

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
Introduction	1
1 The Legal Nature of the Security Council	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
2 Decisions of the Security Council	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
3	The Powers of the Security Council	59
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
4	Limits on the Powers of the Security Council	70
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
5	The Security Council and Measures Not Involving the Use of Force	90
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
6	The Security Council and the Use of Force	116
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
7	The Security Council, International Organizations, and the Use of Force	136
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
8	The Security Council and the International Court of Justice	158
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
9	The Contribution of the Security Council to the Development of International Law	181
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
	Conclusion	195
	<i>Bibliography</i>	201
	<i>Index</i>	214