

THE EXTENT OF BOUND OR UNBOUND UNITED NATIONS SECURITY COUNCIL BY LAW

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ABSTRACT

With a view to discussing the extent to which the view “[t]he Security Council is unbound by law” that is agreeable on the basis of the available evidence considered, this research will begin by first looking to provide an understanding of what the United Nations Security Council (UNSC) is and what it does in practice in the context of the development of international law in this area. Allied to this, along with considering the way in which the UNSC operates internationally, there is also a need for this research to look to show an understanding of the criticisms to have been levelled against the organization. This is because it is arguable that it is the law itself that applies to the way in which the Council operates that is arguably the biggest problem for it going forward in view of the fact that it is somewhat flawed as a result of the position of its permanent member states. In addition, there is also a need for this research to provide an analysis of as to whether and how the UNSC could be reformed with a view to improving in the context of the development of international law in this regard. Finally, there is a need to conclude with a summary of the key points to have been derived from this research analysis with regard to the validity of the aforementioned view that “[t]he Security Council is unbound by law”.

Keywords: United Nation Security Council, United Nation, International Law, UNSC, International Organisation.

INTRODUCTION

The Security Council bears the primary responsibility for the maintenance of international peace and security. The Security Council has 15 members, and each member has one vote. Under the United Nations Charter, all member states are obligated to comply with council decisions. The Security Council takes the lead in identifying a threat to peace or an act of aggression. It calls on the parties to the conflict to settle the dispute by peaceful means and recommends methods of accommodation or terms of the settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

In this study, we deal with the conditions that the UN Security Council must adhere to in issuing its decisions, In order to give it the character of legitimacy, we also address the reference competent to examine the extent of legitimacy these decisions are based on the important position, the UN Security Council occupies in international relations. The Security Council has broad powers under the provisions of the United Nations Charter, especially with regard to

conservation of International peace and security, and it carries out the tasks entrusted to it through the decisions it issues in this regard. Concerned, and he must adhere to the conditions necessary for issuing decisions so that they are consistent with texts The Charter and Norms of Public International Law. The Security Council may issue some of those decisions without observing the required conditions, the matter that marks them Illegality.

Whereas it is impossible to rely on the Security Council to correct its decisions tainted with illegality in effect the principle says: No one can be both an opponent and an arbiter, so it is imperative to find a reference the authority to consider these decisions to monitor their legitimacy.

With a view to discussing the extent to which the view “*The Security Council is unbound by law*” that is agreeable on the basis of the available evidence considered, this research will begin by first looking to provide an understanding of what the United Nations Security Council (UNSC) is and what it does in practice in the context of the development of international law in this area. Allied to this, along with considering the way in which the UNSC operates internationally, there is also a need for this research to look to show an understanding of the criticisms to have been levelled against the organisation. This is because it is arguable that it is the law itself that applies to the way in which the Council operates that is arguably the biggest problem for it going forward in view of the fact that it is somewhat flawed as a result of the position of its permanent member states. In addition, there is also a need for this research to provide an analysis of as to whether and how the UNSC could be reformed with a view to improving in the context of the development of international law in this regard. Finally, there is a need to conclude with a summary of the key points to have been derived from this research analysis with regard to the validity of the aforementioned view that “[t]he Security Council is unbound by law”.

RESULT AND DISCUSSION

What is the UNSC and How did it Come into Being?

Much like the rest of the UN in its entirety, following World War II the UNSC was created to address the League of Nations’ failure to maintain peace and security between countries internationally. However, at least to begin with, the UNSC was ostensibly restricted by the divide between the then USSR and US during the course of the Cold War; although it is also to be noted that the Council did provide for the authorisation of interventions in different scenarios including the Korean War (Hanny, 2008). Consequently, it was only as a result of the USSR’s collapse that there was an increase in the peacekeeping efforts to have been perpetrated by the UNSC in array of missions throughout Africa and the Middle East in the ensuing years (Hanny, 2008).

The UNSC is recognised as one of the United Nations’ (UN’s) five principal organs that provides for the maintenance of peace and security internationally along with accepting new UN members and providing for the approval of any variations to the UN Charter 1945 (Lowe et al., 2008). By way of illustration, the UNSC provided for the establishment of peacekeeping operations and international sanctions along with military actions authorisation by being the only body of the UN capable of issuing binding resolutions upon its Member States (Lowe et al.,

2008). Typically, UN peacekeeping forces that the member states themselves provide voluntarily and are independently funded outside of the overall budget of the UN provide for the enforcement of resolutions of the Security Council. For example, it is to be noted that as of 2015 there were more than 106,000 peacekeeping troops and 18,000 civilians involved in peacekeeping operations and special political missions around the world as a mark of the significance of the UNSC in the context of maintaining peace and security internationally.

Allied to this, there is also a need to recognise the fact that there are currently fifteen countries that are members of the UNSC of which five (i.e. the US, Russia, China, France and the UK) are permanent members that are able to provide for the veto of any Security Council resolution itself that is especially substantive (Bosco, 2009). The Security Council resolutions to have been affected in this regard include those pertaining to new countries admission as additional member states whilst the other ten countries are non-permanent members regionally elected for two-year terms (Bosco, 2009). In addition, there is also a need to recognise the fact that the presidency of the UNSC monthly rotates between its member states. Critics of the council often describe it as an undemocratic international body, and argue it fails its principal task, mainly because of the veto power of the permanent members (Bosco, 2009).

It is actually the role of the UN with regard to the achievement of collective security that the UN Charter 1945 defines that serves to authorise the Council to act with regard to a number of different matters of international concern (Fomerand, 2009). These matters have been ostensibly recognised as including: (1) investigating threats to international peace; (2) recommending means for bringing about a dispute's peaceful resolution; (3) calling upon other member states to interrupt relationships economically along with different means of communication; (4) providing for diplomatic relations severance; and/or (5) the enforcement of decisions (Fomerand, 2009). Moreover, although the UNSC provides for the recommendation of new UN member states and the new Secretary-General to the General Assembly, traditionally the Council interpreted its own mandate as being to deal with the matter of security militarily.

The Role of the UNSC in International Law

The UN Charter 1945 at Chapter VI provides that the UNSC can “*investigate any dispute, or any situation which might lead to international friction or give rise to a dispute*” (Deplano, 2015). Then, dependent upon the Council's findings in this regard, they could “*recommend appropriate procedures or methods of adjustment*” where it is believed that the particular situation under consideration could provide for the endangering of the maintenance of peace and security internationally (Deplano, 2015). However, usually, such recommendations are not deemed to be binding in view of the fact that they do not have a sufficient mechanism of enforcement (Fomerand, 2009). That this has proved to be the case in practice is despite the fact that Chapter VI resolution are still largely considered to be “*directives by the Security Council and differ only in that they do not have the same stringent enforcement options*” which have been taken to include military force (Zunes, 2004).

Nevertheless, the UN Charter 1945 at Chapter VII provides the UNSC with significantly wider power to be able to determine the measures to be completed in those circumstances which involve “*threats to the peace, breaches of the peace, or acts of aggression*” (Deplano, 2015). Therefore, this effectively means that, in such circumstances, the options available to the Council

are not considered to be limited to the making of recommendations since they can act, for example, through military force “*to maintain or restore international peace and security*”.

With this in mind, Chapter VII of the UN Charter 1945 provided the basis at law for the armed action to have been taken by the UN in instances including Kuwait and Iraq in 1991 and Libya in 2011 (Kennedy, 2006). This is because all of the decisions that are reached under Chapter VII of the Charter are considered to be binding upon member states of the UN through the work of the Security Council (Fomerand, 2009).

It is also to be noted that, in the spring of 2006, UNSC Resolutions 1674 and 1706 reaffirmed member states responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (Mikulaschek, 2010). These two Security Council resolutions commit the organisation to protect civilians during the course of an armed conflict from the aforementioned mass atrocity crimes (Mikulaschek, 2010). There is also a need to recognise the fact that the UNSC has the authority under the Rome Statute of the International Criminal Court 1998 to refer cases to the Court where it would otherwise be without the jurisdiction to act (Statute, 1998; Article 13). This power was actually exercised for the first time by the Council in the early spring of 2005 when “the situation prevailing in Darfur since 1st July 2002” was referred to the Court which was important because it would have otherwise lacked jurisdiction in view of the fact Sudan is not a party to the Statute (Wadhams, 2005).

At the same time, however, the UN Charter 1945 at Article 27 provides the decisions of the UNSC regarding all substantive issues need nine member states to cast their vote in the affirmative (Alsharqawi et al., 2021) with the caveat that a permanent member state’s negative vote prevents a specific proposal from being adopted even where the required votes have been received (Fasulo, 2004). Moreover, all of the Council’s five permanent members need to actively concur with a view to either amending the UN Charter 1945 or recommending a new member state (Fomerand, 2009). Nevertheless, it is still to be noted that procedural matters may not be voted to avoid having to discuss a particular issue along with particular decisions specifically related to permanent member states (Fasulo, 2004). However, most vetoes by permanent member states of the UNSC are not utilised in the context of fundamental situations pertaining to the maintenance of international security but for, for example, blocking a member state’s admission (Fasulo, 2004).

Criticisms of the Role of the UNSC in International Law

It is arguably the power of veto for the UNSC’s permanent member states that is one of the most significant problems with the operation of the Council because it was effectively forced upon the smaller countries through a threat that there would otherwise not be any UN (Wilcox, 1945). One of the earliest vetoes was made by the then Soviet Commissar, Andrei Vishinsky who blocked a resolution regarding French forces withdrawal from their Syrian and Lebanese colonies in early 1946 that created the standard it was possible for permanent members to utilise the veto regarding issues beyond simply war and peace (Bosco, 2009). In the ensuing years, the USSR proceeded to veto the admission of a number of different countries as UN member states for at least a number of years. Furthermore, both France and the UK utilised the power of veto to provide for the avoidance of the UNSC’s condemnation of their behaviour during the Suez Crisis of 1956 (Bosco, 2009). Moreover, the US carried out their first veto in 1970 when they blocked

action on the part of the General Assembly in what was then Southern Rhodesia before then proceeding to block an array of further resolutions it deemed to be anti-Israel whilst also looking to safeguard its interests in other countries including Korea and Panama (Bosco, 2009). Finally, it is also to be noted that the UNSC's permanent members have also previously vetoed potential Secretary-General Candidates in the past (Kennedy, 2006).

However, there is also a need to recognise the fact that the UNSC's critics have often described it as being a somewhat undemocratic international body which means that it serves to fail to fulfil its principal task largely in view of permanent member states power of veto (Grieger, 2013). When looking to consider the existence of the Security Council to date, it is to be noted that *"glaring failures had not only accompanied the UN's many achievements, they overshadowed them"* as with the ethnic massacres in Rwanda and Bosnia in recent years largely due to a lack of reliable military resource (Kennedy, 2006). This was despite the fact that the UN had been found to have been successful in two out of every three of its peacekeeping efforts to date along with bringing about fewer wars, genocides and human rights abuses since the Cold War's conclusion (Dobbins et al., 2005). Such a view is supported the fact that it would seem that the UNSC's five permanent members effectively established an exclusive nuclear club which dealt with both their political and strategic interests like looking to protect oil-rich Kuwait in 1991 (Rajan, 2006).

Both the relevance and effectiveness of the UNSC has also been queried due to a lack of real consequences for a resolution of the Council's violation for those countries (Deni, 2007). By way of illustration, in the midst of the crisis that arose in Darfur, elements of the government of Sudan permitted the Janjaweed militias to killing thousands of the civilian population (Deni, 2007). In addition, the Security Council was criticised for failing to resolve the Arab-Israeli conflict due to the council failing to *"to show leadership and abdicating its responsibilities"* whilst somewhat contradictorily also being criticised for devoting an excessive time to its resolution (Fomerand, 2009). The perception of the Security Council is also not helped by the fact that the UN Charter 1945 provides it with all three powers of the legislative, executive, and judiciary because this led to the Council being criticised for having an *"illogical, unjust and completely undemocratic structure and mechanism"* (Fasulo, 2004).

The Potential Reform of the Role of the UNSC in International Law

In view of the fact that evaluations of the effectiveness of the UNSC's role in the context of applicable international law has proved to be somewhat mixed, there have some significant calls for the reformation of the organisation that even predates the first meeting of the 1946; although there is also a lack of consensus regarding how its structure needs to be changed (Grieger, 2013). However, whilst it is arguable that everyone may be in agreement *"that the present structure [of the UNSC] is flawed"* on the basis of the analysis to have been completed during the course of this research, the *"consensus on how to fix it remains out of reach"* (Kennedy, 2006). Some academics that are working in this area have argued that a lot of the problems with the UNSC may be resolved by increasing how many permanent members of the UNSC there are with the strongest demands for permanent seats coming from Brazil, India, Germany and Japan (Zunes, 2004).

The reason for this is that whilst India and Brazil have been recognised as being two of

the most significant contributors of troops to the peace-keeping missions that the UN have mandated to date, Germany and Japan are actually the second and third biggest funders of the organisation itself which should surely see them given greater power within the auspices of the UNSC as it stands (Grieger, 2013). Nevertheless, this was not the only proposal for reform with the Italian government leading a movement including South Korea, Canada, Indonesia, Spain, Pakistan, Mexico, Turkey, Colombia and Argentina to change the composition of the UNSC to reflect the needs and interests of other less powerful countries based in the world today (Grieger, 2013). This movement looked to actively oppose any potential expansion of the number of permanent member states of the UN through a group referred to as Uniting for Consensus (Grieger, 2013). Then, with a view to effectively regulating the work of the organisation as a whole, it was considered that there was a need to provide for the establishment of a new semi-permanent 'seat' category with a broad variety of options from abolition to limitation of vetoes application only to issues under Chapter VII of the UN Charter 1945 (Grieger, 2013). It is also to be noted that, at the behest of the former UN Secretary-General Kofi Anan, a team of advisers were specifically asked to formulate a series of recommendations for the UN's reform by the start of 2005 (Grieger, 2013). One of the most significant measures to have been proposed by this team was to increase the UNSC's permanent membership to ten with the additional five including Brazil, India, Germany and Japan along with one country from Africa or the Middle East (Fomerand, 2009).

However, in view of the original five permanent members of the UNSC each holding their own individual right of veto, they announced their somewhat similar positions regarding the potential for the reform of the Security Council going forward to benefit the interests of other smaller countries (Bosco, 2009). By way of illustration, the US government served to give their unequivocal support to Japan's claim for permanent membership of the Council along with also lending their support to India as well as an additional small number of non-permanent member states (Bosco, 2009). Similarly, both France and the UK have ostensibly looked to support the accession of Brazil, India, Germany and Japan to become permanent member states along with a greater UNSC presence for African countries which China has also supported along with the greater representation of developing countries whilst also still opposing the membership of Japan.

CONCLUSION

To conclude, it would seem to be clear from the analysis to have been completed during the course of this research that, as opposed to the idea that "*The Security Council is unbound by law*", the reality is that it is the law that applies (Alsharqawi et al., 2020) in this area that serves to cause a lot of the problems in this area. This is because it is arguable that, for too long, the five permanent member states of the UNSC have exploited the way in which the Council operates within the confines of the law to support their own specific interests as opposed (Alsharqawi & Younes, 2020) to those of the organisation as a whole along with those other countries that they are meant to help. However, despite the problems to have been recognised in this regard, it is arguable that any efforts at reform are going to prove to be somewhat complex to put into practice. Such a view is founded upon the fact that it is the way in which the UNSC currently operates that will serve to stop any significant reforms from being completed to aid the

functionality of the organisation and remove the apparent element of bias on the part of the permanent member states in the context of the law as it has developed at the international level to date.

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