The UN Security Council and International Law

The UN Security Council and International Law explores the legal powers, limits, and potential of the United Nations Security Council, offering a broadly positive (and positivist) account of the Council’s work in practice. This book aims to answer questions such as when are Council decisions binding and on whom, what legal constraints exist on Council decision-making, and how far is the Council bound by international law? Defining the controlling legal rules and differentiating between what the Council can do, as opposed to what it should do as a matter of policy, this book offers both a tool for assessment of the Council as well as realistic solutions to address its deficiencies, and, most importantly, evaluates its potential for maintaining international peace and security, to the benefit of us all.

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The UN Security Council and International Law

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Preface

This book is an updated and expanded version of the Hersch Lauterpacht Memorial Lectures on *The UN Security Council and International Law* given by Michael Wood at the University of Cambridge’s Lauterpacht Centre for International Law, 7–9 November 2006.

The text of the three lectures remains available on the Centre’s website, and so it is possible to see what has remained constant and what has changed over the last fifteen years. While inevitably there have been many developments over a busy (if not entirely positive) decade and a half of Security Council activity (including some important court pronouncements), the main points made in the lectures remain largely valid. At the same time, Michael is greatly indebted to his co-author for agreeing to join in this publication and for contributing much up-to-date information and introducing some new thinking.

The lectures drew on Michael’s experience of Security Council matters while working at the United Kingdom Mission in New York between 1991 and 1994, as well as following the Council closely while in the Foreign and Commonwealth Office between 1994 and 2006. The lectures are rooted in practice, with even, dare one say, a bit of common sense. The many additions and updates have been made together with Eran Sthoezer, who brought a fresh view from his time working for Security Council Report between 2010 and 2020 and thereafter teaching United Nations law. Both authors benefited greatly from their association with the excellent volume *The Procedure of the UN Security Council* by Loraine Sievers and Sam Daws (currently in its 4th edition; Oxford University Press, 2014), with its associated website.

This is a book about the law, not policy. The focus is on what the Security Council can and cannot do as well as its practice over time, not what it should or ought to do with its powers and authority. Unless there are obvious legal issues, we have tried to avoid (except briefly in the
Preface

conclusions) policy debates such as the eternal questions of Security Council reform, whether concerning the veto or the composition of the Council.

We have sought to retain a style appropriate to lectures: brevity, clarity, and a certain lightness of touch. The text does not aim to be comprehensive or learned; it does not include extensive theoretical digressions or lengthy footnotes.

The authors wish to thank all those working at Cambridge University Press for their assistance with this project. A particular word of thanks is due to Finola O’Sullivan for her great publishing skills, good humour, and patience.
Note on Writings

Writings on the law and practice of the Security Council are extensive. The following are among those that we have found most useful, not least because they reflect actual practice. Further references may be found in the works mentioned here, and in relation to specific points in the chapters that follow.

Sam Daws and Loraine Sievers, *The Procedure of the UN Security Council* (4th ed., Oxford University Press, 2014) is an invaluable resource focusing specifically on procedural aspects. It is the fourth edition of the ground-breaking work by Sydney D. Bailey, first published in 1975. Updates are published online as and when there are significant developments; see www.scprocedure.org/.

The New York-based non-governmental organization Security Council Report has a very useful website, with up-to-date information and analysis on all aspects of the work of the Security Council and links to the principal UN documents; see www.securitycouncilreport.org/.

Monographs and commentaries on the United Nations and the UN Charter, while not all are up-to-date, are usually a good starting point for anyone seeking to investigate a particular area of the law and practice of the United Nations. Sometimes the earlier editions still give important insights, especially where the authors have changed. The following come to mind:


Note on Writings


Also useful are general works on the law of international organizations, such as:


Among studies focusing on the Security Council, we would mention:


Two useful collections of essays on various aspects of the Security Council are:


For the negotiating history of the Charter, a particularly valuable work is:


Finally, the *Max Planck Encyclopedia of Public International Law* and the *Max Planck Encyclopedia of International Procedural Law* contain many entries on aspects of the Security Council and its work; it is available at https://opil.ouplaw.com/home/mpil; see also Peters and Wolfrum in the Bibliography.
Note on Documentation and References

Resolutions and presidential statements adopted by the Security Council are referred to by their official document number, followed by the date adopted. For example, Security Council resolution 1373, adopted by the Security Council at its 4385th meeting, is referred to as S/RES/1373, 28 September 2001. Other Security Council documents, such as meeting records and reports of the Secretary-General to the Security Council, are referred to in the same fashion. For example, the provisional verbatim record of the Security Council's 7354th meeting is referred to as S/PV.7354, 30 December 2014. General Assembly and other UN organs' documents are similarly referenced. The context indicates which organ is referred to.

Shortened references are given in the footnotes to books and articles listed in the Bibliography. Where the same author or authors have more than one entry with the same year, a, b, etc. has been added to indicate the relevant publication. Shortened references are also given to the case law referred to, whereas the full official citations are listed in the Table of Cases.
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LaGrand (Germany v. United States of America), Judgment, ICJ Reports 2001, p. 466
Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, ICJ Reports 2004, p. 12
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136
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Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403
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Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Judgment, Jurisdiction of the Court, December 18, 2020

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Hassan *v.* Council of the European Union and Commission of the European Communities, Case T-49/04, Judgment of the Court of First Instance (Second Chamber), 12 July 2006


### Human Rights Committee


### Canada

Abousfian Abdelrazik *v.* The Minister of Foreign Affairs and the Attorney General of Canada [2010] 1 FCR 267

### The Netherlands

Slobodan Milošević *v.* The Netherlands, 41 ILM (2002) 86–90 (31 August 2001)

### United Kingdom of Great Britain and Northern Ireland

R (Al-Jedda) *v.* Secretary of State for Defence [2006] EWCA Civ 327


### United States of America

Medellín *v.* Texas, 552 US 491 (2008)

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Abbreviations

AFDI  Annuaire français de droit international
AFISMA African-led International Support Mission in Mali
AHRLJ African Human Rights Law Journal
AJCR African Journal on Conflict Resolution
AJIL American Journal of International Law
AMIS AU Mission in Sudan
AMISOM African Union Mission to Somalia
Am U L Rev American University Law Review
ASEAN Association of Southeast Asian Nations
ASIL American Society of International Law
AU African Union
BYIL British Yearbook of International Law
CAR Central African Republic
CJEU Court of Justice of the European Union
DPRK Democratic People’s Republic of Korea
DRC Democratic Republic of the Congo
ECHR (European) Convention for the Protection of Human Rights and Fundamental Freedoms
ECOWAS Economic Community of West African States
ECtHR European Court of Human Rights
EJIL European Journal of International Law
EU European Union
FCO UK Foreign and Commonwealth Office
FRY Federal Republic of Yugoslavia
G8 Group of Eight
IAEA International Atomic Energy Agency
ICC International Criminal Court
ICCPR International Covenant on Civil and Political Rights
ICJ International Court of Justice
List of Abbreviations

ICTR International Criminal Tribunal for Rwanda
ICTY International Criminal Tribunal for the former Yugoslavia
IFOR International Peacekeeping Force
ILA International Law Association
ILC United Nations International Law Commission
ISAF International Security Assistance Force
ISIL Islamic State of Iraq and the Levant
JUFIL Journal on the Use of Force and International Law
MAPROBU African Prevention and Protection Mission in Burundi
MINUSCA Multidimensional Integrated Stabilization Mission in the Central African Republic
MISCA African-led International Support Mission in Central Africa
MN Marginal Note
MNF Multi-National Force – Iraq
MONUC UN Organization Mission in Democratic Republic of the Congo (forerunner of MONUSCO)
MONUSCO UN Organization Stabilization Mission in the DR Congo (the acronym comes from its French name, Mission de l’organisation des nations unies pour la stabilisation en république démocratique du congo)
MPEPIL Max Planck Encyclopedia of Public International Law
MPUNYB Max Planck Yearbook of United Nations Law
NAM Non-Aligned Movement
NATO North Atlantic Treaty Organization
NILR Netherlands International Law Review
NPT Treaty on the Non-Proliferation of Nuclear Weapons (1968)
OAS Organization of American States
OAU Organisation of African Unity
OIC Organisation of Islamic Cooperation (formerly Organization of the Islamic Conference)
OPCW Organisation for the Prohibition of Chemical Weapons
PCA Permanent Court of Arbitration
PCIJ Permanent Court of International Justice
PSC Peace and Security Council
RBDI Revue Belge de Droit International
RHDI Revue Hellénique de Droit International
SMU Law Rev Southern Methodist University Law Review
UN United Nations
UNAMID UN–AU Mission in Darfur

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<td>UNAMSIL</td>
<td>United Nations Mission in Sierra Leone</td>
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<tr>
<td>UNASOG</td>
<td>United Nations Aouzou Strip Observer Group</td>
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<tr>
<td>UNCC</td>
<td>United Nations Compensation Commission</td>
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<td>UNIIIC</td>
<td>United Nations International Independent Investigation Commission</td>
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<td>UNPROFOR</td>
<td>United Nations Protection Force</td>
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<td>UNTS</td>
<td>United Nations Treaty Series</td>
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<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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<td>WEU</td>
<td>Western European Union</td>
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<tr>
<td>ZaöRV</td>
<td>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</td>
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