁽¹²⁰⁾ to describe the various acts of the Security Council,⁽¹²¹⁾ states used the term “legislator” for the first time after the adoption of resolutions 1373,⁽¹²²⁾ and resolution 1540.⁽¹²³⁾

Resolution 1373 is of importance since it gave the Security Council the power to act as international legislator to combat terrorism in the world, and it aimed to hinder terrorist groups in various ways. It recalled

(120) However, in the years since its adoption, Resolution 1540 has been more widely seen as an appropriate multilateral tool to help prevent the acquisition of WMD by non-state actors, and to facilitate the exchange of information and assistance among states. Alshdaifat, Shadi, Silverburg, Sanford, *The Second Decade of Evolution in the International Law and Weapons of Mass Destruction: UN Security Resolution 1540 at a Glance*, *British Journal of Humanities and Social Sciences* 32, vol. 16 (2) (2017).

(121) In this regard See also Keith Harper, *Does the United Nations Security Council Have the Competence to Act as a Court and Legislature?*, 27 *N.Y.U. J. INT'L L. & POL.* 103 (1994). Laura Lopez, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts*, 69 *N.Y.U. L. REV.* 916, 954 (1994). Frederic L. Kirgis Jr., *The Security Council's First Fifty Years*, 89 *AM. J. INT'L L.* 506, 520-22 (1995). Martti Koskenniemi, *The Police in the Temple: Order, Justice and the UN: A Dialectical View*, 6 *EUR. J. INT'L L.* 325, 326 (1995).

(122) The Charter does not establish the Council as an omnipotent world legislator but, rather, as a single-issue legislator. This restriction is confirmed by the fact that the Charter allocates to the General Assembly the task of making recommendations for the purpose of progressively developing and codifying international law, See, e.g., Delbrück, Jost, *Transnational Federalism: Problems and Prospects of Allocating Public Authority Beyond the State*, 11 *IND. J. GLOBAL LEGAL STUD.* 31, 37 (2004). Keith Harper, *Does the United Nations Security Council Have the Competence to Act as a Court and Legislature?* 27 *N.Y.U. J. INT'L L. & POL.* 103, 126–29 (1994). Frederic L. Kirgis Jr., *The Security Council's First Fifty Years*, 89 *AJIL* 506, 520, 522 (1995). Koskenniemi, Martti, *The Police in the Temple: Order, Justice and the UN: A Dialectical View*, 6 *EUR. J. INT'L L.* 325, 326 (1995). Laura Lopez, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts*, 69 *N.Y.U. L. REV.* 916, 954 (1994). See also Paul C. Szasz, *Remarks*, in *The UN Decade on International Law: Progress and Promises*, 89 *ASILPROC*, 172, 183 (1995).

(123) See, e.g., U.N. Doc. S/PV. 4950, at 9-10 (Apr. 22, 2004). The document explains that the representative of Angola to the UN declared in the Council debate that “[b]y adopting resolution 1373 (2001), the Security Council took the unprecedented step of bringing into force legislation binding on all States on the issue of combating terrorism”. Also, S.C. Res. 1540 explains that the representative of Algeria declared in the same Council debate, in connection with resolution 1540: “In the absence of binding international standards, and because of the seriousness and the urgent nature of the threat, the response to it needs to be articulated and formulated by the Security Council. It is understood that, in shouldering this responsibility, the Security Council is acting in an exceptional manner, since, clearly, the Charter does not give it a mandate to legislate on behalf of the international community, but simply gives it the principal responsibility for the maintenance of international peace and security”.

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provisions from resolutions 1189 (1998), 1269 (1999) and 1368 (2001) concerning terrorism. The UN member states were encouraged to share their intelligence on terrorist groups in order to assist in combating international terrorism. The resolution also calls on all states to adjust their national laws so that they can ratify all of the existing international conventions on terrorism. It stated that all States “should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served.”

The resolution established the Security Council’s Counter Terrorism Committee [CTC] to monitor state compliance with its provisions. It also aimed at restricting immigration law, stating that “before granting refugee status, all States should take appropriate measures to ensure that the asylum seekers had not planned facilitated or participated in terrorist acts. Further, States should ensure that refugee status was not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation were not recognized as grounds for refusing requests for the extradition of alleged terrorists.”⁽¹²⁴⁾

However, the resolution failed to define ‘Terrorism’, and the working group initially only added Al-Qaeda and the Taliban regime of Afghanistan on the sanctions list. This also entailed the possibility that authoritarian regimes could label even non-violent activities as terrorist acts, thus infringing upon basic human rights.

7.The Security Council as a Global Government

The rule of international law has been thus the cornerstone in the international community; however, the Security Council has played a central role on expansion and supporting international law. It is generally acknowledged that the Security Council’s powers are subject to the UN Charter and norms of jus cogens.⁽¹²⁵⁾

(124) For further reading in this regard see Talmond, Stefan, ‘The Security Council as World Legislator’ 99 *American Journal of International Law* p. 175 (2005), and Reilly, Alexander, Appleby, Gabrielle, Grenfell, Laura, *Australian Public Law*, Oxford University Press, p. 222 (2011).

(125) The rules of jus cogens (also known as peremptory norm) are derived from the customary international law. The concept of jus cogens was said to be popularized by Verdross. He defined it as the ‘ethical minimum recognized by all the states of the international community’. =

As Alain Pellet has noted, the Security Council ‘has an absolute obligation to respect jus cogens’. In mining the same vein, Bardo Fassbender has written that ‘obligations of States arising from decisions of the Security Council only lawfully arise “under the present Charter” (Article 103) if those decisions are in accordance with the constitutional law of the international community, including the peremptory norms.

Acting as Ad Hoc Judge in the Genocide case, brought by Bosnia and Herzegovina against Yugoslavia, Elihu Lauterpacht declared with reference to genocide and its relation to Article 103 of the Charter: The concept of jus cogens operates as a concept superior to both customary international law and treaty. The relief which Article 103 of the Charter may give the Security Council in case of a conflict between one of its decisions and an operative treaty obligation cannot – as a matter simply of hierarchy of 8 norms – extend to a conflict between a Security Council resolution and jus cogens.

Indeed, one only has to state the opposite proposition thus – that a Security Council resolution may even require participation in genocide – for its unacceptability to be apparent.⁽¹²⁶⁾

The Charter established the Council as an organ to deter instability, to police breaches of the peace, and to act swiftly to achieve these ends. These virtues of the Security Council as a police officer are precisely its vices as a legislator.⁽¹²⁷⁾ As the Security Council is not a representative body, any “legislative” resolution should be adopted only after a process

≡ Nonetheless, the controversy as to the existence of jus cogens has subsided and now the conclusion is shared that the concept exists, but that it is not clear which norms belong to jus cogens. Combacau, J., *Sur, S.*, *Droit international public*, Montchrestien, LGDJ, p. 156-160 (2004). Verhoeven, J., *Droit international public*, Brussels, Larcier, p. 338-340 (2000). Brownlie, I., *Principles of Public International Law*, Oxford, Oxford University Press, p. 490 (2003). Meron, T., *Human Rights in Internal Strife, Their International Protection*, Cambridge, Grotius Publications, p. 137 (1987). Kirchner, S., “Relative Normativity and the Constitutional Dimension of International Law: A Place for Values in the International Legal System?”, *German Law Journal*, p.51(2004).

(126) Allain, Jean, *The jus cogens Nature of non-refoulement*, *International Journal of Refugee Law*, Volume 13, Issue 4, p. 540 (2001).

(127) On the police function of the Security Council, see Frowein, Jochen, Krisch, Nico, *Introduction to Chapter VII*, in 1 *The Charter of The United Nations: A Commentary* 701, 705–06, paras. 12–14, Bruno Simma ed., 2d ed. 325–48 (2002).

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that seeks to address the legitimate concerns of the wider membership of the United Nations.⁽¹²⁸⁾ Any such resolution should, moreover, be acknowledged by the Security Council as an exception to the normal law-making process.⁽¹²⁹⁾

In spite of this, the Security Council's powers have expanded; it is arguable that it has also taken on judicial functions. Among other issues, the Council has established international tribunals with criminal jurisdiction over individuals, created exceptions to the jurisdiction of the International Criminal Court,⁽¹³⁰⁾ ruled on border disputes between Iraq and Kuwait and established a compensation commission to award damages suffered due Iraq's invasion, and set up an international criminal investigation commission.⁽¹³¹⁾

This increasing scope of its powers raises a number of questions: of competence, of applicable safeguards, and of the Security Council's relationship to other organs.

The lack of separation of powers in the UN Charter⁽¹³²⁾ is compounded by the fact that each UN organ determines the scope of its own competence under the Charter.⁽¹³³⁾ This lack of separation of powers

(128) Talmon, *supra* note 16, at 175.

(129) Chesterman, Simon, *The UN Security Council and the Rule of Law*, United Nations General Assembly Security Council, Doc. A/63/69-S/2008/270, 2008; NYU School of Law, Public Law Research Paper No. 08-57 (2008).

(130) For further reading in this regard, see Slaughter, A., 'Not the Court of First Resort', *Washington Post*, 21 December 2003. See further Burke-White, William, 'Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice', *Harvard International Law Journal*, 49(1) 53, 2008. Cassese, Antonio, *International Criminal Law*, Oxford University Press, p. 351 (2003).

(131) De Greiff, P., 'Justice and Reparation', in P. de Greiff (ed.), *The Handbook of Reparations*, New York, Oxford University Press, p. 454(2006). See Caron, David, *The United Nations Compensation Commission for Claims Arising out of the 1991 Gulf War: The "Arising Prior To Decision,"* 14 *FLA. ST. J. TRANSNAT'L L. & POL'Y* 309, 310-16 (2005).

(132) The Charter was drafted in 1945 in the aftermath of World War II, in a conference that had the participation of 50 states but was led by the five countries that are now permanent members of the Security Council. Unsurprisingly for a treaty from that period, the foundation of the Charter was formed with a narrowly conceived theme of peace and security. See Chesterman, S., Franck, T.M., and Malone, D.M., *Law and Practice of the United Nations: Documents and Commentary*, Oxford University Press, p. 20 (2008).

(133) Chesterman, Simon, Lehnardt, Chia, *The Security Council as World Judge? Panel 3_report.doc*, p. 4 (2006).

amounts to a failing government.

Simply put, when you have an imperfect world, one cannot imagine perfect global government, thus, reformation can be done and therefore a realistic plan can help to modify the classical rooted UN Charter.

Admittedly, some international law scholars have consistently maintained that when it comes to issues of peace and security, the Security Council is not bound by international law.⁽¹³⁴⁾ However, a government needs a constitution to build on, and the failing of international law –constitutionally– leads to the failing of the creation of the so-called global government.

This position is founded on the view that nothing in the Charter explicitly binds the Security Council to meet any general requirements of international law and that in the maintenance of international peace and security, the Security Council is particularly free to act.⁽¹³⁵⁾ Some interpret Article 24(2) as a requirement that the Security Council conform only with the Charter, not general international law.⁽¹³⁶⁾

Others cite a statement of the Secretary-General, repeated in the International Court of Justice (ICJ) Advisory Opinion on Namibia: '[T]he Members of the United Nations have conferred upon the Security Council powers commensurate with its responsibility for the maintenance of peace and security. The only limitations are the fundamental principles and purposes found in Chapter I of the Charter'.⁽¹³⁷⁾

Moreover, members of the Security Council have never rejected the claim that general international law applies to their conduct. Rather they appear to have rejected the Namibia Court's statement that they

(134) Adapted from M.E. O'Connell, 'Debating the Law of Sanctions', 13 *European Journal of International Law* 63, pp. 13-15 (2002).

(135) O'Connell, Mary Ellen, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement*, New York; Oxford: Oxford University Press, p. 212 (2008).

(136) Blokker, N., Schrijver, N., *The Security Council and the use of force: Theory and reality--a need for change?* Leiden: Martinus Nijhoff Publishers, p. 211 (2005).

(137) *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 ICJ Rep. 16, 52 (21 June).

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need not observe international law.⁽¹³⁸⁾

Judge ad hoc Sir Elihu Lauterpacht in the Bosnia case made the compelling argument which satisfies most of us on the question whether principles of general international law apply to the Security Council: '[O]ne only has to state the proposition thus—that a Security Council Resolution may even require participation in genocide—for its unacceptability to be apparent'.⁽¹³⁹⁾

Judge Weeramantry expressed a similar view in the Lockerbie case: 'The history of the United Nations Charter corroborates the view that a clear limitation on the plenitude of the Security Council's powers is that those powers must be exercised in accordance with well-established principles of international law'.⁽¹⁴⁰⁾

The Reparations case also emphasizes that the UN has both rights as well as responsibilities beyond the specific provisions of the Charter. It stated that rights and responsibilities would evolve with time, influenced by the UN's 'purposes and functions as specified or implied in its constituent documents and developed in practice'.⁽¹⁴¹⁾

Perhaps more significantly, in the area of use of force, the United Nations has committed itself to respect for customary principles of international humanitarian law. However, this law is not specifically cited in the Charter.⁽¹⁴²⁾

Even before the explicit acknowledgement, Dietrich Schindler never doubted that customary humanitarian law applied to the UN.⁽¹⁴³⁾ Judith

(138) Malanczuk, P., *Akehurst's Modern Introduction to International Law*, pp. 328-29 (1997).

(139) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, 1993 ICJ Rep. 325, 440 (13 Sept.) (Separate opinion of Judge Lauterpacht).

(140) *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK; Libya v. U.S.)*, Provisional Measures, 1992 ICJ Rep. 114, 175 (14 Apr.) (Judge Weeramantry dissenting).

(141) *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 ICJ Rep. 174, 180 (11 Apr.).

(142) Shraga, D., 'UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage', 94 *American Journal of International Law* 406 (2002).

(143) Schindler, D., Toman, J., *The Laws of Armed Conflicts: A Collection of Conventions, Resolu-*

Gardam, too, argued before the acknowledgement that the Security Council must respect the customary principles of international humanitarian law, such as necessity and proportionality, both in the decision to authorize force and in the way force is used when authorized.⁽¹⁴⁴⁾

For Gardam, the inclusion in Article 24 of the Security Council's need to observe international national law, mentioned in Chapter I of the Charter, could only be interpreted as mandating Council commitment to humanitarian law.⁽¹⁴⁵⁾

In authorizing the use of force, the Council is bound by the Charter and rules of customary international law. In particular, it is bound by the principles of necessity and proportionality.⁽¹⁴⁶⁾ Necessity means that the Council may only authorize force if it is probable that the use of military force can accomplish a reasonable military objective.⁽¹⁴⁷⁾

Proportionality prohibits that 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to concrete and direct military advantage anticipated'.⁽¹⁴⁸⁾

= tions and Other Documents, 3rd ed, Dordrecht, Martinus Nijhoff Publishers, Geneva, Henry Dunant Institute, p. 207-217 (1988).

(144) Gardam, J., 'Legal Restraints on Security Council Military Enforcement Action', 17 Michigan Journal of International Law 285, 318 (1996).

(145) O'Connell, Mary Ellen, The Security Council and the Use of Force, Theory and Reality - A Need for Change?, Niels Blokker and Nico Schrijver, eds., Martinus Nijhoff, p. 58 (2005).

(146) O'Connell, supra note 145, at 58.

(147) Reisman, W.M., Stevick, D.L., 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 European Journal of International Law 86, 117-24 (1998).

(148) Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 12 Dec. 1977, art. 51 (5), 1125 UNTS 3 (entered into force 7 Dec. 1978). According to Gardam: "The legitimate resort to force under the United Nations system is regarded by most commentators as restricted to the use of force in self-defense under Article 51 and collective security action under chapter VII of the UN Charter. The resort to force in both these situations is limited by the customary law requirement that it be proportionate to the unlawful aggression that gave rise to the right. In the law of armed conflict, the notion of proportionality is based on the fundamental principle that belligerents do not enjoy an unlimited choice of means to inflict damage on the enemy." Gardam, supra note 144, at 391.

Final Reflections

One of the points that I have observed in this paper is that the Security Council is taking a genuine and significant role on its part for maintenance of international peace and security. According to critics, although the Security Council is progressing, it is not an independent body in itself. In reality, it is operated by various members' nations, which usually look after their interest first.

Even the critics come to point out that there is no provision of legislation body in the UN Charter. What I envisage in the future that there will be more criticisms against the Security Council but still we can observe that Security Council is working for the general welfare of the masses. It has been 73 years since that dream took re-birth, yet conflict remains, and I ask for serious consideration of reformation by the veto holders and propose a new decision-making methodology.

It may be helpful, therefore, to distinguish between the “political” interest of the Security Council veto holders and their actual functions in the Council. In the latter situation, having and giving reasons for decisions—including, as appropriate, input from states and other actors not on the Council prior to decisions and responding to challenges after them— would be a useful first step.

The Council should limit itself to using its extraordinary resolutions for extraordinary purposes. The exercise of such powers should be limited in time and allow for representations by affected states (such as under Articles 31 and 32 of the UN Charter) and, where possible, individuals.

In general sense, the questions remain: Where is the Security Council going wrong in its road? What is the hidden system of the Council? And what can we collectively do to make it as powerful and efficient as it was supposed to be? These are questions that need pondering, that need more debates.

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