

## 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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## *Contents*

<i>Preface</i>	<i>page</i> ix
<i>Note on Writings</i>	xi
<i>Note on Documentation and References</i>	xiii
<i>Table of Cases</i>	xiv
<i>List of Abbreviations</i>	xviii
<b>Introduction</b>	1
<b>1 The Legal Nature of the Security Council</b>	5
1.1 Applicable Law	5
1.2 The Legal Nature of the Security Council	8
1.2.1 A UN Organ, without Separate Legal Personality	8
1.2.2 A Political Organ, an Executive Organ, a Legislature, a Judicial Body?	10
1.2.2.1 A Political Organ?	10
1.2.2.2 An Executive Organ?	11
1.2.2.3 A Legislature?	11
1.2.2.4 A Judicial Body?	14
1.3 Priority of Charter Obligations (Article 103)	18
<b>2 Decisions of the Security Council</b>	28
2.1 Certain Legal Questions Concerning Voting in the Security Council	28
2.1.1 Procedural Matters / All Other Matters	29
2.1.2 When Must a Party to a Dispute Abstain from Voting?	29

## Contents

2.1.3 Other Legal Constraints on the Use of the Veto?	30
2.2 When Are Council Decisions Legally Binding?	31
2.3 Who Is Bound by Security Council Decisions?	44
2.3.1 UN Member States and Non-Member States	44
2.3.2 International Organizations	47
2.3.3 The International Criminal Court	50
2.3.4 Non-State Actors	52
2.4 May Binding Decisions Be Included in Presidential Statements?	54
<b>3 The Powers of the Security Council</b>	<b>59</b>
3.1 General Considerations	59
3.2 The Powers of the Security Council	61
3.3 Determining the Existence of a Threat to the Peace, Breach of the Peace, or Act of Aggression	63
3.4 The Justiciability of Council Determinations under Article 39	68
<b>4 Limits on the Powers of the Security Council</b>	<b>70</b>
4.1 General Considerations	70
4.2 ‘in accordance with the present Charter’	71
4.3 ‘in accordance with the Purposes and Principles of the United Nations’	72
4.3.1 ‘in conformity with the principles of justice and international law’	74
4.3.2 Domestic Jurisdiction	74
4.3.3 Self-Determination	75
4.3.4 Human Rights	75
4.3.5 Good Faith and Abuse of Rights	77
4.4 Limits Inherent in <i>Jus Cogens</i> Norms	78
4.5 Checks and Balances on the Council	84
<b>5 The Security Council and Measures Not Involving the Use of Force</b>	<b>90</b>
5.1 Article 40: Provisional Measures	91
5.1.1 Are Provisional Measures under Article 40 Binding?	91

## Contents

5.1.2	Is a Determination under Article 39 a Necessary Prerequisite for Provisional Measures under Article 40?	94
5.1.3	The Temporary Nature of Measures under Article 40	96
5.1.4	The Timing of Measures under Article 40	98
5.2	Article 41: Sanctions and Other Measures Not Involving the Use of Armed Force	98
5.2.1	The Legal Framework	98
5.2.2	Measures Not Involving the Use of Armed Force Adopted by the Council	100
5.2.3	What Are the Limits of Article 41?	108
<b>6</b>	<b>The Security Council and the Use of Force</b>	<b>116</b>
6.1	The Current State of International Law on the Use of Force	116
6.2	The Rules of International Law on the Use of Force	119
6.3	The Security Council and the Use of Force	120
6.3.1	Prohibition of the Use of Force	121
6.3.2	Use of Force by or Authorized by the Council	122
6.3.3	Self-Defence	126
6.3.4	'Humanitarian Intervention' / 'Responsibility to Protect'	131
<b>7</b>	<b>The Security Council, International Organizations, and the Use of Force</b>	<b>136</b>
7.1	Legal Framework	136
7.2	Chapter VIII in Practice	139
7.3	The Need for Prior Security Council Authorization for Use of Force	143
7.4	Consent by Prior Treaty to Use of Force by Regional Organizations	146
<b>8</b>	<b>The Security Council and the International Court of Justice</b>	<b>158</b>
8.1	Drafting History	159
8.2	The Security Council and the ICJ: Practice and Potential	161
8.2.1	Council Referral to the ICJ	161
8.2.2	Requests for Advisory Opinions from the ICJ	165

Contents

8.2.3	Enforcement of ICJ Judgments	168
8.2.4	Election of ICJ Judges	172
8.2.5	The Council and the ICJ: Competing Competences	173
8.2.6	Review of Council Decisions	175
8.2.7	Interpretation of Council Resolutions	176
8.2.8	Provisional Measures	177
8.2.9	Meetings between the Council and the Court	179
<b>9</b>	<b>The Contribution of the Security Council to the Development of International Law</b>	<b>181</b>
9.1	Development of International Law by the Security Council: Four Distinct Processes	183
9.1.1	The Council ‘Lays Down the Law’	183
9.1.2	The Council Interprets and Develops the Law of the Charter	184
9.1.3	The Council Determines Rules of International Law	184
9.1.4	The Council Stimulates Legal Developments	187
9.2	The Security Council and the Sources of International Law	187
9.2.1	Treaties	188
9.2.2	Customary International Law	192
	<b>Conclusion</b>	<b>195</b>
	<i>Bibliography</i>	201
	<i>Index</i>	214



## *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 Sthoeger, 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/](http://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/](http://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:

Leland Goodrich, Edvard Hambro, and Anne Patricia Simons, *The Charter of the United Nations: Commentary and Documents* (3rd ed., Columbia University Press, 1969).

Jean-Pierre Cot, Alain Pellet, and Mathias Forteau, *La Charte des Nations Unies: Commentaire article par article* (3rd ed., Economica, 2005).

### Note on Writings

Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds.), *The Charter of the United Nations: A Commentary* (3rd ed., Oxford University Press, 2012).

Simon Chesterman, Ian Johnstone, and David M. Malone, *Law and Practice of the United Nations* (2nd ed., Oxford University Press, 2016).

Rosalyn Higgins, Philippa Webb, Dapo Akande, Sandesh Sivakumaran, and James Sloan, *Oppenheim's International Law: United Nations* (Oxford University Press, 2017).

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

Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions* (6th ed., Sweet and Maxwell, 2009).

Henry Schermers and Niels Blokker, *International Institutional Law* (6th rev. ed., Brill, 2018).

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

Michael J. Matherson, *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War* (United States Institute of Peace, 2006).

Edward J. Luck, *UN Security Council: Practice and Promise* (Routledge, 2006).

Niels Blokker, *Saving Succeeding Generations from the Scourge of War: The United Nations Security Council at 75* (Brill/Nijhoff, 2020).

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

David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Lynne Rienner, 2004).

Sebastian von Einsiedel, David M. Malone, and Bruno Stagno Ugarte (eds.), *The UN Security Council in the 21st Century* (Lynne Rienner, 2016).

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

Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States, 1940–1945* (Brookings Institute Press, 1958).

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/mpi>; 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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### **Permanent Court of International Justice**

The Case of the S.S. 'Lotus', PCIJ, Series A, No. 10 (1927)

### **International Court of Justice**

Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, ICJ Reports 1948, p. 57

Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949, p. 174

Anglo-Iranian Oil Co. Case, Order of July 5th, 1951, ICJ Reports 1951, p. 89

Anglo-Iranian Oil Co. Case (Jurisdiction), Judgment of July 22nd, 1952, ICJ Reports 1952, p. 93

Effect of Awards of Compensation Made by the UN Administrative Tribunal, Advisory Opinion of July 13th, 1954, ICJ Reports 1954, p. 47

Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956, ICJ Reports 1956, p. 23

Case Concerning the Temple of Preah Vihear (Cambodia *v.* Thailand), Merits, Judgment of 15 June 1962, ICJ Reports 1962, p. 6

Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962, ICJ Reports 1962, p. 151

North Sea Continental Shelf, Judgment, ICJ Reports 1969, p. 3

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, p. 16

Aegean Sea Continental Shelf, Judgment, ICJ Reports 1978, p. 3

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- United States Diplomatic and Consular Staff in Tehran (United States of America *v.* Iran), Request for the Indication of Provisional Measures, Order of 15 December 1979, ICJ Reports 1979, p. 6
- Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, ICJ Reports 1980, p. 73
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v.* United States of America), Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, p. 392
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v.* United States of America), Merits, Judgment, ICJ Reports 1986, p. 14
- Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom), Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 3
- Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United States of America), Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 114
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, ICJ Reports 1993, p. 325
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, p. 226
- Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom), Preliminary Objections, Judgment, ICJ Reports 1998, p. 9
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- Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (El Salvador *v.* Honduras), Judgment, ICJ Reports 2003, p. 392
- 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

### Table of Cases

- Armed Activities on the Territory of the Congo (Democratic Republic of the Congo *v.* Uganda), Judgment, ICJ Reports 2005, p. 168
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- Jurisdictional Immunities of the State (Germany *v.* Italy: Greece Intervening), Judgment, ICJ Reports 2012, p. 139
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- Arbitral Award of 3 October 1899 (Guyana *v.* Venezuela), Judgment, Jurisdiction of the Court, December 18, 2020

### International Criminal Tribunal for Rwanda

- Prosecutor *v.* Joseph Kanyabashi, Decision on the Defence Motion on Jurisdiction, Case No. ICTR-96-15-T, 18 June 1997

### International Criminal Tribunal for the former Yugoslavia

- Prosecutor *v.* Dusko Tadić a/k/a 'Dule', Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber Decision of 2 October 1995
- Prosecutor *v.* Tihomir Blaskić, Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeals Chamber Judgement of October 29, 1997
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- Application no. 71412/01, Behrami *v.* France and Application no. 78166/01, Saramati *v.* France, Germany and Norway, Decision of 2 May 2007
- Al-Jedda *v.* the United Kingdom [GC], App. no. 27021/08, 7 July 2011
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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
- Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities*, Case T-315/01, Judgment of 21 September 2005, [2005] ECR II-3649
- Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v. Council and Commission* [2008] ECR I-6351

### **Human Rights Committee**

- Nabil Sayadi and Patricia Vinck v. Belgium*, CCPR/C/94/D/1472/2006 (29 December 2008)

### **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
- R (Al-Jedda) v. Secretary of State for Defence* [2007] UKHL 58, [2008] 1 AC 332

### **United States of America**

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

## *Abbreviations*

<i>AFDI</i>	<i>Annuaire français de droit international</i>
AFISMA	African-led International Support Mission in Mali
<i>AHRLJ</i>	<i>African Human Rights Law Journal</i>
<i>AJCR</i>	<i>African Journal on Conflict Resolution</i>
<i>AJIL</i>	<i>American Journal of International Law</i>
AMIS	AU Mission in Sudan
AMISOM	African Union Mission to Somalia
<i>Am U L Rev</i>	<i>American University Law Review</i>
ASEAN	Association of Southeast Asian Nations
<i>ASIL</i>	<i>American Society of International Law</i>
AU	African Union
<i>BYIL</i>	<i>British Yearbook of International Law</i>
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
<i>EJIL</i>	<i>European Journal of International Law</i>
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
<i>JUFIL</i>	<i>Journal on the Use of Force and International Law</i>
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, <i>Mission de l'organisation des nations unies pour la stabilisation en république démocratique du congo</i> )
<i>MPEPIL</i>	<i>Max Planck Encyclopedia of Public International Law</i>
<i>MPUNYB</i>	<i>Max Planck Yearbook of United Nations Law</i>
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
<i>NILR</i>	<i>Netherlands International Law Review</i>
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
<i>RBDI</i>	<i>Revue Belge de Droit International</i>
<i>RHDI</i>	<i>Revue Hellénique de Droit International</i>
<i>SMU Law Rev</i>	<i>Southern Methodist University Law Review</i>
UN	United Nations
UNAMID	UN–AU Mission in Darfur

## List of Abbreviations

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