

**‘THE ROLE OF THE UNITED NATIONS
SECURITY COUNCIL IN ADDRESSING
THE CHALLENGES BROUGHT BY
CLIMATE CHANGE’**

Dorothee Freiin vom Holtz (FRNDOR003)

LL.M. in Public International Law, 2019

Supervisor: Associate Professor Cathleen Helen Powell

University of Cape Town

Word Count: 19478

Research dissertation/ research paper presented for the approval of Senate in fulfillment of part of the requirements for the LLM in approved courses and a minor dissertation/ research paper. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of LLM dissertations/ research papers, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation/ research paper conforms to those regulations.

Signed by candidate

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Table of Content

A. Introduction

B. Chapter 1: How climate change results in a threat to peace and security worldwide

- I. Definition of Climate Change
- II. At what point do the effects of climate change become a security issue?
 - (a) Scenarios
 - (i) Natural disasters and rising sea levels
 - (ii) Fight for exhausted resources
 - (iii) Territorial claims and newfound resources (Arctic)
 - (b) Comparison between the Global North and the Global South
- III. The legal classification of the various scenarios
 - (a) Specific scenarios that the Security Council tackles
 - (b) Preventive measures (legislation)

C. Chapter 2: The Scope and Limits of the United Nations Security Council

- I. The Security Council and its function
- II. The Security Council as a legislature
 - (a) Resolutions instead of treaties
 - (b) The legal status of legislative resolutions
 - (c) Examples
 - (i) Resolution 1373
 - (ii) Resolution 1540
- III. Limits set by the quasi-constitutive document of the Security Council: The Charter of the United Nations
 - (a) The implied powers doctrine
 - (b) Principle of Proportionality
 - (c) Principle of Subsidiarity
 - (d) The Scope in regard to Climate Change

D. Chapter 3: What the Security Council can do regarding climate security threats

- I. The legal possibilities open to the Security Council
 - (a) The Security Council's attitude towards climate change
 - (b) The threat to peace and security as an indirect consequence of climate change - the problem of accountability and state responsibility
 - (c) The risk of turning the Security Council into a legislature with regards to an on-going threat
 - (d) How does this differ from what the Security Council usually deals with?
- II. The Security Council's structural weaknesses and how it affects its actions
 - (a) Permanent members coming from the Global North
 - (b) Permanent members being industrialised states
 - (c) Permanent members being the worst perpetrators of climate change

E. Chapter 4: Mechanisms to counter the Security Council's lack of political will

- I. Reactions and expectations of the international community
 - (a) Climate change affected countries
 - (b) Developing countries
- II. Which circumstances could force the Security Council to act?
- III. The role of the General Assembly of the United Nations
- IV. Further possible undertakings

F. Conclusion

A. INTRODUCTION

Climate change is an inevitable scenario that already endangers millions of lives.¹ The phenomenon occurs in an area of international law where there is an urgent need for international co-operation in order to solve the problem. It is a global problem that needs a global solution.² Since treaty-based collaborations, aimed at battling the consequences of climate change, have been difficult to achieve or implement,³ the question arises whether the United Nations Security Council, with its ability to pass binding resolutions, could thus be a successful alternative to address the issues resulting from climate change.⁴ In contrast to conventional treaty-making, United Nations Security Council Resolutions are often more efficient in their decision making as they require less compromise and can result in a stronger impact due to faster implementation.⁵

One could argue that climate change will increasingly threaten international peace and security and that the involvement of the Security Council is thus inevitable in the near future.

My thesis will focus on what role the United Nations Security Council could play in tackling the challenges arising from climate change. I would like to evaluate the potential risk that by giving the United Nations Security Council - one of the most powerful organs of international law - the power to address perpetrators of climate change this could worsen the political divides and self-interests already present in the Council. I will be looking at the legal possibilities of the Council while taking into account what permanent members, influenced by their own interests, are most likely to do. From this I might conclude that potential future actions by the United Nations Security Council with regards to climate security threats are part of the solution or too risky as this would only hinder progress.

I will examine the extent to which climate change affects peace and security worldwide and whether the Security Council can, will and should be involved in solving these threats.

¹ COP24 Special Report 'Health and Climate Change' WHO (2018) 16.

² Gunter Pleuger 'Climate Change as a Threat to International Peace' in Sabine von Schorlems (ed)

'Dresden Papers on Law and Policy of the United Nations' 19ed (2014) 33.

³ Jan Klabbers *International Law* 5 ed (2014) 252.

⁴ Sumon Dantiki 'Power through Process: An Administrative law Framework for United Nations Legislative Resolutions' (2009) 40 *GEOJIL* 656.

⁵ *Ibid* at 663.

Chapter One will be dealing with the connection between climate change and security. The relationship between cause and effect will be examined. Various current and future environmental scenarios will be analysed with regards to their potential threat to international peace and security. A specific emphasis will be put on the disparity between the Global North and the Global South, of which the latter suffers more regularly and more intensively from climate catastrophes.

Chapter Two will lay down the scope and limits of the Security Council's powers in general. I will analyse how the Charter of the United Nations provides the Council members possibilities to take action and how Council member states used these powers to create specific resolutions with legislative character in the past. I will determine the potential of the United Nations Security Council binding resolutions first before identifying its potential in tackling climate change in the next chapter.

Chapter Three will be the synthesis of the first two chapters by asking what the Security Council is able to do specifically regarding climate change-related threats to peace and security. I will be discussing issues of state responsibility and accountability as well as the risks and opportunities that come with handing over the climate change responsibility to the Security Council. This will then be continued by an analysis of the structural problems of the Security Council, taking into account that the permanent members are the biggest polluters from the industrialised Global North.

The final chapter will look at possible actions the United Nations Security Council should undertake in order to stop climate change. I will try to draw a realistic picture of what the different stakeholders expect from the Council, taking the politics on the ground into account. I will discuss the complex relationship between the Member States of the United Nations and the Security Council. In addition, I will point out alternative approaches using different United Nations institutions.

To conclude, a short summary and outlook will be provided with regards to the estimated actions that the Council will probably undertake to handle future conflicts resulting from climate change.

Climate change is a topic which we have to try to solve using all theoretical approaches and ideas. I hope that this paper can offer one approach to how states should resolve upcoming conflicts, thereby aiding their fight to end climate change.

B. CHAPTER 1: HOW CLIMATE CHANGE RESULTS IN A THREAT TO PEACE AND SECURITY WORLDWIDE

Under Art 39 of the Charter of the United Nations (UN Charter)⁶, the United Nations Security Council determines what poses a threat to international peace and security. In accordance with Art 25 of the UN Charter, the Council can pass binding resolutions under Chapter VII. Before examining the exact scope of the Council's powers and functions, I will analyse how the term climate change should be understood and how it can pose a security threat.

I. The definition of Climate Change

Art 1 (2) of the United Nations Framework Convention on Climate Change (UNFCCC)⁷ defines climate change as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.' This paper will be working with this United Nations definition that has been ratified by 197 parties as of 2020.⁸

Human-produced greenhouse gases are the result of human activity, altering the composition of the global atmosphere. The majority of scientists acknowledge that the increased greenhouse effect worldwide can be traced back to human activity.⁹

Greenhouse gas concentration levels are at a record high and will lead to an increase in global temperature by 3 to 5 degree Celsius by the end of the century.¹⁰ The years 2015 to 2018 have been recorded to be the warmest years in all of

⁶ Charter of the United Nations (1945).

⁷ United Nations Framework Convention on Climate Change (1992).

⁸ Status of Ratification of the Convention – United Nations Climate Change available at <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/status-of-ratification-of-the-convention>, accessed on 6 February 2020.

⁹ Marcel Leroy & Fana Gebresenbet 'Science, Facts and Fears: The Debate on Climate Change and Security' in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting's (ed) *Climate Change: International Law and Global Governance* (2013) 687.

¹⁰ UN Press Release 'World simply 'not on track' to slow climate change this year: UN weather agency' 29 November 2018.

recorded history, temperature-wise only being beaten by the previous three years.¹¹ The record-breaking heatwave in Western Europe that occurred in July 2019 was at least to some extent a result of the human influence on the climate. An international study showed that in the Netherlands as well as in France, similar events with temperatures exceeding 40 degrees Celsius would reappear less often without climate change.¹²

Due to melting of the glaciers¹³ the mean global sea level in the period from January till July 2018 has been 2 to 3 mm higher than in 2017.¹⁴ In addition, the average ocean temperature is at a record high.¹⁵ Finally, as of January 2019, the sea ice in the Antarctica is at its lowest levels since recording started 40 years ago.¹⁶

Climate change is happening and continues to do so at a worrying pace. However, according to Art 39 of the UN Charter the Security Council can only intervene and pass binding resolutions if climate change is a threat to international peace and security. I will therefore now ask under what circumstances climate change can become a security concern.

II. At what point do the effects of climate change become a security issue?

While violence is one of the most dangerous consequences of climate change,¹⁷ climate change does not directly lead to conflict. Instead it triggers destabilising factors within a society that can then lead to the outbreak of violence. For instance, climate change causes higher temperatures resulting in droughts and scarcity, which might eventually lead to conflict over resources.¹⁸ For several decades, the number of people suffering from hunger had dropped, but due to climate

¹¹ World Metrological Organization (WMO) 'The State of the Global Climate in 2018' 1.

¹² World Weather Attribution 'Human contribution to the record-breaking July 2019 heat-wave in Western Europe' 2 August 2019 available at <https://www.worldweatherattribution.org/human-contribution-to-the-record-breaking-july-2019-heat-wave-in-western-europe/>, accessed on 6 February 2020.

¹³ World Metrological Organization (WMO) op cit note 11 at 5.

¹⁴ Ibid at 2.

¹⁵ Ibid at 3.

¹⁶ National Snow & Ice Data Center (NSIDC) 'A record-low start to the new year in Antarctica' 3 January 2019 available at <https://nsidc.org/arcticseaicenews/2019/01/a-record-low-start-to-the-new-year-in-antarctica/>, accessed on 6 February 2020.

¹⁷ Branch, A. 'Rethinking the Climate-Conflict Relationship' (2018) 3 *Peace Science Digest* 12.

¹⁸ Marcel Leroy & Fana Gebresenbet op cit note 9 at 688.

change world hunger is on the rise again.¹⁹ Various ecological changes influence human health, access to food and freshwater and thus affect economic productivity, food security and the resilience of infrastructure and cities.²⁰ It is not easy to reveal a clear and direct relationship between climate change, migration and violent conflict for instance. It is therefore often easier to separate the issues of how climate change can lead to migration and how migration can result in violent conflict.²¹

The criteria for ‘threat to peace’ evolve constantly.²² The absence of war and military conflicts amongst States does not in itself ensure international peace and security. Non-military sources of instability in economic, social, humanitarian and ecological form can become threats to peace and security too.²³

Whether climate change results in a ‘security issue’ is a matter of how we define the relationship between cause and effect.²⁴ As pointed out the phenomenon of climate change in itself does not automatically and directly pose a threat to peace and security. For instance we see that resource scarcity is a broader issue and that the physical single impact of climate change (rising temperatures and sea levels for instance), is only one contributing factor.²⁵ It is therefore necessary to understand that different climate phenomena have different security impacts, with some resulting more directly in security threats than others.

Armed conflicts, as an ascertainment of a threat to peace and security, have various contributing factors that cannot be looked at independently. It is important to see the broader picture and to consider factors like colonial history, extractive industries and unequal trade partnerships for example.²⁶ Climate change has to be understood as a so-called ‘threat multiplier’, causing and deepening instabilities.²⁷

¹⁹ Dan Smith, Malin Mobjörk, Florian Krampe et al ‘Climate Security – Making it #Doable’ (2019) *Clingendal Netherlands Institute of International Relations* 9.

²⁰ UN Press Release op cit note 10.

²¹ Brzoska, M. & Fröhlich, C. ‘Exploring the Relationship Between Climate Change, Migration and, Violent Conflict’ (2016) 3 *Peace Science Digest* 8.

²² Stefan Talmon ‘The Security Council as World Legislature’ (2005) 99/1 *AJIL* 180.

²³ UN Doc. S/23500 (31 January 1992) 3.

²⁴ Erika Pires Ramos ‘Climate Change, Disasters and Migration: Current Challenges to International Law’ in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting’s (ed) *Climate Change: International Law and Global Governance* (2013) 742.

²⁵ Marcel Leroy & Fana Gebresenbet op cit note 9 at 696.

²⁶ Branch, A. op cit note 17 at 15.

²⁷ ‘Climate Change: An Escalating National Security Threat’ *Outrider Post* available at <https://outrider.org/climate-change/articles/climate-change-national-security-threat/>, accessed on 6 February 2020.

Let us turn to various instances where such a connection has been established. The 2018 Boe Declaration on Regional Security for example reaffirmed that climate change is the single greatest threat to the wellbeing of the Pacific.²⁸ In 2007 the United Nations Secretary-General Ban Ki-Moon pointed out that the Darfur Conflict had its roots inter alia in climate change, therefore labelling it the ‘first climate change conflict.’²⁹

The European Union’s High Representative and the European Commission to the European Council identified different scenarios that climate change will trigger: conflict over resources, risks for coastal cities, loss of territory and border disputes, migration, situations of fragility and radicalization, tension over energy supply and pressure on international governance.³⁰

These are just some of the scenarios that will be triggered through climate change, not to mention the fact that it will affect each and every one of us on several levels in different ways. Some of these scenarios are more easily identified as a direct threat to international peace and security, while others only pose a threat to security when combined with other factors.

(a) Different scenarios

For the United Nations Security Council to get involved through a binding resolution, the existence of a threat to peace and security is of necessity according to Art 39 of the UN Charter. The question is therefore how these various scenarios result in (a) threat(s) to peace and security.

It is important to point out that developing countries are especially at risk. Factors like their ‘their tropical geography, high population growth, heavy dependence on agriculture, rapid urbanisation, weak infrastructures and lack of resources’³¹ provide a higher risk for fragile countries to become stuck in a cycle of

²⁸ Boe Declaration on Regional Security (2018) by the Pacific Islands Forum Annex 1 (i).

²⁹ Ban Ki-Moon ‘A Climate Culprit In Darfur’ *The Washington Post* 16 June 2007.

³⁰ The High Representative and the European Commission to the European Council ‘Climate Change and International Security’ European Union (2008) at 3-5.

³¹ Marcel Leroy & Fana Gebresenbet op cit note 9 at 691.

conflict and climate disaster.³² Africa is expected to be the first continent to experience the full impact of this development.³³

(i) Natural disasters and rising sea levels

The rising of sea levels, as well as the increase in the frequency and intensity of natural disasters, will force millions of people to flee their homes, creating climate refugees, that are on the move due to environmental degradation³⁴ and border disputes due to the high possibility of loss of entire countries. Risks are particularly high in the East coasts of India and China, the Caribbean region and Central America.³⁵ As the United Nations Secretary-General Antonio Guterres has stated: ‘as coastal areas or degraded inland areas become uninhabitable, people will seek safety and better lives elsewhere.’³⁶ Rising sea levels in Tuvalu will eventually make people flee and emigrate and they might even lose their nationality if their country sinks completely. In such a case, there is no possibility to ever return, unlike in those situations, where people flee from conflict for example. This will not only affect distant islands in the Pacific, metropolitan cities that border the ocean may face similar difficulties.³⁷

The recent migrant caravan that made its way from Central America to the United States of America has its roots in food insecurity aggravated by unusually strong hurricanes and droughts. These circumstances have made people more vulnerable to gang violence, which is often pointed out as the reason for the movement of the local people.³⁸

The shrinking of Lake Chad, for instance, is another major concern to the United Nations as it is connected to the livelihood of 30 million people, the President

³² Deputy Secretary-General Amina Mohammed’s remarks at Security Council Debate ‘Understanding and Addressing Climate-related Security Risks’ UN Statements, 11 July 2018.

³³ Marcel Leroy & Fana Gebresenbet op cit note 9 at 686-7.

³⁴ Erika Pires Ramos op cit note 24 at 743.

³⁵ The High Representative and the European Commission to the European Council op cit note 30 at 4.

³⁶ ‘UN chief outlines ‘intertwined challenges’ of climate change, ocean health facing Pacific nations on the ‘frontline’’, 14 May 2019, UN News available at <https://news.un.org/en/story/2019/05/1038521>, accessed on 6 February 2020.

³⁷ ‘The World’s first Climate Refugees’ *Stories* available at <https://www.youtube.com/watch?v=b6QEDbI5zrg>, accessed on 6 February 2020.

³⁸ Brzoska, M. & Fröhlich, C. op cit note 21 at 10.

of the 73rd United Nations General Assembly, Maria Espinosa-Garces said.³⁹ This is to be closely monitored as a growing population will intensify the water scarcity even further. In addition, the fact that a lot of its rivers are shared between countries, can cause tensions between neighbours.⁴⁰

‘Ecological-economic migrants’ or ‘climate disaster refugees’ are less likely to cause violent conflicts because the former will choose more welcoming areas for migrants and the later will only stay temporarily. ‘Climate-affected migrants’ or ‘permanent climate refugees’ on the other hand pose a bigger threat to peace since they are more likely to migrate to areas which are also affected by climate change. They could therefore be seen as additional competition by locals.⁴¹

In addition, one has to distinguish between migration, that, although partly due to the environment, is triggered by a conflict and migration that is more evolving due to direct environmental issues such as flooding or storms.⁴² In the latter the causal link between climate change and a resulting security threat is clearer.

(ii) Fight for exhausted resources

Natural resources play a crucial role when it comes to conflict: they have been the cause of more than 40 per cent of internal armed conflict over the last 60 years and 75 per cent of civil wars in Africa since 1990 have been partially funded by their revenues.⁴³

The lack of resources is just one of many accumulative factors that often evolve into violence.⁴⁴ People who are directly dependent on renewable natural resources are more likely to migrate to new areas that too are richer in these resources once their resources are depleted due to extreme weather conditions.⁴⁵ Whether the movement of these people leads to a conflict is a matter of the receiving

³⁹ In a joint news conference with the Foreign Affairs Minister, Geoffrey Onyeama, on 7 May 2019 in Abuja, Nigeria; available at <https://punchng.com/lake-chads-shrinking-major-climate-change-disaster-un/>, accessed on 6 February 2020.

⁴⁰ Link, P. M., Scheffran, J., & Ide, T. ‘From Water Scarcity to Conflict or Cooperation’ (2016) 3 *Peace Science Digest* 20.

⁴¹ Brzoska, M. & Fröhlich, C. op cit note 21 at 9.

⁴² Erika Pires Ramos op cit note 24 at 742-3.

⁴³ Secretary-General Antonio Guterres’ remarks to Security Council, ‘The Maintenance of International Peace and Security: The Root Causes of Conflict – The Role of Natural Resources’ UN, 16 October 2018.

⁴⁴ Brzoska, M. & Fröhlich, C. op cit note 21 at 8.

⁴⁵ Ibid at 9.

area and the conditions on-site.⁴⁶ This depends on whether the host country is experiencing scarcity itself or is undergoing an identity conflict that arriving migrants could affect.⁴⁷ It is therefore possible that environmentally caused migration can increase conflict in transit and destination areas.⁴⁸

The lack of water specifically can heighten the risk of civil unrest.⁴⁹ Over 65 per cent of the Arab world depends on water resources that lie outside of their territories.⁵⁰ Lake Chad, for instance, has shrunk by more than 90 per cent since the 1960s. The environmental, socio-economical and security consequences affect more than 45 million people.⁵¹ By the end of 2020, there will be millions of ‘environmental’ migrants according to the United Nations.⁵²

Another aspect is the world’s hydrocarbon reserves. A lot of regions that hold the majority of these reserves are already unstable. These regions also tend to be more vulnerable to climate change, which will deepen their instability and the competition for resources even further.⁵³

(iii) Territorial claims and newfound resources (Arctic)

The Arctic is not only melting twice as fast as other regions; it also contains 25 per cent of the world’s undiscovered fossil fuel reserves. This will not only lead to new shipping lanes becoming available but also to potential conflicts between the global powers Russia, the United States of America and China over the energy resources that become available.⁵⁴ All five Arctic littoral states (Canada, Denmark, Norway, Russia and the United States) have increased their military presence in the area.⁵⁵

Whether a climate change-related scenario poses or results in a threat to peace and security always depends on the vulnerability of the affected society and its

⁴⁶ Brzoska, M. & Fröhlich, C. op cit note 21 at 9.

⁴⁷ Ibid.

⁴⁸ The High Representative and the European Commission to the European Council op cit note 30 at 4.

⁴⁹ Ibid at 3.

⁵⁰ Ibid at 7.

⁵¹ Deputy Secretary-General Amina Mohammed op cit note 32.

⁵² The High Representative and the European Commission to the European Council op cit note 30 at 4.

⁵³ Ibid at 5.

⁵⁴ *Outrider Post* op cit note 27; The High Representative and the European Commission to the European Council op cit note 30 at 4 and 8.

⁵⁵ Siemon T. Wezeman ‘Military Capabilities in the Arctic’ (2012) *SIPRI Background Paper*.

ability to respond.⁵⁶ Climate change does not automatically lead to conflict. They are human-made and can therefore only be solved by humans.⁵⁷ Conflicts resulting from climate change are more often the ‘consequences of consequences.’⁵⁸ It is therefore often the case that those countries that are most vulnerable to climate change are also the ones that are most vulnerable to conflict following hereafter.⁵⁹ Already existing precarious situations will be exacerbated by climate change.

The problem is that climate change is usually just one out of many factors that may lead to the outbreak of conflict.⁶⁰ The repercussions of climate change are multi-layered and continuous, which makes it hard to draw a definite line. For instance, vulnerable regions that will not be able to react appropriately will face high unemployment, which could in turn cause the youth to join violent extremist groups.⁶¹ Past examples include the Boko Haram, which, among other factors, is believed to have gained power due to the shrinking of Lake Chad.⁶² Climate change needs to be understood as a threat multiplier, applying additional stress on prevailing political, social and economic pressure points.⁶³ But despite the different scenarios that have been described, climate change itself can also be a form of insecurity,⁶⁴ because ‘it not only exacerbates threats to international peace and security, it is a threat to international peace and security.’⁶⁵

(b) Comparison between the Global North and the Global South

What has become clear now is that the Global North is the main perpetrator of climate change whereas the Global South is the main victim, since it is particularly vulnerable to the effects of climate change. Without directly interfering

⁵⁶ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 7.

⁵⁷ Brzoska, M. & Fröhlich, C. op cit note 21 at 11.

⁵⁸ Dan Smith, Janani Vivekananda ‘A Climate of Conflict: The Links between Climate Change, Peace and War’ (2007) *International Alert* 3.

⁵⁹ Deputy Secretary-General Amina Mohammed op cit note 32; The High Representative and the European Commission to the European Council (2008) op cit note 32 at 4.

⁶⁰ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 22.

⁶¹ Deputy Secretary-General Amina Mohammed’s op cit note 32; The High Representative and the European Commission to the European Council op cit note 30 at 5.

⁶² ‘Open Debate: Addressing the impacts of climate-related disasters on international peace and security’ *What’s in Blue* 24 January 2019.

⁶³ The High Representative and the European Commission to the European Council op cit note 30 at 2; Deputy Secretary-General Amina Mohammed op cit note 32.

⁶⁴ Patrick Hiller, Molly Wallace, Kristin Henderson et al ‘Special Issue Climate Change, Security and Conflict’ (2019) 3 *Peace Science Digest* 4.

⁶⁵ Ban Ki-Moon UN Doc. SC/10332, Security Council 6587th Meeting (20 July 2011).

on the ground, the northern states' actions within their own territories make the Global South suffer. But that is not all. There is a specific term used for the overuse of resources in the Global South by extractive industries that do not consider social nor environmental impacts – it is called 'extractive imperialism'.⁶⁶ This will increase the political tensions between those who are most responsible for climate change and those who are most affected by it. But one should not lose sight of the fact that there will also be a South-South dimension since Indian and Chinese greenhouse gas emissions are on the rise.⁶⁷ So the responsibility for climate change has shifted and nowadays not only includes industrialised countries but also growing economies with a non-capitalist past.⁶⁸ The energy sector plays a crucial role in hindering the catastrophic consequences of climate change because it accounts for two-thirds of total greenhouse gas emissions and 80 per cent of CO₂.⁶⁹ Increased CO₂ emissions that are a result of fuel combustion are mostly linked to economic output. In 2017 China, India and the EU were the leading countries in increased emissions. It is also shown in the CO₂ Emission statistics that neither Africa nor Oceania, regions that are generally most affected by the consequences of climate change, have ever produced high CO₂ emissions with little to no increase.⁷⁰ Small islands and developing states are especially at risk. Moreover key vulnerabilities are low developed country isolation, lack of land, high-risk location, nature and land degradation, population growth, poverty, poor infrastructure, concentration of activities or populations in high-risk areas, dependence on natural resources (eg rainfall) or economic sectors (eg fossil fuels) or processes (eg desalination for water), low capacity, food shortages, and health sector challenges.⁷¹

In 2019 the 'Earth Overshoot Day' – the day in a year that humankind has consumed more ecological resources than could theoretically be refilled in the course of that rest of the year – was 29 July 2019, the earliest day to date.⁷² It is worth pointing out that if we were to use our resources like the majority of the countries

⁶⁶ Branch, A. op cit note 17 at 14.

⁶⁷ The High Representative and the European Commission to the European Council op cit note 30 at 5.

⁶⁸ Marcel Leroy & Fana Gebresenbet op cit note 9 at 701.

⁶⁹ The International Energy Agency (IEA) 'Global Energy & CO₂ Status Report' (March 2019) available at <https://www.iea.org/topics/climatechange/>, accessed on 6 February 2020.

⁷⁰ The International Energy Agency 'CO₂ Emissions Statistics' (2018) available at <https://www.iea.org/statistics/co2emissions/>, accessed on 6 February 2020.

⁷¹ 'Climate action and support trends' (2019) UNFCCC Report 12.

⁷² 'Earth Overshoot Day 2019 is July 29, the earliest ever', *Global Footprint Network* 26 June 2019 available at <https://www.overshootday.org/newsroom/press-release-june-2019-english/>, accessed on 6 February 2020.

from the Global South (some of them not even having an overshoot day), that date would be way later in the year.⁷³ It thus becomes clear that the Global South is contributing far less to climate change than the Global North.

III. The legal classification of the various scenarios

Which of the scenarios described above pose a threat to peace and security? During an African Union summit in 2007, Uganda's president Yoweri Museveni went as far as calling climate change 'an act of aggression' by the developed world against the developing world and called for compensation.⁷⁴ Namibia's Kaire Munionganda Mbuende described greenhouse gases as 'a low intensity or chemical warfare' between the rich and poor countries.⁷⁵

Since climate-related security risks are highly complex and multifaceted they cannot be solved by one country alone.⁷⁶ When climate change results in the various scenarios described above, these scenarios represent only one of many factors constituting to conflict and can never be looked at outside of context. Nonetheless, it is important that the Council does not ignore the role of nature in today's political crisis and conflicts.⁷⁷

(a) Specific scenarios that the Security Council tackles

One needs to make a distinction between long-term development issues and short-term diplomatic issues, with the latter falling into the scope of the Security Council.⁷⁸ Chapter VII of the UN Charter gives the Council legally binding powers to a certain extent only: ad hoc in the case of an actual threat.⁷⁹

⁷³ 'Country Overshoot Days 2019' *Earth Overshoot Day*, available at <https://www.overshootday.org/newsroom/country-overshoot-days/>, accessed on 6 February 2020.

⁷⁴ 'Global warming in Africa – Drying up and flooding out' *The Economist* 10 May 2007.

⁷⁵ UN Doc. SC/9000 'Security Council holds first-ever debate on impact of climate change on peace, security, hearing over 50 speakers' UN Press Release (17 April 2007).

⁷⁶ 'Climate Security in times of geopolitical crises – what ways forward?' 18 February 2019, *Stockholm International Peace Research Institute* available at <https://www.sipri.org/commentary/blog/2019/climate-security-times-geopolitical-crises-what-ways-forward>, accessed on 6 February 2020.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Gunter Pleuger op cit note 2 at 34.

It is beyond dispute that the Council is allowed to react to specific threats. However, the same consensus does not necessarily apply when it comes to legislation that prevents these threats from arising. Yet again the Security Council is not obliged to wait until something happens.⁸⁰

A more recent example of a specific threat was the burning of the Amazonas rainforest. The Security Council could have issued a binding resolution that would have forbidden member states to interact economically with Brazil until help to tackle the fires had been accepted by the latter. In addition, the Council could have obligated member states to send firefighters or contribute financially to stop the environmental catastrophe.⁸¹

This thesis however does not focus on Security Council's legitimate reactions to actual threats that are in some way related to climate change. Rather I am concentrating my analysis on the question of whether the Security Council can get involved long before an actual threat has been identified.

(b) Preventive measures (legislation)

For the specific case of climate change preventive measures are indispensable. The question that arises is whether the UN Security Council can pass binding resolutions that do not address a specific, direct threat to international peace and security, but a general long-term problem that can only be solved globally. For this question to be answered in the affirmative, the Council would need to have the power to pass so-called legislative resolutions. Whether this is legally possible I will discuss in the following chapter, further examining the scope of the Council's actions.

C. CHAPTER 2: THE SCOPE AND LIMITS OF THE UNITED NATIONS SECURITY COUNCIL

I. The Security Council and its function

⁸⁰ Matthew Happold 'Security Council Resolution 1373 and the Constitution of the United Nations' (2003) 16 *LJIL* 600.

⁸¹ 'The UN Could Save the Amazonas With One Simple Move' *Truthdig* 13 September 2019.

The main function of the United Nations Security Council is ‘the maintenance of international peace and security’ formulated in Art 24 of the UN Charter.

According to Art 23 of the UN Charter, the Security Council consists of 15 members, of which five (The People’s Republic of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America) are permanent.

The decisions of the United Nations Security Council that fall under Chapter VII (Action with respect to threats to the peace, breaches of the peace, and actions of aggression) are binding on all member states under Art 25 of the UN Charter. By determining that climate change can constitute a threat to international peace and security, the possibility for the Council to act under Chapter VII of the Charter has therefore been opened.⁸² The original intention of Chapter VII however is that such decisions and actions should be administrative or executive in nature, rather than legislative.⁸³

It is important to recall that the United Nations Security Council does not stand above the law, notwithstanding the broad freedom of judgement it enjoys, concerning action under Chapter VII.⁸⁴ The Security Council may not act outside of the purposes and principles of the United Nations.⁸⁵

United Nations military interventions are ‘recommended’ or ‘authorized’ not ‘ordered’.⁸⁶ While this might be due to the fact that the Security Council has no troops of its own – something that was originally planned for⁸⁷ - the United Nations Security Council cannot order certain actions as it depends on the member states’ willingness to comply. Hence the mandatory language it uses is limited to the aggressor state. Flight bans can be imposed for instance, while military actions can only be authorised but not ordered due to its potentially high political risk for domestic authorities.⁸⁸

⁸² Darragh Conway ‘The United Nations Security Council and climate change: challenges and opportunities’ (2010) 1 *Climate Law* 381.

⁸³ Jan Klabbers op cit note 3 at 88.

⁸⁴ Carsten Stahn ‘The Ambiguities of Security Council Resolution 1422 (2002)’ (2003) *EJIL* 97.

⁸⁵ Cathleen Helen Powell ‘The Role and Limits of Global Administrative Law in the Security Council’s Anti-Terrorism Programme’ (2000) *Acta Juridica* 40.

⁸⁶ Jan Klabbers op cit note 3 at 173.

⁸⁷ *Ibid* at 171.

⁸⁸ *Ibid* at 173.

Lately, one might notice the increase of Security Council decisions dealing not with any particular conflict or situation but, rather, with conflicts in general.⁸⁹ These include issues concerning the protection of children⁹⁰ and civilians,⁹¹ the role of women with respect to peace and security,⁹² humanitarian questions,⁹³ as well as international terrorism.⁹⁴ This recent development brings up the possibility that conflicts that arise from climate change could be added to this list.

The Security Council increasingly intervenes in domestic matters when human right violations occur. However, climate change is probably the most non-domestic problem countries have to face. Yet again, one could argue that the Council was created to face those problems domestic laws alone cannot handle. If the Security Council already addresses domestic matters at the moment, then *argumentum e contrario* climate change issues should be handled all the more legislatively.

II. The Security Council as a legislature

The Security Council can be seen as having adopted a quasi-legislative role.⁹⁵ Some say that this is an exercise of power which was not intended by the authors of the Charter; what turned into legislation through resolutions are therefore *ultra vires* acts by the Council.⁹⁶ However to prove that the Council acted *ultra vires* is a difficult undertaking, since the decision whether something is a threat to peace and security remains highly political and therefore at the heart of the Council's discretion.⁹⁷ When it comes to legislation, one view is that the Security Council acts outside the usual 'consensual process' of international lawmaking and binds member states without their specific consent.⁹⁸ This, however, is necessary to fulfil its role in

⁸⁹ Paul C. Szasz 'The Security Council Starts Legislating' (2002) 96 *AJIL* 902.

⁹⁰ SC Res. 1261, S/RES/1261 (25 August 1999); SC Res. 1265, S/RES/1265 (17 September 1999); SC Res. 1296, S/RES/1296 (19 April 2000); SC Res. 1314, S/RES/1314 (11 August 2000); Paul C. Szasz op cit note 89 at 902.

⁹¹ SC Res. 1265, S/RES/1265 (17 September 1999); SC Res. 1296, S/RES/1296 (19 April 2000); Paul C. Szasz op cit note 89 at 902.

⁹² SC Res. 1325, S/RES/1325 (31 October 2000); Paul C. Szasz op cit note 89 at 902.

⁹³ UN Doc. S/PRST/2000/7 SC Presidential Statement (9 March 2000); Paul C. Szasz op cit note 89 at 902.

⁹⁴ SC Res. 1269, S/RES/1269 (19 October 1999); UN Doc. S/PRST/2000/38 SC Presidential Statement (6 December 2000); Paul C. Szasz op cit note 89 at 902.

⁹⁵ Jan Klabbers op cit note 3 at 88.

⁹⁶ TW Bennett & J Strug *Introduction to International Law* (2013) 359.

⁹⁷ Carsten Stahn op cit note 84 at 98.

⁹⁸ Cathleen Helen Powell op cit note 85 at 46.

the first place: to react quickly to an urgent crisis where it would either take too long or where it would not be possible at all to find consent among all states. Conventions usually take time, bearing the risk of leaving legislative gaps uncovered for years.⁹⁹ And although it is often a time-consuming process to pass a resolution in the Security Council, it is relatively speaking quicker than passing a treaty.

(a) Resolutions instead of treaties

One could insist the Council has to have the greatest freedom possible in order to react appropriately to the various challenges brought to it, otherwise its efficiency would be limited.¹⁰⁰ Success through resolutions is accomplished in days or months rather than years which is usually the case within treaty regimes.¹⁰¹ The Security Council has intervened legislatively when there had been an urgent need for a global and uniform regulatory framework but a lack thereof.¹⁰² ‘Law-making should remain with the member states as long as they can attain the common objective effectively.’¹⁰³ It is always more ideal to have a multilateral treaty regime on the matter, but in some cases urgent action is needed.¹⁰⁴

Some commentators say that since binding resolutions that are general and new in nature and passed under Chapter VII of the UN Charter are legislative, they should therefore be decided unilaterally in order to be lawful.¹⁰⁵

By setting general rules for actual problems the Security Council has turned itself into an additional source of international law next to international customary and treaty law.¹⁰⁶ However, Art 38 (1) of the International Court of Justice Statute does not see binding Security Council resolutions as a source of international law. However, since these resolutions have their legal basis in the United Nations Charter, an international convention and therefore a source of international law, they count as ‘secondary treaty (or Charter) law’.¹⁰⁷ This means that Security Council resolutions have a legal impact because they are binding for all United Nations member states.

⁹⁹ Darragh Conway op cit note 82 at 382.

¹⁰⁰ Cathleen Helen Powell op cit note 85 at 40.

¹⁰¹ Sumon Dantiki op cit note 4 at 657.

¹⁰² Nicholas Tsagourisa ‘Security Council Legislation, Art 2 (7) of the UN Charter, and the Principle of Subsidiarity’ (2011) 24 *LJIL* 554.

¹⁰³ *Ibid* at 550 and 553.

¹⁰⁴ UN Doc. S/PV. 4950 UN Sec. Council, 4950th Meeting at 25, (22 April 2004).

¹⁰⁵ Cathleen Helen Powell op cit note 85 at 45.

¹⁰⁶ Gunter Pleuger op cit note 2 at 34.

¹⁰⁷ Stefan Talmon op cit note 22 at 179.

To look at the relationship between resolutions and treaties it even strikes that due to Art 25 and 103 of the UN Charter, the Security Council can use its authority given by Chapter VII to overrule certain state rights or obligations installed by treaties.¹⁰⁸

On the one hand, resolutions can have a more severe political weight than a treaty, as they do not come with complicated implementation procedures.¹⁰⁹ On the other hand, resolutions are not as detailed and often lack concrete definitions compared to treaties resulting in the risk of ambiguity.¹¹⁰ In addition, resolutions dealing with sanctions affect the external affairs of a country, whereas legislative resolutions touch the internal affairs and potential conflict national politics.¹¹¹ For that reason it is necessary that a resolution – like a directive regulation in the European Community law – functions more as a framework within which national legislation can unfold.¹¹² The resolution dictates the aim; each member state will though decide the manner of reaching it.¹¹³

It is therefore important to realise that resolutions should not replace treaties, they should not even be seen as an alternative but rather a tool of last resort to avoid or end crises of highest priorities.

(b) The legal status of legislative resolutions

The power of each United Nations organ is self-referential and self-judging, there is no such thing as a classical separation of powers hence the limit on the latter does not emerge as definite.¹¹⁴ This results in the Security Council's lack of checks and balances, a system that is ideally in place on a domestic level.¹¹⁵

It is important to assert that legislation through the Security Council has been widely accepted by states.¹¹⁶ At the end of the day 'the imposition of general obligations is nothing but the generalization of individual obligations.'¹¹⁷ One has to differ though between the legality of a United Nations Security Council resolution

¹⁰⁸ Carsten Stahn op cit note 84 at 99.

¹⁰⁹ Masahiko Asada 'WMD Terrorism and Security Council Resolution 1540: Conditions for Legitimacy in International Legislation' (2007) 9 *ILLJ* 12.

¹¹⁰ Stefan Talmon op cit note 22 at 188-9.

¹¹¹ Ibid at 191.

¹¹² Ibid at 189; Nicholas Tsagourisa op cit note 102 at 555.

¹¹³ Stefan Talmon op cit note 22 at 193.

¹¹⁴ Nicholas Tsagourisa op cit note 102 at 543.

¹¹⁵ Cathleen Helen Powell op cit note 85 at 56.

¹¹⁶ Cathleen Helen Powell 'The Powers of the United Nations Security Council under Law' (2016) 6.

¹¹⁷ Stefan Talmon op cit note 22 at 182.

and the willingness of states to accept it. Member states might accept a resolution if they support the political intention behind it, not necessarily because it is legally permissible.¹¹⁸ Proof of customary international law, where it is important to not only establish state practice but also opinion juris, meaning states act a certain way because they think they are legally obliged to do so, reinforces this argument.¹¹⁹

It is debatable with which resolution the legislation of the Security Council started. Some might argue that establishing the ad hoc tribunals for Yugoslavia and Rwanda¹²⁰ or the obligations imposed on Iraq and Libya by Resolutions 687 and 748¹²¹ already had legislative character.

There is mutual agreement though that with Resolution 1373, which dealt with terrorism shortly after 9/11, the Security Council, did undeniable issue a legislative resolution.¹²² There is a similar attitude towards Resolution 1540, a resolution regarding the non-proliferation of weapons of mass destruction. I have singled out these two resolutions to form a stronger argument in favour of the Security Council as a legislature. One could argue that these two legislative resolutions have created a precedent for the Security Council to pass similar legislative action in the future.

(c) Examples

(i) Resolution 1373

In the aftermath of 9/11 in 2001, the Security Council adopted Resolution 1373, which called upon all member states of the United Nations to install certain measurements in order to improve the fight against international terrorism.¹²³

¹¹⁸ Cathleen Helen Powell op cit note 116 at 9.

¹¹⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* (1996) ICJ Rep 95 para 226, 253.

¹²⁰ M. Koskenniemi, 'The Police in the Temple: Order, Justice and the UN—A Dialectical View' (1995) 6 *EJIL* 326.

¹²¹ K. Harper, 'Does the United Nations Security Council Have the Competence to Act as a Court and Legislature?' (1994) 27 *NYUJILP* 103, 126–9.

¹²² Matthew Happold op cit note 80 at 598; Sumon Dantiki op cit note 4 at 655; Paul C. Szasz op cit note 89 at 902; Masahiko Asada op cit note 109 at 15.

¹²³ SC Res. 1373, S/RES/1373 (28 September 2001).

Resolution 1373 showed that the Council's approach to fight terrorism is more of a legislative than an administrative action.¹²⁴

With Resolution 1373 the Security Council acted in response to a general phenomenon: terrorism.¹²⁵ This was a novelty in that it told states to change their domestic legal processes in order to tackle the nonspecific and on going threat of terrorism.¹²⁶ The resolution addressed a more general form of behaviour rather than a specific single determinable situation.¹²⁷ Furthermore this resolution is in force indefinitely.¹²⁸ The same could become a realistic option with climate change.

And although the United Nations Security Council's Resolution 1373 can be seen as an ultra vires act of the Council which does not have to be followed by the member states,¹²⁹ the Counterterrorism Committee (CTC) created by the Council noted that, although no state met all the requirements of Resolution 1373, all states adopted some additional domestic legislation.¹³⁰ Even before Resolution 1373, there were several treaties in place that were concerned with the issue of terrorism, but state membership was low, ratifications even lower, reservations abundant, and monitoring mechanisms weak.¹³¹ Resolution 1373 speeded up the process of international cooperation in the fight against terrorism, something that no other source of international law had done to such an extent before.

The instrument of Security Council resolutions could push member states towards environmentally friendly legislation. Even if they are not fully implemented by all member states, they could be the start of a fundamental rethink.

(ii) Resolution 1540

In 2004 the Security Council passed Resolution 1540 that required all member states to refrain from any form of support to non-state actors regarding the proliferation of nuclear weapons.¹³² Unlike Resolution 1373, this resolution was not

¹²⁴ Jan Klabbers op cit note 3 at 182.

¹²⁵ Stefan Talmon op cit note 22 at 180.

¹²⁶ SC Res. 1373 op cit note 123 para 1-2 and 6.

¹²⁷ Matthew Happold op cit note 80 at 598.

¹²⁸ Ibid.

¹²⁹ Jan Klabbers op cit note 3 at 200.

¹³⁰ Sumon Dantiki op cit note 4 at 662.

¹³¹ Nicholas Tsagourisa op cit note 102 at 554.

¹³² SC Res. 1540, S/RES/1540 (28 April 2004).

passed under extreme political circumstances, paving a way for legislative resolutions to be passed under unexceptional conditions.

Just like Resolution 1373, it also tackled a problem that is general and on-going: the non-proliferation agenda for non-state actors.¹³³ While Resolution 1373 referred to obligations that had already been acknowledged by the General Assembly before, Resolution 1540 handled scenarios that had not been legally covered yet.¹³⁴ It had gone a step further and managed to determine something where no mutual consent had already been established. However, it is necessary to point out that Resolution 1540 is still not widely implemented: in 2016 out of a possible maximum number of 330 measures to achieve the resolutions' goal, only 109 member states had 150 or more measures in place, with only 17 states having implemented all of the 330 possible measures.¹³⁵ This poor level of implementation could be due to the lack of state consent or acknowledgement of the topic when the resolution was passed. It raises the question how effective resolutions can be when passed without any prior state consensus.

III. Limits set by the quasi-constitutive document of the Security Council: The Charter of the United Nations

‘Legislative resolutions carry the potential for both: great promise and great peril.’¹³⁶

The past has shown that the Security Council is in the position to be frequently innovative, whether through an expanded interpretation of the meaning of the concept of ‘threats to the peace’ in Article 39 of the UN Charter, or through installing different methods of reacting to it.¹³⁷ The questions whether a situation is a threat to peace and security is a question that only the Council itself can answer, making it nearly impossible to define any limits that the Council could overstep here. In addition, there is no one that can correct the Council’s assessment.¹³⁸ Non-military sources of instability in the economic, social, humanitarian and ecological fields can

¹³³ Cathleen Helen Powell op cit note 85 at 48.

¹³⁴ Ibid at 49.

¹³⁵ United Nations 1540 Security Council Committee ‘General information about the national implementation of Resolution 1540’ available at <https://www.un.org/en/sc/1540/national-implementation/general-information.shtml>, accessed on 6 February 2020.

¹³⁶ Sumon Dantiki op cit note 4 at 672.

¹³⁷ Matthew Happold op cit note 80 at 594; Jan Klabbbers op cit note 3 at 175.

¹³⁸ Jan Klabbbers op cit note 3 at 175.

also lead to a situation which is referred to as a threat to peace and security, including climate change.¹³⁹

The Security Council is so powerful that non-compliance of a member state can result in non-military (Art 41 UN Charter) or military (Art 42 UN Charter) sanctions by the Security Council that will be carried out by other member states. Moreover, the Council's authority is exercised in an extreme uniquely way, when it comes to legislative resolutions that ask to change domestic law in order to react to ongoing and non-specific threats.¹⁴⁰

The traditional process of creating international law has lagged behind the urgent requirements of the new millennium. Legislation of the Security Council through binding resolutions is a powerful tool that could not only enhance the United Nations but could also benefit the world community if used prudently.¹⁴¹

Next I am going to analyse how legislative resolutions by the Security Council could be legally justified by the quasi-constitutive document of the Council: The Charter of the United Nations. The UN Charter, like any domestic constitution, is subject to change and always a product of its times¹⁴². Recently it has turned into a more flexible tool, mirroring the current will of the member states. In addition it has been trying to fulfill the 'effet utile' ('to have a useful impact'), meaning that norms are to be interpreted in such a way that they best serve the objectives of the convention.¹⁴³

(a) The implied powers doctrine

Some argue that the powers of international organisations are defined and limited by the function that they were given when they were created.¹⁴⁴ Within that space they are able to exercise legal powers and have some form of authority.¹⁴⁵ However, due to the implied power doctrine, international organisations that have

¹³⁹ Jan Klabbbers op cit note 3 at 175; UN Doc. S/23500 op cit note 23.

¹⁴⁰ Sumon Dantiki op cit note 4 at 680.

¹⁴¹ Paul C. Szasz op cit note 89 at 905.

¹⁴² *Competence of the General Assembly for the Admission of a State to the United Nations Advisory Opinion*, (1950) ICJ Rep. 17-18 (Judge Azevedo, Dissenting Opinion); Jan Klabbbers op cit note 3 at 87.

¹⁴³ Andreas Zimmermann, Björn Elberling 'Grenzen der Legislativbefugnisse des Sicherheitsrats' (2004) 3 *Zeitschrift für die Vereinten Nationen und ihre Sonderorganisationen* 72-3.

¹⁴⁴ Jan Klabbbers op cit note 3 at 85.

¹⁴⁵ *Ibid* at 98.

been granted certain rights, can additionally use ‘implied’ rights from the constituting treaties if these additional powers are necessary for its duties.¹⁴⁶

Consequently, it could be argued that the Security Council could benefit from such implied rights found in the UN Charter and could justify legislative resolutions in order to fulfil its duty of maintaining international peace and security.

The implied powers doctrine however is so broad that it would justify a very wide range of activities by international organisations.¹⁴⁷ And regardless whether the implied powers doctrine could legally be stretched beyond breaking point, the international organisation would lack the competence in certain fields notwithstanding that under international law it might have the legal capacity to act in these areas.¹⁴⁸ This means that although an international organisation might have implied powers to act in a certain way, the reality would not permit it due to practical reasons like the lack of expertise or funds for instance. That in turn shows in my opinion an interdependency in which the implied powers doctrine can naturally only go as far as in practice it would be possible, otherwise losing its *raison d’être*: the implication.

(b) Principle of Proportionality

The wording in Art 40, 42, 43 (1) and 51 of the UN Charter shows that the Council’s actions are limited by the principle of proportionality meaning that actions or measures by the Council are only legitimate if they are absolutely necessary.¹⁴⁹ The notion of proportionality is especially relevant since Security Council legislation is unilateral and mandatory *erga omnes*.¹⁵⁰ In addition to that, several member states expect that the Council can only act legislatively when a certain level of urgency is reached.¹⁵¹ Due to the lack of control in regard to the Council’s actions, these limits

¹⁴⁶ *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion (1949) ICJ Rep 179.

¹⁴⁷ Jan Klabbers op cit note 3 at 99.

¹⁴⁸ *Ibid* at 100.

¹⁴⁹ Stefan Talmon op cit note 22 at 184.

¹⁵⁰ Nicholas Tsagourisa op cit note 102 at 555.

¹⁵¹ UN Doc. S/PV. 4950 op cit note 104 at 9-10 (22 April 2004) at 3 (Brazil); at 5 (Algeria); at 7 (Spain); at 9 (Angola); at 11 (United Kingdom); at 20 (Peru); at 21 (New Zealand); at 24 (India); at 25 (Singapore); at 27 (Sweden); at 28 (Japan, Switzerland); at 31 (Indonesia); at 4 (Malaysia for the Non-Aligned Group); at 5 (Mexico); at 8 (Republic of Korea); at 11 (Jordan); at 14 (Nigeria); UN Doc. S/PV.4956, at 9 (2004) (Romania); see also UN Doc. S/PV. 4451 UN Sec. Council, 4951st Meeting at 19 (16 January 2002) (India, with regard to Resolution 1373); Stefan Talmon op cit note 22 at 184.

are in practice very weak however since the Council decides whether something is ‘necessary’ or ‘urgent’.¹⁵²

A necessary intermediate step, although not required by the Charter, could be an approved recommendation on the part of the General Assembly when it comes to legislative recommendations through the Security Council.¹⁵³

(c) Principle of Subsidiarity

The principle of subsidiarity, which can be found in Art 2 (7) of the UN Charter, clarifies that a higher level of authority is only justified in carrying out certain duties if this authority can do this in a more effective way than the authority below.¹⁵⁴ The principle of subsidiarity attains the common good more effectively and less intrusively by deciding for each case which level of authority can best achieve the goal.¹⁵⁵ Actions of a higher level of authority can only be imposed if a lower level authority cannot achieve the same effect.¹⁵⁶

By legislating through resolutions the Security Council serves the common purpose more efficiently than when states make international law through the protracted process of ratifying an international convention.¹⁵⁷ Art 2 (7) of the UN Charter might be a tool to mediate instead of separate between different jurisdictional authorities of the United Nations and its member states.¹⁵⁸ This might prove as a system where the Council would not be able to abuse its powers and could only legislate once it is clear that this forms the better solution.

(d) The Scope with regards to Climate Change

The measures of the United Nations Security Council resolutions could fill the gaps that still exist in climate change related treaties today,¹⁵⁹ although it is unclear to what extent and how.

¹⁵² Stefan Talmon op cit note 22 at 185.

¹⁵³ Paul C. Szasz op cit note 89 at 905.

¹⁵⁴ Nicholas Tsagourisa op cit note 102 at 547.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid at 550-1.

¹⁵⁸ Ibid at 547.

¹⁵⁹ Masahiko Asada op cit note 109 at 11.

Due to the increased interdependence of states, especially for issues such as climate change, there is a growing need for global administrative institutions to take action even if their legitimacy is often questioned.¹⁶⁰

The Security Council has revealed that there is a connection between climate change and the maintenance of peace and security. In the Presidential Statement 2011/15 on climate change it ‘expressed its concern that possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security.’¹⁶¹

An important characteristic is that legislative resolutions do not focus on a specific state, society or group of people.¹⁶² With regards to climate change this could mean tackling different stakeholders simultaneously.

Climate change is a modern international law problem that might need a modern solution. Similar to terrorism, it poses a threat to the international community in a way, which had not been experienced before. And similar to how the Security Council handled the terrorist attacks of 2001 by issuing a legislative resolution, it could now follow its own example and tackle climate change in a comparable way.

I am therefore convinced that the United Nations Security Council would be in a legally sound position to pass legislative resolutions. Whether one thinks that the Security Council is entitled to pass legislative resolutions or not is in the end irrelevant. This is because the Council decides for itself which resolutions it should pass or not pass and cannot be held accountable or stopped by a higher authority. In my opinion it is therefore more important to focus on whether this situation could be used in a positive way to end threats to peace and security that seem difficult to resolve on other levels.

C. CHAPTER 3: WHAT THE SECURITY COUNCIL CAN DO REGARDING CLIMATE SECURITY THREATS

I. The legal possibilities open to the Security Council

¹⁶⁰ Sumon Dantiki op cit note 4 at 692.

¹⁶¹ UN Doc. S/PRST/2011/15 SC Presidential Statement (20 July 2011).

¹⁶² Stefan Talmon op cit note 22 at 175.

From the two previous chapters, it has become clear that the Security Council can react to specific events that have their roots in climate change and have evolved into peace and security issues. One of the several actions the Council could take are the so-called ‘adaptive measures’.¹⁶³ However, these measures miss out on its capability to address the underlying cause that is climate change.¹⁶⁴ An alternative and more preventive action might be a legally binding call for ‘mitigation’, meaning ‘a human intervention to reduce the sources or enhance the sinks of greenhouse gases’.¹⁶⁵

In this chapter, I will be analysing what the Security Council, with its compulsory powers, can do to prevent scenarios, as described above, that have their roots in climate change but are often not solely and directly correlated to the peace and security threats that they helped to bring about. The problem with climate change is that most conflicts are only avoidable if their causes are stopped far in advance. If climate change triggered a military action, the Council’s decision would often be based on that military action and not on the original climate change occurrence. Most of the time the developments resulting from climate change are often too vague and unclear to declare them as actual threats to peace and security. On the other hand, the Security Council is a flexible organ that is limited, besides the UN Charter, only by itself.¹⁶⁶ It has already proven that it can find new ways to address new forms of threats like when it tackled global terrorism for instance.

(a) The Security Council’s attitude towards climate change

Although climate change might be a security issue, it does not automatically turn into a Security Council issue.¹⁶⁷ Talking about climate change at United Nations Security Council meetings was controversial since most members regarded it as an issue that was either provocative or irrelevant or both.¹⁶⁸ The Security Council held

¹⁶³ Shirley V. Scott ‘Implications of Climate Change for the UN Security Council: mapping the range of potential policy responses’ (2015) 91 *International Affairs* 1319.

¹⁶⁴ Christopher K. Penny ‘Greening the Security Council: climate change as an emerging ‘threat to international peace and security’ (2007) 7 *Int Environ Agreements* 58.

¹⁶⁵ UNFCCC ‘Glossary of climate change acronyms’ available at <https://unfccc.int/process-and-meetings/the-convention/glossary-of-climate-change-acronyms-and-terms#m>, accessed on 6 February 2020.

¹⁶⁶ Christopher K. Penny op cit note 164 at 57.

¹⁶⁷ Francesco Sindico ‘Climate Change: A Security (Council) Issue?’ (2007) 1 *Carbon & Climate L. Rev.* 34.

¹⁶⁸ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 12.

its first-ever debate on climate impacts in 2007.¹⁶⁹ This initiative can be traced back to the United Kingdom's Council leadership, the focus on preventive actions within conflicts and the overall progress of the concept of international security.¹⁷⁰ The debate whether the Council is at all the right organ to address climate change has been going on since then. Russia and some G77 countries,¹⁷¹ mostly including developing countries such as India, South Africa and Brazil do still not support the idea that the Council should deal with climate-related issues.¹⁷² Since 2007, several attempts were made to put climate change on the Council's agenda, but all of them failed.¹⁷³ When climate issues are handled by the Council at all, this is usually done implicitly not explicitly, like during its discussions about water when there was no mentioning of the term climate.¹⁷⁴

A question worth considering is whether climate change should be termed a sustainable development issue rather than security issue.¹⁷⁵ If this was the case however, the United Nations Security Council could no longer deal with it as Art 24 of the UN Charter states that its main function is to maintain peace and security. The Security Council itself however linked sustainable development to conflict prevention back in 2005.¹⁷⁶ It stated that the United Nations Framework Convention on Climate Change (UNFCCC) is the crucial instrument for addressing climate change, recalling its provisions.¹⁷⁷ But one could argue that actions through the UNFCCC might not be sufficient to deal with the multi-layered challenges brought about by climate change.¹⁷⁸ So far, the UNFCCC itself only issued non-binding emissions stabilisation principles.¹⁷⁹ Besides, its latest document, the Paris Agreement, lost major traction when the United States of America¹⁸⁰ and Brazil

¹⁶⁹ UN Doc. S/PV. 5663 UN Sec. Council, 5663rd Meeting (17 April 2007).

¹⁷⁰ Francesco Sindico op cit note 167 at 30.

¹⁷¹ What's in Blue op cit note 62.

¹⁷² Francesco Sindico op cit note 167 at 33.

¹⁷³ Camilla Born 'A resolution for a peaceful climate: Opportunities for the UN Security Council' (2017) *SIPRI* 5.

¹⁷⁴ Ibid at 6; UN Doc. S/PV. 7818 UN Sec. Council, 7818th Meeting (22 November 2016).

¹⁷⁵ Francesco Sindico op cit note 167 at 33.

¹⁷⁶ SC Res. 1625, S/RES/1625 (14 September 2005) Preamble.

¹⁷⁷ S/PRST/2011/15 op cit note 161.

¹⁷⁸ Darragh Conway op cit note 82 at 376.

¹⁷⁹ Christopher K. Penny op cit note 164 at 41.

¹⁸⁰ Lisa Friedmann 'Trump Administration to Begin Official Withdrawal from Paris Climate Accord' *The New York Times* 23 October 2019 available at <https://www.nytimes.com/2019/10/23/climate/trump-paris-climate-agreement.html>, accessed on 6 February 2020.

announced their withdrawals,¹⁸¹ clearly demonstrating a strong need for support from other institutions.¹⁸²

Over the years, the problem of climate change has come to the forefront within the Security Council.¹⁸³ It has passed various resolutions that mention the climate security aspect on some level. The Security Council has recognised environmental challenges as a root cause to the conflicts in the Lake Chad Region,¹⁸⁴ in Somalia,¹⁸⁵ Mali,¹⁸⁶ and Darfur¹⁸⁷ and to the stability of West Africa and the Sahel region.¹⁸⁸ However, it has been neither consistent nor systematic when it comes to climate-related security risks.¹⁸⁹

(b) The threat to peace and security as an indirect consequence of climate change - the problem of accountability and state responsibility

According to Art 39 of the UN Charter, there has to be ‘a threat to the peace’ in order for the Council to act. But this might not only include specific instances but also situations that generally threaten peace in a fundamental way.¹⁹⁰ If the Security Council then wants to enact legislation it can only do so if a genuine link between the general obligations enacted and the maintenance of international peace and security exists.¹⁹¹ Article 34 of the UN Charter states that

‘the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.’

This indicates that complete certainty is not required. Also, it is not legally required that the measurements have proven to be post facto effective.¹⁹²

¹⁸¹ ‘Brazil: Bolzano threatens to quit Paris climate deal’ *Climate Home News* 14 August 2018 available at <https://www.climatechangenews.com/2018/08/14/brazils-bolsonaro-threatens-quit-paris-climate-deal/>, accessed on 6 February 2020.

¹⁸² Darragh Conway op cit note 82 at 382.

¹⁸³ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 12.

¹⁸⁴ SC Res. 2349, S/RES/2349 (31 March 2017) para 22 and 26.

¹⁸⁵ SC Res. 2408, S/RES/2408 (27 March 2018); SC Res. 2431, S/RES/2431 (30 July 2018).

¹⁸⁶ SC Res. 2423, S/RES/2423 (28 June 2018).

¹⁸⁷ SC Res. 2429, S/RES/2429 (13 July 2018).

¹⁸⁸ UN Doc. S/PRST/2018/3 SC Presidential Statement (30 January 2018); Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 12.

¹⁸⁹ Camilla Born op cit note 173 at 1.

¹⁹⁰ Andreas Zimmermann, Björn Elberling op cit note 143 at 71.

¹⁹¹ Stefan Talmon op cit note 22 at 183.

¹⁹² Christopher K. Penny op cit note 164 at 59.

A significant point of critique against Resolutions 1422 and 1487 was that the Security Council did not present a tangible link to a peace and security threat.¹⁹³ Resolution 1422 was remarkable as it suggested between the lines that the non-contribution of troops to the United Nations peacekeeping operations would pose a threat to international peace and security.¹⁹⁴ The link here between threat and action is very vague. When looking at Resolution 1540, regarding the prohibition of nuclear weapons, the Security Council declared that the abstract action of proliferation of weapons of mass destruction formed a threat to peace and security,¹⁹⁵ even if this action had not manifested itself as a threat in a concrete form.¹⁹⁶ A similar approach could be used for climate change. If proliferation of nuclear weapons represented an indirect threat, one could argue that the abstract action of rising CO2 emissions by states could equally be understood as a threat to peace and security. In order to know which member states have to be addressed by the Security Council it is necessary to establish the extent of state responsibility regarding such indirect threats. The causes and effects of climate change are more visible and easier to identify than the ones of terrorism, since it is quite easy to determine which country has contributed to climate change to what extent through which levels of CO2 emissions.¹⁹⁷ However, scientific findings no matter how accurate or widely accepted will never prescribe just one solution approach and will provide some leeway in regard to policy responses.¹⁹⁸

By passing Resolution 1373, the Council issued a binding resolution to fight terrorism.¹⁹⁹ Here it made the reasonable assumption that financing terrorists could eventually harm states and that this therefore poses a threat to international peace and security.²⁰⁰ In this case the Security Council had not established any level of state responsibility for this situation that, later down the causal chain, posed a threat to international peace and security. None of the articles in the UN Charter would have required it to do this, showing that the Security Council is willing to counteract threats regardless from where and from whom they originate.

¹⁹³ Stefan Talmon op cit note 22 at 178.

¹⁹⁴ Carsten Stahn op cit note 84 at 87.

¹⁹⁵ S/RES/1540 op cit note 132 Preamble; Andreas Zimmermann, Björn Elberling op cit note 143 at 71.

¹⁹⁶ Darragh Conway op cit note 82 at 380.

¹⁹⁷ Christopher K. Penny op cit note 164 at 59 and 64-5.

¹⁹⁸ Marcel Leroy & Fana Gebresenbet op cit note 9 at 701.

¹⁹⁹ Christopher K. Penny op cit note 164 at 59.

²⁰⁰ Ibid at 60.

The question whether the Security Council can tackle abstract risks is of great importance as it goes hand in hand with the response to those abstract risks through abstract-general regulation in the form of legislative measures.²⁰¹ As Art 1 (1) of the UN Charter indicates, maintaining peace and security also includes preventive measures that remove the threat. Therefore preventive measures and a proactive dimension to the functioning of the Council was always envisioned.²⁰² Already the phrasing of Art 39 of the UN Charter of the term ‘threat’ already permits the Council to take precautionary action.²⁰³ Regarding the different measures of non-military actions these are not enumerated exhaustively in Art 41 of the UN Charter and include the wording ‘these may include’. This means that a possible action from the Council could be the passing of an abstract-general regulation.²⁰⁴ The only requirement is that these measures do not involve the use of force.²⁰⁵

While environmental stress, deepened by climate change, is a factors leads to conflict this does not necessarily make it a direct cause of conflict. Environmental stress lies further up the causal chain.²⁰⁶ It is quite difficult to anticipate and attribute conflicts that have been affected by climate change. Climate change is just one factor among many and it usually acts as a threat multiplier.²⁰⁷ When dealing with environmental matters, traditional notions regarding the burden of proof cannot always be applied. This is due to their high degree of technical complexity.²⁰⁸ Multidimensional climate risks have therefore to be tackled using a comprehensive approach.²⁰⁹ It is almost impossible to put different climate change scenarios and how humans will react to them into specific categories.²¹⁰ This, in turn, makes it particularly difficult to anticipate what will trigger instability and therefore poses a threat to peace and security. As a result, putting legislative measurements in place, that will hinder the outcome, is a difficult undertaking.

²⁰¹ Andreas Zimmermann, Björn Elberling op cit note 143 at 71.

²⁰² Stefan Talmon op cit note 22 at 181.

²⁰³ Christian Tomuschat, ‘Obligations Arising for States without or against Their Will’ *Recueil des Cours*, tome 241 (1993-IV), 344-5.

²⁰⁴ Andreas Zimmermann, Björn Elberling op cit note 143 at 71.

²⁰⁵ *Prosecutor v Dusko Tadic* (1999) ICTY case no. IT-94-1A para 35.

²⁰⁶ Marcel Leroy & Fana Gebresenbet op cit note 9 at 696.

²⁰⁷ *Ibid* at 693-4.

²⁰⁸ Joint dissenting judges Al-Khasawneh and Simma *Pulp Mills on the River Uruguay, Argentina v. Uruguay, Provisional Measures* (2006) ICJ Rep 113 para 5.

²⁰⁹ Camilla Born op cit note 173 at 4.

²¹⁰ Marcel Leroy & Fana Gebresenbet op cit note 9 at 700-1.

Another obstacle is the fact that polluters are often private enterprises and not states.²¹¹ States can however be held responsible for omission if they do not achieve the climate targets that they legally agreed to uphold.²¹² Through stricter legal rules that have to be enforced by the state, climate change could be reduced. International environmental law could force lawmakers and negotiators to experiment with new mechanisms and techniques.²¹³ Targeted sanctions through ‘Listing’ processes within the fight of terrorism²¹⁴ as well as Security Council’s resolutions concerning foreign terrorist fighters²¹⁵ have shown that the Security Council does not directly address non-state actors but through the member states of the United Nations. This approach could easily be used to address private entities when it comes to pollution. The Security Council could require states to pass binding legislation to reduce their carbon footprint in order to decarbonise the economy across the globe.²¹⁶ Alternatively, it could issue specific greenhouse gas emissions targets that states would have to obey.²¹⁷ If states refuse to comply with their given obligations, economic sanctions, including import and export bans, could pose an effective method.²¹⁸ This could force them to reduce greenhouse gas emissions.²¹⁹ Another possibility are the so-called commodity-specific sanctions that, by targeting entire economic branches, address private enterprises directly and the source of the problem. In that way, the Council could ban products that have been produced or extracted in environmentally harmful ways or hinder their export from non-compliant states, also providing incentives for investors to aim for low-carbon methods.²²⁰

Another potential angle of argument could be to declare climate change a threat to collective security as a threat to one member state is a threat to all.²²¹ While Art 1 (1) of the UN Charter challenges the United Nations to ‘take effective collective measures for the prevention and removal of threats to the peace’, the main

²¹¹ Jan Klabbers op cit note 3 at 252.

²¹² Art 2 *Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries* Yearbook of the International Law Commission, 2001, Vol. II, Part Two.

²¹³ Jan Klabbers op cit note 3 253.

²¹⁴ SC Res. 2368, S/RES/2368 (20 July 2017).

²¹⁵ SC Res. 2178, S/RES/2178 (24 September 2014).

²¹⁶ Shirley V. Scott op cit note 163 at 1323.

²¹⁷ Christopher K. Penny op cit note 164 at 59.

²¹⁸ *Ibid* at 61.

²¹⁹ Shirley V. Scott op cit note 163 at 1324; Darragh Conway op cit note 82 at 400.

²²⁰ Darragh Conway op cit note 82 at 400.

²²¹ Shirley V. Scott op cit note 163 at 1322.

focus of the Security Council has been on crisis management and hard security interventions.²²²

There are different attitudes towards handling climate change in the Security Council. Some countries solely try to raise awareness, while others see climate change in a wider understanding of security and are therefore willing to apply a more holistic approach. And then there are the small island states that are already threatened by climate change today and require preventive actions immediately. This raises the interesting question whether the Council can only fulfil an advisory rather than an authoritative role if one looks at climate change as a non-military threat.²²³ It might not however be enough for the Council to just embody an advisory role without the competency to initiate actions that have legal consequences. Although creating awareness and putting climate change on the agenda are essential measures, these developments are not sufficient to stop the catastrophe of climate change.

A realistic approach could be to form a cooperation between the Paris Compliance Mechanism and the Security Council. The former could identify which states have not been complying in their binding obligations to reduce emissions²²⁴ while the latter could enforce sanctions against such perpetrators.²²⁵ In case of conflicting interests, the Council's actions would make sure abide by the obligations states have under the Paris Agreement.²²⁶ In instances relating to terror or nuclear weapons, the binding resolutions of the Security Council were accompanied by oversight mechanisms, which are possible under Art 29 of the UN Charter.²²⁷ This says that 'the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.' A similar 'Environmental Security Committee' could track the implementation of a resolution regarding emission obligations.²²⁸

(c) The risk of turning the Security Council into a legislature regarding an on-going threat

²²² Camilla Born op cit note 173 at 8.

²²³ Francesco Sindico op cit note 167 at 32.

²²⁴ Christopher K. Penny op cit note 164 at 42.

²²⁵ Francesco Sindico op cit note 167 at 34.

²²⁶ Shirley V. Scott op cit note 163 at 1323.

²²⁷ Christopher K. Penny op cit note 164 at 54.

²²⁸ Ibid at 61.

It is most likely that the Security Council, instead of setting up specific measures, will instead impose emission-limitation requirements.²²⁹ When it comes to climate change and the effects that it has, concrete circumstances on the ground will vary depending on the country and region.²³⁰ It is therefore quite challenging to find a general legislative solution that can do justice to all the differently affected parties. Therefore the Security Council should concentrate its power on one specific and simple rule which would benefit all: the reduction of greenhouse emissions.

In addition, the Security Council needs greater access to risk assessment information relating to food insecurity, water insecurity, changes in the world energy economy, and disruptions to key commodity supply chains. Currently it does not collect any climate-related information from its reports on missions, peacekeeping operations and general country information.²³¹ By including climate related information in these reports one could achieve great awareness within the Security Council with relatively little effort. Another option would be for the Security Council to create an Environmental Security Committee that could gather data and supervise the various developments made by states.²³²

The Security Council must be empowered to take concrete action where climate change exacerbate conflicts. To do this a secure and comprehensive information base is required. All relevant information must be bundled, processed and analytically evaluated and an early warning system should be put in place.

The Security Council cannot and should not replace the established instruments of climate policy. Instead it should complement them.²³³ An ambitious climate policy remains the best way to limit climate risks. But as long as the climate goals of the international community are not sufficient to limit global warming to an acceptable level, it must address the foreign and security policy consequences of climate change.²³⁴ It is not a question of whether one single organ can offer the solution but instead of how the different layers affected by climate change can be handled by varying institutions. Giving the Security Council the power to act upon

²²⁹ Darragh Conway op cit note 82 at 390.

²³⁰ Marcel Leroy & Fana Gebresenbet op cit note 9 at 705; Erika Pires Ramos op cit note 24 at 742.

²³¹ Camilla Born op cit note 173 at 11.

²³² Christopher K. Penny op cit note 164 at 61.

²³³ Darragh Conway op cit note 82 at 377.

²³⁴ Auswärtiges Amt (German Ministry of Foreign Affairs) 'Klima und Sicherheit' available at <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/klima/klimaundsicherheit-node>, accessed on 6 February 2020.

climate change does not mean that powers are necessarily taken away from other United Nations organs. It would be desirable if the Council did not have to act but rather be a means of last resort. The Council could use the already existing framework and build upon its existing foundation.²³⁵

There is a general fear among member states that the Council could cut state sovereignty by introducing prescriptive mitigation measures.²³⁶ However, there is growing recognition that the Council should not only respond to current crisis but also prevent them.²³⁷ Once a situation has been identified as a potential future threat, the Council should be able to act before it materialises into an actual threat.²³⁸

There have been several instances where preventive measures by the Council were indeed successful. These were cases relating to HIV/AIDS, counterterrorism and gender.²³⁹ In those cases the Council focused on four conflict prevention functions including political elevation of root causes, institution-building and reform, coordination of the United Nations system and mainstreaming the solutions into security operations.²⁴⁰ The Security Council has always evolved and adapted to various political developments over time. Its actions did not only include sanctions, and the use of force but also the foundation of international criminal tribunals and the establishment of peacekeeping missions for instance.²⁴¹ Just because climate change forms an ongoing threat rather than a singular incident, this does not mean that the Council is not equipped to resolve it.

(d) How does the scenario of climate change differ from what the Security Council usually deals with?

Many destabilising factors in the world present potential threats to peace and security, climate change being just one of them. So, why should the Security Council spend so much of its focus on climate change? Because climate change is a factor that could successfully be tackled through international legal action. Instabilities in regions through ethnic tensions, social, cultural or political factors often require solutions within countries. Climate change, however, crosses borders and therefore

²³⁵ Christopher K. Penny op cit note 164 at 62.

²³⁶ Camilla Born op cit note 173 at 2.

²³⁷ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 13.

²³⁸ Stefan Talmon op cit note 22 at 192.

²³⁹ Camilla Born op cit note 173 at 8.

²⁴⁰ Ibid at 10.

²⁴¹ Shirley V. Scott op cit note 163 at 1319.

follows in the footsteps of other transnational problems that individual states fail to get under control, such as piracy and armed robbery. Here the Council has already installed various international tribunals due to national insufficiencies when it comes to these issues.²⁴² The same should be done for climate related matters. As climate change brings about situations where the origin of a problem and its effects are often geographically removed from one another, the installation of tribunals are even more necessary. Direct causal links to the 'victim' states is often missing.²⁴³ This precisely makes it precisely a global problem that therefore, can also only be solved globally.

In the past, the Council had passed resolutions not because of threats to peace and security but to achieve other goals.²⁴⁴ These resolutions related to humanitarian relief, assisting United Nations personnel on-site and promoting democracy for instance.²⁴⁵ Previously discussed Council topics relating to terrorism or HIV/ AIDS could show that it would not be unnatural for the Security Council to tackle climate change.²⁴⁶

If the Security Council manages to address terrorists or the very private issues surrounding HIV and unprotected sex, HIV's most common method of transmission, both topics not subject to domestic regulatory framework,²⁴⁷ it should find it much simpler to deal with private agents like enterprises that pollute the environment and can very well be controlled by state means. Commercial enterprises that influence climate change through production are easier to address through legislative measures than terrorists who do not even operate in a legally manageable space. The same goes for the private matter that is sexual intercourse where legislators can only go as far as to provide protection against sexual transmitted diseases but they cannot enforce the actual use of them. One could therefore argue that this makes the area of climate change not only easier to govern, but also an area where the Security Council specifically has to take action due to the cross-border scale.

The Security Council is in a unique position as it can address climate security challenges and can put them into practice across the United Nations system with its

²⁴² SC Res. 1918, S/RES/1918 (27 April 2010) Preamble.

²⁴³ Christopher K. Penny op cit note 164 at 60.

²⁴⁴ Cathleen Helen Powell op cit note 85 at 54.

²⁴⁵ Resolutions on Somalia (SC Res. 733, S/RES/733 (23 January 1992), SC Res. 794, S/RES/794 (3 December 1992)), interventions in Haiti (SC Res. 841, S/RES/841 (16 June 1993), SC Res. 940, S/RES/940 (31 July 1994)) and Angola (SC Res. 864, S/RES/864 (15 September 1993)); Cathleen Helen Powell op cit note 85 at 54.

²⁴⁶ Christopher K. Penny op cit note 164 at 64.

²⁴⁷ Ibid at 65.

member states.²⁴⁸ There are member states however that argue that climate change should be handled by a much more representative organ like the General Assembly.²⁴⁹ Climate security issues do not have a dedicated department in the United Nations. This however represents a chance for a new form of cooperation among the institutions of the United Nations. For instance, the Security Council could come together with the General Assembly and the Secretary-General to try and deal with the consequences of climate change.²⁵⁰ However, final decisions would still have to be made by the Security Council as General Assembly resolutions are never as powerful as the binding resolutions that can be issued by the Security Council. The Security Council would have to remain the locus of global governance with regards to an issue that might call into question the long-term viability of human survival.²⁵¹ One also has to keep in mind that climate agreements are ‘package-deals’, determining levels of emissions for member state. This means however that any lack of unity risks jeopardizing the entire climate undertaking.²⁵² It was never so urgent or feasible to have the Security Council intervene on climate change.²⁵³ It is about time to use the powers of the Council to set new legal rules to cope with climate change.²⁵⁴

II. The Security Council’s structural weaknesses and how this affects its actions

This brings me to my next point: the structural weaknesses of the Security Council. The political will of the members of the Security Council determines how the climate challenge will be answered.²⁵⁵ Just because the UN Charter has delegated certain powers to the Security Council, this does not mean that the latter will use them to achieve the former’s aim.²⁵⁶

While all regions are theoretically represented in the Security Council,²⁵⁷ there remains a strong geographical imbalance as the mostly underdeveloped Global

²⁴⁸ Camilla Born op cit note 173 at 12.

²⁴⁹ Francesco Sindico op cit note 167 at 33.

²⁵⁰ Camilla Born op cit note 173 at 11.

²⁵¹ Shirley V. Scott op cit note 163 at 1322.

²⁵² Darragh Conway op cit note 82 at 384.

²⁵³ Camilla Born op cit note 173 at 12.

²⁵⁴ Gunter Pleuger op cit note 2 at 34.

²⁵⁵ Christopher K. Penny op cit note 164 at 62.

²⁵⁶ Cathleen Helen Powell op cit note 116 at 2.

²⁵⁷ TW Bennett & J Strug op cit note 96 at 287; Jan Klabbers op cit note 3 at 87.

South is only represented as non-permanent members.²⁵⁸ In addition to that, all permanent members have reached at least a certain degree of development.

According to Art 27 of the UN Charter, substantive Council decisions requirement a majority of nine votes, including the concurring votes of the permanent members, also known as their veto right.²⁵⁹ This procedure has evolved over time, and ever since the Korea Crises the ‘concurring vote’ is still upheld notwithstanding absence or abstention, meaning a veto has to be expressed specifically.²⁶⁰ Decisions of the Security Council are therefore heavily influenced by the voting behaviour of the permanent members. To put it frankly: without the support of the P5, the Security Council is not able to take action.²⁶¹ Naturally, the Security Council members’ actions are affected by their own interests and that of their close allies.²⁶² This creates the risk that the veto powers will block enforcements actions that are not in their interest.²⁶³ In the past, the Council had remained silent when one of its permanent members invaded or attacked another member state of the United Nations.²⁶⁴ The five permanent members often put their national interests before that of the international community.²⁶⁵ As seen with Resolutions 1422, 1487 and 1497, were the United States of America used the Council to enforce their national interests, legislative resolutions can result in the abuse of power.²⁶⁶ Another problematic component is that the measurements of the Council are ‘unbalanced and selective, as they represent only the views of those who drafted them.’²⁶⁷

All five permanent member states are parties to the United Nations Framework Convention on Climate Change²⁶⁸ as well as to the Paris Agreement.²⁶⁹ That being said in 2013 and 2015, Russia and China had continuously dismissed an

²⁵⁸ Jan Klabbers op cit note 3 at 87-8.

²⁵⁹ Ibid at 86.

²⁶⁰ Ibid at 173.

²⁶¹ Christopher K. Penny op cit note 2 at 62.

²⁶² Paul C. Szasz op cit note 89 at 905.

²⁶³ Darragh Conway op cit note 82 at 405.

²⁶⁴ Jan Klabbers op cit note 3 at 172.

²⁶⁵ Gunter Pleuger op cit note 2 at 35.

²⁶⁶ Sumon Dantiki op cit note 4 at 672.

²⁶⁷ UN Doc. S/PV. 4950 op cit note 104 at 17.

²⁶⁸ Christopher K. Penny op cit note 164 at 63.

²⁶⁹ United Nations Treaty Collection on 4/11/2019 available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en, accessed on 6 February 2020.

explicit link between climate change and security.²⁷⁰ In 2017 and 2018, China supported the widening of the Council's agenda, taking a more proactive role in preventive action. Russia on the other hand refuses to label the issue of climate change a responsibility of the Security Council. But it is willing to discuss the topic if it appears as one of many factors that cause a specific conflict.²⁷¹ Recently, the United States of America (under President Donald J Trump) is holding a low profile when it comes to climate change.²⁷² The current power relations between the United States of America and China could further fuel this inactivity of the Council.²⁷³

The following characteristics of the P5 are likely to influence their attitude towards climate change:

(a) Permanent members coming from the Global North

As already mentioned in Chapter One, the Global North is far less vulnerable to the impacts of climate change.²⁷⁴ This could leave the permanent members of the Security Council less willing to engage in actions against climate change. Trade routes will be opening up in the Arctic.²⁷⁵ These developments are of great potential benefit for the US and Russia and could one reason why they don't necessarily want to halt the melting of the ice.

(b) Permanent members being industrialised states

All of the permanent members have reached a high degree of industrialisation, which goes hand in hand with pollution and increased CO₂ emissions. This leads to a bias among permanent members when handling climate related security issues at the Security Council. Although industrialised countries are the biggest consumers of ecological resources and produce the majority of CO₂ emissions globally, their emissions have actually decreased since 2000. Emerging economies, particularly Asian countries, have generally seen increases in their emissions.²⁷⁶ The Kyoto Protocol tried to tackle the inequality between developing

²⁷⁰ Camilla Born op cit note 173 at 5.

²⁷¹ Ibid at 6.

²⁷² Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 14.

²⁷³ Darragh Conway op cit note 82 at 385.

²⁷⁴ Chapter 1 (b) page 13-14.

²⁷⁵ Christopher K. Penny op cit note 164 at 41.

²⁷⁶ The International Energy Agency op cit note 70.

countries and developed countries, the latter being able to afford expensive energy alternatives (green energy). This is why the emission targets, as set by to Annex 1 of the Kyoto Protocol, only applied to developed countries. This however meant that rising developing countries with their steadily increasing pollution was not adequately addressed.²⁷⁷ While the main responsibility for stopping climate change lies with the wealthier states, an effective solution requires commitment from the entire global community.²⁷⁸

(c) Permanent members being the worst perpetrators of climate change

Whereas most industrialised states are ready to use green alternatives, emerging industrial powers such as China like to point out that it is their turn to freely industrialise even if it that furthers climate change.²⁷⁹ Regulations concerning climate change will have a significant impact on states' core economic and development priorities and will result in expensive investments.²⁸⁰ While the costs for polluting industries to become climate-neutral are short term and new economic opportunities can result, this will still be regarded an economic obstacle and will influence states' voting behaviour in the Security Council.²⁸¹

Various permanent members have a hostile attitude towards the Paris Agreement and the US has even started their withdrawal.²⁸² If permanent members adhere to these climate regulations more strictly, not only would various peace and security issues relating to climate change be reduced, but the P5 and the Security Council would not have to decide on these matters in the first place.²⁸³ Whether the Security Council realises this chain of consequences and how this affects the political power of its permanent members, will be discussed in the following chapter where I will also take a closer look at the various expectations from different stakeholders.

²⁷⁷ Falkner, R. 'How the Paris Agreement Can Help Us Get to a Low-Carbon Global Economy' (2016) 3 *Peace Science Digest* 16.

²⁷⁸ Darragh Conway op cit note 82 at 407.

²⁷⁹ Jan Klabbers op cit note 3 at 85.

²⁸⁰ Darragh Conway op cit note 82 at 383.

²⁸¹ Christopher K. Penny op cit note 164 at 65.

²⁸² US Department of State 'On the U.S. Withdrawal from the Paris Agreement' (4 November 2019) available at <https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/>, accessed on 6 February 2020.

²⁸³ Brzoska, M. & Fröhlich, C. op cit note 21 at 11.

E. CHAPTER 4: MECHANISMS TO COUNTER THE SECURITY COUNCILS'S LACK OF POLITICAL WILL

After analysing the legal possibilities given to the Security Council, I will now try to put them into perspective by looking at the probability of realising them. This chapter will therefore look at the context and politics on the ground, realising that although legal mechanisms are set in place, as shown in the previous chapter, they might not always be enforced. Inherently being political, international law is all about which actors make the actual decisions at the end of the day.²⁸⁴ I will try to analysis why and under which circumstances the Security Council will most likely take action when it comes to climate change related issues. This is very topical, given that one of the key questions posed in the run-up to the open debate on climate change in 2019 was what role the Council might play in responding early and adequately to climate-related disasters.²⁸⁵ One has to keep in mind that as climate change security threats become more relevant globally, states may change their positions on the issue.²⁸⁶

I. The reactions and expectations of the international community towards the Security Council

Before examining the political intentions of the Council's member states, it is necessary to first analyse what the international community expects from the Council. It is important to remember that legislations of the Security Council have only been possible in the past because member states chose to create room for them.²⁸⁷ Without this willingness by the member states, the Council would not have been able to assume such a role. However, this was set up in such a way where the United Nations Security Council can set rules for the United Nations member but does not have the authority to enforce them if a state is disobedient. This creates a dependency of the Council on the goodwill of the member states of the United Nations. The Security Councils' actions will always be influenced, at least to a certain degree, by what the global community expects from it.

²⁸⁴ Jan Klabbers op cit note 3 at 308.

²⁸⁵ UN Doc. S/2019/1 Security Council letter (3 January 2019).

²⁸⁶ Christopher K. Penny op cit note 164 at 63.

²⁸⁷ Cathleen Helen Powell op cit note 85 at 52.

A significant concern is that, by extending the scope of the Council to non-traditional security threats such as climate change, the Security Council could lose what is granted to it under Art 24 of the UN Charter: ‘prompt and effective action’ as one of its primary responsibilities.²⁸⁸ Therefore, one could argue that the Security Council’s role regarding climate change should only be in the short-term manner for which the Security Council was intended.²⁸⁹ In addition, if the Security Council legislates, this could undermine all of international law because the Council does not represent a legitimate source of international law or because it would present international lawmaking as slow and uncertain.²⁹⁰ Some smaller countries dismiss the Council’s intervention, arguing that its decision making is too strongly influenced by big power politics.²⁹¹ However, actions by the Council could be accepted if the need to fill a gap in international law becomes too big or too urgent.²⁹² This necessity could even lead to member states expecting or pressuring the Council to tackle the current climate crises.

(a) Climate change affected countries

Security-wise, climate change will affect some countries more than others²⁹³ and sooner or later the consequences of climate change – by leading to security issues - will catch up with the Council.²⁹⁴ As already stated in the previous chapter, for the most affected countries today climate change is already a security issue.²⁹⁵ These countries are however in the minority and politically weak. This makes it difficult for them to have a significant political impact and force the Council to act.

(b) Developing countries

Many developing countries stress that climate change should rather be seen as a topic of sustainable development. By taking this issue up, the Security Council would interfere with other United Nation bodies such as the General Assembly, the United Nations Economic and Social Council, and the United Nations Commission

²⁸⁸ Christopher K. Penny op cit note 165 at 68.

²⁸⁹ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 24.

²⁹⁰ Cathleen Helen Powell op cit note 85 at 58.

²⁹¹ Camilla Born op cit note 173 at 8.

²⁹² Darragh Conway op cit note 82 at 384.

²⁹³ Christopher K. Penny op cit note 164 at 40.

²⁹⁴ Shirley V. Scott op cit note 163 at 1317.

²⁹⁵ Francesco Sindico op cit note 167 at 32.

on Sustainable Development. Developing countries are alarmed that with such behaviour, the Council would change the rules of the game.²⁹⁶ Countries like China, Venezuela and Saudi Arabia have furthermore stated their fear of losing sovereignty in their development choices.²⁹⁷ Venezuela went as far as stating that the interference of the Security Council would violate the state's sovereignty and its right to do as it likes with its natural resources.²⁹⁸ It is evident that climate change is not a national priority for developing countries and that they fear that by having to cut down on greenhouse gas emissions is increasing their insecurities by slowing down their economic development.²⁹⁹

Many developing countries are of the opinion that 'all parties - developed and developing - should implement their commitments according to the principle of 'common but differentiated responsibilities', and not according to the principle of 'shared responsibilities'.³⁰⁰ However, the responsibility for climate change has shifted recently and a lot of emerging economies are now enormous contributors to green gas emissions.³⁰¹ However, it is more difficult for these countries to reduce their carbon footprint as they often lack the financial means to do so. Instead, many of them believe that they should be allowed to industrialise just like the developed industrialised countries have.³⁰² While this is true, these countries are often themselves affected by climate change. To invest in more expensive but emission friendly technology could be a win-win situation for them in the long-term. Sticking to the 'common but differentiated responsibilities' principle could be a realistic approach as it has worked before in another context with the division of financial dues.³⁰³ There is a tendency to solve collective problems by allowing less solvent states a more voluntary role while they benefit just as much as developed states that have to contribute to the goal fully. Less able countries are given a so-called 'free-ride' in order to achieve the objective collectively.³⁰⁴

Although there is justified criticism about the violation of state sovereignty of non-council members and subjective behaviour of council members, one has to keep

²⁹⁶ Ibid at 33.

²⁹⁷ Camilla Born op cit note 173 at 6.

²⁹⁸ Venezuela Statement UN Doc. SC/9000 op cit note 75.

²⁹⁹ India Statement UN Doc. SC/9000 op cit note 75.

³⁰⁰ Egypt Statement UN Doc. SC/9000 op cit note 75.

³⁰¹ Marcel Leroy & Fana Gebresenbet op cit note 9 at 701.

³⁰² Camilla Born op cit note 173 at 6.

³⁰³ Shirley V. Scott op cit note 163 at 1331-2.

³⁰⁴ Falkner, R op cit note 277 at 17.

in mind that the Security Council was created to address emergency situations. There is a reason why a forum was created where fewer states would get to have a say in order to reach consent sooner and more easily. This institution is not meant to incarnate participatory democracy of sovereign states. It is intended to produce efficient solutions.³⁰⁵ If Security Council Resolutions were based on the consent of all the member states of the United Nations in a democratic manner, there would not be a need for the Council in the first place, since a treaty on the specific topic would already be in force. But the disunity concerning climate change shows that this kind of forum might be needed more than ever before. This does not mean however, that the different stages of development of member states should not be taken into consideration. Just like with the Kyoto Protocol, the Security Council could go ahead and impose different obligations for different stakeholders.³⁰⁶

II. Which circumstances could force the Security Council to act?

Convincing the international community that the Security Council should take action against climate change is not sufficient however, if the Council itself refuses to act. There is no obligation for the Security Council to identify a particular situation as a threat to peace, breach of peace, or act of aggression, as the wording under Art 39 of the UN Charter ‘shall determine’ identifies.³⁰⁷ It is for this reason, that I will now lay out under what circumstances the Security Council could decide to become active in the fight against climate change.

A youth representative called upon the Security Council to officially recognise climate change as a threat to peace and security during the open debate in January 2019.³⁰⁸ Notably, 70 per cent of the United Nations member states have declared climate change a threat to security on a national level.³⁰⁹ Keeping this in mind, one might ask how long the Security Council can continue to look the other way when it comes to climate-related security risks. The European Union’s High Representative and the European Commission to the European Council calls for the

³⁰⁵ Barry Kellman, ‘Criminalization and Control of WMD Proliferation: The Security Council Acts’ (2004) Vol. 11, No 2 Non-proliferation Review 159.

³⁰⁶ Christopher K. Penny op cit note 164 at 65-6.

³⁰⁷ Jan Klabbers op cit note 3 at 175.

³⁰⁸ Catherine Benson Whalen ‘UNSC Debates Climate Change Impact on Peace, Security and Development’ 31 January 2019 available at <https://sdg.iisd.org/news/unsc-debates-climate-change-impact-on-peace-security-and-development/>, accessed on 6 February 2020.

³⁰⁹ Shirley V. Scott op cit note 163 at 1330.

multilateral arena to focus on security risks related to climate change, emphasizing the Security Council's responsibility here.³¹⁰

Some voices claim that the powers of the Security Council are not subject to quantifiable limitation.³¹¹ And without determining whether this is true, one might have to realise that the Council's power is dependent on the United Nations member states' adherence to the resolutions it passes. This means that the Council can only act decisively as long as the member states, by implementing its decisions, will allow it to. This turns out to be a balancing act for the Council between using its powers but also maintaining them by sticking to its designated role.³¹² A resolution is only binding on member states if it adheres to Art 25 of the UN Charter which forces the Council to act within certain boundaries if it wants its decisions to be obeyed.³¹³ Although the Council is theoretically an independent organ of the United Nations, it does act on behalf of the United Nations members according to Art 24 of the UN Charter and can legally not be completely removed from member states' interests.³¹⁴ As a matter of fact its actions are limited by *realpolitik*.³¹⁵ There are various conditions for legitimate international legislation, some of procedural, some of substantive nature. The topic has to be of certain urgency since legislation is established without taking into account the normal treaty-making process.³¹⁶ Moreover, it is of utter importance that resolutions concerning the whole of the international community issued by the Council alone find broader support among non-member states,³¹⁷ since all United Nations members are bound by the resolution even without their consent.³¹⁸

Even if one comes to the conclusion that the Council is not legally bound to act this way - a claim that is already quite debatable, as discussed already³¹⁹ - the missing consent of other United Nations member states often raises the request to pass legislative resolutions by consensus.³²⁰ Furthermore, it is not uncommon that

³¹⁰ The High Representative and the European Commission to the European Council op cit note 30 at 10.

³¹¹ Darragh Conway op cit note 82 at 377.

³¹² Matthew Happold op cit note 80 at 610.

³¹³ ICJ *Conditions of Admission to the United Nations*, Advisory Opinion, ICJ Rep (1948) at 64; Carsten Stahn op cit note 84 at 97.

³¹⁴ Nicholas Tsagourisa op cit note 102 at 557.

³¹⁵ Darragh Conway op cit note 82 at 379.

³¹⁶ Masahiko Asada op cit note 109 at 22.

³¹⁷ Masahiko Asada op cit note 109 at 26.

³¹⁸ Ibid at 22.

³¹⁹ Cathleen Helen Powell op cit note 105.

³²⁰ Masahiko Asada op cit note 109 at 23.

specific agendas are pushed at a regional level first before entering the international stage at the Security Council. A pioneer in that regard has been the African Union, which has discussed the link between climate change and security in Africa.³²¹ Sometimes it is argued that in the run-up to legislative resolutions non-Security Council member states should be able to express their views and perceptions as well.³²² Art 31 of the UN Charter actually agrees with this and most of the time the Council is simply unable to enforce legislation that is unpopular among the members of the United Nations.³²³ If it acts beyond its legal boundaries, states might just not implement its decisions.³²⁴ Opening up the Council by introducing consultations with non-Security Council members and open meetings, the Council is trying to react to the widespread criticism it regularly faces.³²⁵ The Security Council has no possibility to enforce unpopular decrees, but if there is general approval of a resolution, the pressure on member states to fulfil the legislation will rise.³²⁶ However, if the support is lacking, compliance and implementation will prove to be poor, hence weakening the binding powers of the Council as a result.³²⁷ This shows that the Council on the one hand and the receiving member states on the other are interdependent. When deciding on a highly political question the Council has to balance the need to find a wider consensus on a topic and the efficiency that comes from a smaller group of states. This is made clear by the technical problem that there are only about 20 experts that guard the implementation of Council resolutions in around 195 states.³²⁸ Maybe a reform of the Security Council would play in its favour, strengthening its legitimacy and the effectiveness of its decisions. This could lead to new and creative opportunities, and effective rules to resolve global challenges such as climate change.³²⁹

III. The role of the General Assembly of the United Nations

³²¹ Camilla Born op cit note 173 at 7.

³²² Stefan Talmon op cit note 22 at 187.

³²³ Ibid.

³²⁴ Cathleen Helen Powell op cit note 85 at 58; Eric Rosand 'The Security Council as 'global legislator': ultra vires or ultra innovative?' (2005) 28 *Fordham International Law Journal* 579; Stefan Talmon op cit note 22 at 187.

³²⁵ Nicholas Tsagourisa op cit note 102 at 557.

³²⁶ Paul C. Szasz op cit note 89 at 905.

³²⁷ Masahiko Asada op cit note 109 at 26.

³²⁸ Stefan Talmon op cit note 22 at 193.

³²⁹ Gunter Pleuger op cit note 2 at 35.

One might wonder whether it would even make a difference if the Security Council passed binding resolutions that tackle climate change. If member states cannot come to an agreement through an international treaty, why should they obey decisions made by only a handful of states? Maybe a change of perspective is needed, one where the relationship between the United Nations and its member states is more seen as a symbiotic and synergetic one rather than a conflictual one.³³⁰ After all, the Security Council might be more open to criticism than its reputation suggests. The outrage following the terrorists listing resolutions resulted in the 1267 Committee willing to reform its system once states and other entities stood up against it.³³¹ And although this achievement took several years of outrage and non-co-operation, it shows that there is some acknowledged dependency from the Council's side. The Security Council's effectiveness increases when its working in tandem with complementary interventions from other United Nations bodies such as the General Assembly or the Secretary-General.³³² One of the reasons for Antonio Guterres' nomination as Secretary-General was his prioritizing of preventive action.³³³ This could greatly support for a change in climate change agenda within the Security Council.

A solution might be to adopt a two-track approach, achieving General Assembly resolutions as well as Security Council resolutions at the same time. In instances where agreements do not reach complete consensus but have managed to find a shared understanding of the critical points of the issue, the Security Council might be able to 'co-legislate' with the General Assembly by drawing from its affirmative vote.³³⁴ One could allow the Security Council to legislate in cooperation with the General Assembly. The latter would make sure that the legislation, in form of a binding resolution, reflects the will of the majority of states,³³⁵ even though, legally speaking, the Council would not be dependent on this procedure.³³⁶ Council interventions might hereby become more legitimate and politically feasible.³³⁷ A good example of this is the legislative Security Council Resolution 1373 about

³³⁰ Nicholas Tsagourisa op cit note 102 at 558.

³³¹ Cathleen Helen Powell op cit note 116 at 5.

³³² Camilla Born op cit note 173 at 10.

³³³ Ibid at 8.

³³⁴ Christopher K. Penny op cit note 164 at 61.

³³⁵ Matthew Happold op cit note 80 at 608.

³³⁶ Paul C. Szasz op cit note 89 at 905.

³³⁷ Darragh Conway op cit note 82 at 384.

terrorism. Here criticism against this resolution from member states was limited³³⁸ which was also reflected in a previous similar resolution adopted by the General Assembly.³³⁹

Other voices say that greater involvement of the General Assembly would harm the credibility and effectiveness of the United Nations in general due to the often-occurring disunity between the member states.³⁴⁰ Involvement of the General Assembly might be inevitable, though. It could take action into its own hands as it had done before with the Uniting Peace Resolution before. Here it stated that it ‘shall consider the matter immediately’ if the Security Council ‘fails to exercise its primary responsibility for the maintenance of international peace and security.’³⁴¹ If the members of the Council know that disagreements regarding climate change would mean losing power to the Assembly, this could function as a catalyser to act fast. The Uniting for Peace procedure may therefore form a possible tool in the fight against climate change.³⁴² While these developments can be seen as a threat to western powers,³⁴³ they also represent a chance to tackle problems the P5 members are politically not interested in solving.

Due to the Council’s fear of losing power to the General Assembly through a possible Uniting for Peace procedure, the latter is able to pressure the former.³⁴⁴ Without deciding whether climate change is a topic that should be dealt with in connection to development, one might state that when it comes to legislating, the General Assembly might, in any case, be the more suitable organ. Art 13 of the UN Charter assigns the General Assembly the task of ‘encouraging the progressive development of international law.’³⁴⁵ However, the Security Council remains the only organ that can impose binding actions and this is why the General Assembly functions more as the international community’s moral indignation.³⁴⁶ If the latter uses this role wisely, however, it can also make a difference.

³³⁸ Masahiko Asada op cit note 109 at 18.

³³⁹ UN Doc. A/54/PV.76 General Assembly, 76th plenary meeting (9 December 1999) at 8.

³⁴⁰ Dominik Zaum ‘The Security Council, the General Assembly, and War: The Uniting for Peace Resolution’ in Vaughan Lowe, Adam Roberts, Jennifer Welsh et al (eds) *The United Nations Security Council and War* (2010) 173.

³⁴¹ UN Doc. A/RES/377 A General Assembly, 302nd plenary meeting (3 November 1950).

³⁴² Dominik Zaum op cit note 340 at 163.

³⁴³ Ibid at 165.

³⁴⁴ Ibid at 166.

³⁴⁵ Andreas Zimmermann, Björn Elberling op cit note 143 at 72.

³⁴⁶ Dominik Zaum op cit note 340 at 168.

IV. Further possible undertakings

Although the past has shown that the General Assembly proves to be the organ most capable of forming a strong opposite pole to the Security Council, more United Nations organs and institutions should be considered when it comes to tackling climate change.

The International Court of Justice (ICJ) could play a significant role if the Security Council requests an opinion on the legality or illegality of states' actions or inactions regarding climate change.³⁴⁷ This could strengthen the legal basis for action by the Security Council. An alternative possibility could be the establishment of a criminal tribunal for environmental crimes like 'ecocide'.³⁴⁸

In late 2018 a United Nations tool, the 'Climate Security Mechanism', was created. It is a pilot coordination mechanism for climate and security and is supposed to assist the Security Council and other United Nations bodies with integrated climate risk assessments. In addition, the independent Expert Working Group on Climate-Related Security Risks could also provide information.³⁴⁹ Both initiatives are relatively new and small, but they could provide a further climate change solution.

A less controversial starting point for the Council could be to issue binding resolutions for already existing climate obligations that have not been fulfilled.³⁵⁰ This would leave the UNFCCC process fully functional and independent with the exception that non-compliant states could be referred to the scrutiny of the Security Council.³⁵¹ While it is debatable whether this approach will make the reluctant state fulfil its commitment, it would generally combine the broader legitimacy of the UNFCCC with the Chapter VII powers of the Council in a way that could enable future solutions to the climate crises.³⁵²

All these different options arising from the different United Nations institutions should not be regarded as alternative solutions but instead as additional approaches that can be combined. Otherwise, initiatives like the Climate Security

³⁴⁷ Shirley V. Scott op cit note 163 at 1326.

³⁴⁸ Ibid at 1322-3.

³⁴⁹ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 15.

³⁵⁰ Darragh Conway op cit note 82 at 398-9.

³⁵¹ Darragh Conway op cit note 82 at 406.

³⁵² Ibid.

Mechanism bear the risk of becoming more passive.³⁵³ When it comes to climate change it is important to establish that all institutions have to take responsibility and take action rather than distancing themselves from taking responsibility.

F. CONCLUSION

The United Nations Security Council's attitude towards climate change will remain an interesting development to watch. What has however become clear is that climate change will impact international security not in the distant future but has already started to affect us today.³⁵⁴ Climate change is moving fast - faster than we are - and that is why there is a need for the United Nations Security Council to do its part to help humankind keep pace.³⁵⁵ Some could argue that it is not only appropriate, but even imperative for the Council to intervene.³⁵⁶ Never before has the timing been more crucial. It is time to realise 'that we are the first generation to fully understand climate change and the last generation to be able to do something about it.'³⁵⁷

In a very recent statement during a United Nations Security Council Open Debate, Germany, a Security Council member until 2021, encouraged the Council to address new threats to peace and security, including the effects of climate change in line with the Charter of the United Nations.³⁵⁸ Germany had previously stated that a Security Council Initiative on Climate and Security is overdue and that it become part of the climate policy as a whole. Where climate change threatens people's livelihoods, the international community must take action before conflicts break out. It must be possible for the Security Council to take action here too.³⁵⁹

I have established that legally speaking the Security Council is able to take measures to tackle what is probably the most complicated and complex problem of our century. Securitisation of climate related issues may lead to fast and expensive

³⁵³ Dan Smith, Malin Mobjörk, Florian Krampe et al op cit note 19 at 15-16.

³⁵⁴ The High Representative and the European Commission to the European Council op cit note 30 at 8.

³⁵⁵ Deputy Secretary-General Amina Mohammed op cit note 32.

³⁵⁶ UN Doc. S/PV. 4950 at 11.

³⁵⁷ Secretary-General of the World Meteorological Organization Professor Petteri Taalas, UN Press Release op cit note 10.

³⁵⁸ Statement by Minister of State Michelle Müntefering in the UNSC Open Debate: Upholding the United Nations Charter, 9 January 2020, available at <https://new-york-un.diplo.de/un-en/news-corner/200109-un-charter/2291676>, accessed on 6 February 2020.

³⁵⁹ German Ministry of Foreign Affairs op cit note 234.

responses rather than cost-effective and sustainable options.³⁶⁰ This raises the question whether we have the time for the low-level approach or whether a mixture of both, one that is fast but sustainable, is necessary.

It goes without saying that Security Council actions under Chapter VII would remain an extreme response to the complex problem that is climate change.³⁶¹ It is evident that Council legislation is emergency legislation.³⁶² And while the Security Council has a large number of critics, the worsening of the climate situation will make less popular solutions become more desirable in the future.³⁶³ Climate change could become the prime driving force behind an increasingly interdependent international community in which legislative resolutions by the Security Council has become a valuable tool.³⁶⁴

In conclusion, it is important to remember, that while the Security Council can be overly political in character, it remains a fundamental creature of law.³⁶⁵

³⁶⁰ Marcel Leroy & Fana Gebresenbet op cit note 9 at 688.

³⁶¹ Christopher K. Penny op cit note 164 at 68.

³⁶² Stefan Talmon op cit note 22 at 184.

³⁶³ Darragh Conway op cit note 82 at 407.

³⁶⁴ Sumon Dantiki op cit note 4 at 701.

³⁶⁵ Darragh Conway op cit note 82 at 377.

Bibliography

Primary Sources

Cases

- *Competence of the General Assembly for the Admission of a State to the United Nations Advisory Opinion*, (1950) ICJ Rep. 17-18 (Judge Azevedo, Dissenting Opinion).
- *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* (1996) ICJ Rep 95.
- *Prosecutor v Dusko Tadic* (1999) ICTY case no. IT-94-1A.
- *Pulp Mills on the River Uruguay, Argentina v. Uruguay, Provisional Measures* (2006) ICJ Rep 113 ICJ *Conditions of Admission to the United Nations*, Advisory Opinion, ICJ Rep (1948).
- *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion (1949) ICJ Rep 179.

Statutes

- Charter of the United Nations (UN Charter), adopted on 26 June 1945, entered into force on 24 October 1945.
- United Nations Framework Convention on Climate Change (UNFCCC), adopted on 9 May 1992, entered into force on 21 March 1994.
- Status of Ratification of the Convention – United Nations Climate Change available at <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/status-of-ratification-of-the-convention>, accessed on 6 February 2020.

Secondary Sources

- Asada, Masahiko ‘WMD Terrorism and Security Council Resolution 1540: Conditions for Legitimacy in International Legislation’ (2007) 9 *ILLJ*.
- Bennett, TW & Strug, J *Introduction to International Law* (2013) Juta & Co. Ltd, Cape Town (South Africa).

- Benson Whalen, Catherine 'UNSC Debates Climate Change Impact on Peace, Security and Development' 31 January 2019 available at <https://sdg.iisd.org/news/unsc-debates-climate-change-impact-on-peace-security-and-development/>, accessed on 6 February 2020.
- Boe Declaration on Regional Security (2018) by the Pacific Islands Forum.
- Born, Camilla 'A resolution for a peaceful climate: Opportunities for the UN Security Council' (2017).
- Branch, A. 'Rethinking the Climate-Conflict Relationship' (2018) 3 *Peace Science Digest*.
- Brzoska, M. & Fröhlich, C. 'Exploring the Relationship Between Climate Change, Migration and, Violent Conflict' (2016) 3 *Peace Science Digest*.
- *Climate Home News* 'Brazil: Bolsonaro threatens to quit Paris climate deal' 14 August 2018 available at <https://www.climatechangenews.com/2018/08/14/brazils-bolsonaro-threatens-quit-paris-climate-deal/>, accessed on 6 February 2020.
- Conway, Darragh 'The United Nations Security Council and climate change: challenges and opportunities' (2010) 1 *Climate Law*.
- COP24 Special Report 'Health and Climate Change' WHO (2018).
- Dantiki, Sumon 'Power through Process: An Administrative law Framework for United Nations Legislative Resolutions' (2009) 40 *GEOJIL*.
- *Earth Overshoot Day* 'Country Overshoot Days 2019', available at <https://www.overshootday.org/newsroom/country-overshoot-days/>, accessed on 6 February 2020.
- Espinosa-Garces, Maria, in a joint news conference with the Foreign Affairs Minister of Nigeria, Geoffrey Onyeama on the 7th of May 2019 in Abuja, Nigeria; available at <https://punchng.com/lake-chads-shrinking-major-climate-change-disaster-un/>, accessed on 6 February 2020.
- Falkner, R 'How the Paris Agreement Can Help Us Get to a Low-Carbon Global Economy' (2016) 3 *Peace Science Digest*.
- Friedmann, Lisa 'Trump Administration to Begin Official Withdrawal from Paris Climate Accord' *The New York Times* 23 October 2019 available at <https://www.nytimes.com/2019/10/23/climate/trump-paris-climate-accord.html>, accessed on 6 February 2020.

- German Ministry of Foreign Affairs (Auswärtiges Amt) 'Klima und Sicherheit' available at <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/klima/klimaundsicherheit-node>, accessed on 6 February 2020.
- *Global Footprint Network* 'Earth Overshoot Day 2019 is July 29, the earliest ever', 26 June 2019 available at <https://www.overshootday.org/newsroom/press-release-june-2019-english/>, accessed on 6 February 2020.
- Guterres, Antonio 'The Maintenance of International Peace and Security: The Root Causes of Conflict – The Role of Natural Resources' UN, 16 October 2018.
- Happold, Matthew 'Security Council Resolution 1373 and the Constitution of the United Nations' (2003) 16 *LJIL*.
- Harper, K. 'Does the United Nations Security Council Have the Competence to Act as a Court and Legislature?' (1994) 27 *NYUJILP* 103, 126–9.
- Hiller, Patrick; Wallace, Molly; Henderson, Kristin et al 'Special Issue Climate Change, Security and Conflict' (2019) 3 *Peace Science Digest*.
- International Law Commission, 2001 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries' Yearbook Vol. II, Part Two.
- Kellman, Barry 'Criminalization and Control of WMD Proliferation: The Security Council Acts' (2004) Vol. 11, No 2 *Non-proliferation Review*.
- Ki-Moon, Ban 'A Climate Culprit In Darfur' *The Washington Post* 16 June 2007.
- Klabbers, Jan *International Law* 5 ed (2014) Cambridge University Press, Cambridge (United Kingdom).
- Koskenniemi, M. 'The Police in the Temple: Order, Justice and the UN—A Dialectical View' (1995) 6 *EJIL* 326.
- Leroy, Marcel & Gebresenbet, Fana 'Science, Facts and Fears: The Debate on Climate Change and Security' in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting's (ed) *Climate Change: International Law and Global Governance* (2013).
- Link, P. M., Scheffran, J., & Ide, T. 'From Water Scarcity to Conflict or Cooperation' (2016) 3 *Peace Science Digest*.

- Mohammed, Amina 'Understanding and Addressing Climate-related Security Risks' UN Statements, 11 July 2018.
- Müntefering, Michelle in the UNSC Open Debate: Upholding the United Nations Charter, 9 January 2020, available at <https://new-york-un.diplo.de/un-en/news-corner/200109-un-charter/2291676>, accessed on 6 February 2020.
- National Snow & Ice Data Center (NSICD) 'A record-low start to the new year in Antarctica' 3 January 2019 available at <https://nsidc.org/arcticseaicenews/2019/01/a-record-low-start-to-the-new-year-in-antarctica/>, accessed on 6 February 2020.
- *Outrider Post* 'Climate Change: An Escalating National Security Threat' available at <https://outrider.org/climate-change/articles/climate-change-national-security-threat/>, accessed on 6 February 2020.
- Penny, Christopher K. 'Greening the Security Council: climate change as an emerging 'threat to international peace and security' (2007) 7 *Int Environ Agreements*.
- Pires Ramos, Erika 'Climate Change, Disasters and Migration: Current Challenges to International Law' in Oliver C. Ruppel, Christian Roschmann, Katharina Ruppel-Schlichting's (ed) *Climate Change: International Law and Global Governance* (2013).
- Pleuger, Gunter 'Climate Change as a Threat to International Peace' in Sabine von Schorlems (ed) 'Dresden Papers on Law and Policy of the United Nations' 19ed (2014).
- Powell, Cathleen Helen 'The Role and Limits of Global Administrative Law in the Security Council's Anti-Terrorism Programme' (2000) *Acta Juridica*.
- Powell, Cathleen Helen 'The Powers of the United Nations Security Council under Law' (2016).
- Rosand, Eric 'The Security Council as 'global legislator': ultra vires or ultra innovative?' (2005) 28 *Fordham International Law Journal*.
- Scott, Shirley V. 'Implications of Climate Change for the UN Security Council: mapping the range of potential policy responses' (2015) 91 *International Affairs*.
- Sindico, Francesco 'Climate Change: A Security (Council) Issue?' (2007) 1 *Carbon & Climate L. Rev.*

- Smith, Dan & Vivekananda, Janani ‘A Climate of Conflict: The Links between Climate Change, Peace and War’ (2007) *International Alert*.
- Smith, Dan; Mobjörk, Malin; Krampe Florian et al ‘Climate Security – Making it #Doable’ (2019) *Clingendal Netherlands Institute of International Relations*.
- Stahn, Carsten ‘The Ambiguities of Security Council Resolution 1422 (2002)’ (2003) *EJIL*.
- *Stockholm International Peace Research Institute* ‘Climate Security in times of geopolitical crises – what ways forward?’ 18 February 2019, available at <https://www.sipri.org/commentary/blog/2019/climate-security-times-geopolitical-crises-what-ways-forward>, accessed on 6 February 2020.
- *Stories* ‘The World’s first Climate Refugees’ Stories available at <https://www.youtube.com/watch?v=b6QEDbI5zrg>, accessed on 6 February 2020.
- Szasz, Paul C. ‘The Security Council Starts Legislating’ (2002) 96 *AJIL*.
- Talmon, Stefan ‘The Security Council as World Legislature’ (2005) 99/1 *AJIL*.
- *The Economist* ‘Global warming in Africa – Drying up and flooding out’ 10 May 2007.
- The High Representative and the European Commission to the European Council ‘Climate Change and International Security’ European Union (2008).
- The International Energy Agency ‘CO2 Emissions Statistics’ (2018) available at <https://www.iea.org/statistics/co2emissions/>, accessed on 6 February 2020.
- The International Energy Agency (IEA) ‘Global Energy & CO2 Status Report’ (March 2019) available at <https://www.iea.org/reports/global-energy-and-co2-status-report-2019/emissions#abstract> accessed on 6 February 2020.
- Tomuschat, Christian ‘Obligations Arising for States without or against Their Will’ *Recueil des Cours*, tome 241 (1993-IV).
- *Truthdig* ‘The UN Could Save the Amazonas With One Simple Move’ 13 September 2019.
- Tsagourisa, Nicholas ‘Security Council Legislation, Art 2 (7) of the UN Charter, and the Principle of Subsidiarity’ (2011) 24 *LJIL*.
- *UN News* ‘UN chief outlines ‘intertwined challenges’ of climate change, ocean health facing Pacific nations on the ‘frontline’’, 14 May 2019,

available at <https://news.un.org/en/story/2019/05/1038521>, accessed on 6 February 2020.

- UNFCCC ‘Climate action and support trends’ (2019) UNFCCC Report 12.
- UNFCCC ‘Glossary of climate change acronyms’ available at <https://unfccc.int/process-and-meetings/the-convention/glossary-of-climate-change-acronyms-and-terms#m>, accessed on 6 February 2020.
- United Nations 1540 Security Council Committee ‘General information about the national implementation of Resolution 1540’, available at <https://www.un.org/en/sc/1540/national-implementation/general-information.shtml>, accessed on 6 February 2020.
- United Nations Treaty Collection on 4/11/2019 available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en, accessed on 6 February 2020.
- US Department of State ‘On the U.S. Withdrawal from the Paris Agreement’ (4 November 2019) available at <https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/>, accessed on 6 February 2020.
- Wezeman, Siemon T. ‘Military Capabilities in the Arctic’ (2012) *SIPRI Background Paper*.
- *What’s in Blue* ‘Open Debate: Addressing the impacts of climate-related disasters on international peace and security’ 24 January 2019.
- World Metrological Organization (WMO) ‘The State of the Global Climate in 2018’ 11.
- World Weather Attribution ‘Human contribution to the record-breaking July 2019 heat-wave in Western Europe’ 2 August 2019 available at <https://www.worldweatherattribution.org/human-contribution-to-the-record-breaking-july-2019-heat-wave-in-western-europe/>, accessed on 6 February 2020.
- Zaum, Dominik ‘The Security Council, the General Assembly, and War: The Uniting for Peace Resolution’ in Vaughan Lowe, Adam Roberts, Jennifer Welsh et al (eds) *The United Nations Security Council and War* (2010).
- Zimmermann, Andreas & Elberling, Björn ‘Grenzen der Legislativbefugnisse des Sicherheitsrats’ (2004) 3 *Zeitschrift für die Vereinten Nationen und ihre Sonderorganisationen*.

Security Council Resolution

- SC Res. 733, S/RES/733 (23 January 1992).
- SC Res. 794, S/RES/794 (3 December 1992).
- SC Res. 841, S/RES/841 (16 June 1993).
- SC Res. 864, S/RES/864 (15 September 1993).
- SC Res. 940, S/RES/940 (31 July 1994).
- SC Res. 1261, S/RES/1261 (25 August 1999).
- SC Res. 1265, S/RES/1265 (17 September 1999).
- SC Res. 1269, S/RES/1269 (19 October 1999).
- SC Res. 1296, S/RES/1296 (19 April 2000).
- SC Res. 1314, S/RES/1314 (11 August 2000).
- SC Res. 1373, S/RES/1373 (28 September 2001).
- SC Res. 1325, S/RES/1325 (31 October 2000).
- SC Res. 1540, S/RES/1540 (28 April 2004).
- SC Res. 1625, S/RES/1625 (14 September 2005).
- SC Res. 1918, S/RES/1918 (27 April 2010).
- SC Res. 2178, S/RES/2178 (24 September 2014).
- SC Res. 2349, S/RES/2349 (31 March 2017).
- SC Res. 2368, S/RES/2368 (20 July 2017).
- SC Res. 2408, S/RES/2408 (27 March 2018).
- SC Res. 2423, S/RES/2423 (28 June 2018).
- SC Res. 2431, S/RES/2431 (30 July 2018).
- SC Res. 2429, S/RES/2429 (13 July 2018).

UN Doc

- UN Doc. A/RES/377 A General Assembly, 302nd plenary meeting (3 November 1950).
- UN Doc. A/54/PV.76 General Assembly, 76th plenary meeting (9 December 1999)
- UN Doc. S/23500 (31 January 1992).
- UN Doc. S/2019/1 Security Council letter (3 January 2019).

- UN Doc. SC/9000 ‘Security Council holds first-ever debate on impact of climate change on peace, security, hearing over 50 speakers’ UN Press Release (17 April 2007).
- UN Doc. SC/10332, Security Council 6587th Meeting (20 July 2011).
- UN Doc. S/PRST/ 2000/7 SC Presidential Statement (9 March 2000).
- UN Doc. S/PRST/2000/38 SC Presidential Statement (6 December 2000).
- UN Doc. S/PRST/2011/15 SC Presidential Statement (20 July 2011).
- UN Doc. S/PRST/2018/3 SC Presidential Statement (30 January 2018).
- UN Doc. S/PV. 4451 UN Sec. Council, 4951st Meeting at 19 (16 January 2002).
- UN Doc. S/PV. 4950 UN Sec. Council, 4950th Meeting at 25 (22 April 2004).
- UN Doc. S/PV. 5663 UN Sec. Council, 5663rd Meeting (17 April 2007).
- UN Doc. S/PV. 7818 UN Sec. Council, 7818th Meeting (22 November 2016).
- UN Press Release ‘World simply ‘not on track’ to slow climate change this year: UN weather agency’ 29 November 2018.