



THE UNIVERSITY OF NAIROBI

**UNITED NATIONS PEACE AND SECURITY FRAMEWORK: ADDRESSING
CONTEMPORARY THREATS**

BY

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DECLARATION

I, LILLIAN NYANGASI do declare that this research project is my original work. Neither has the whole, or part of it been submitted for examination, publication, or award of a degree in any other institution or university. Where the work of other people has been used, this has been duly acknowledged and referenced.

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This Research Project has been written and submitted for examination with my approval as the university supervisor.

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DEDICATION

This research is dedicated to all persons who have fallen victim to human trafficking, to all persons whose loved ones have succumbed to the COVID-19 pandemic, and to all people who have been rendered homeless by climate change.

LIST OF ABBREVIATIONS

APSA-	African Peace and Security Architecture
ASEAN-	The Arab League and the Association of South East Asian Nations.
AU PSC-	African Union Peace and Security Council
AU-	African Union
EAC-	East African Community
EU-	European Union
ICJ-	International Court of Justice
MINUJUSH-	United Nations Mission for Justice Support in Haiti
MINUSMA-	Sudan United Nations Multidimensional Integrated Stabilisation Mission in Mali
NATO-	North Atlantic Treaty Organisation
OAS-	Organisation of American States
OAU-	Organisation of African Unity
PCIJ-	Permanent Court of International Justice
LON-	League of Nations
UN-	United Nations
UNGA-	United Nations General Assembly
UNMISS-	United Nations Mission in South Sudan
UNOCI-	United Nations Operation in Cote d’voire
UNSC-	United Nations Security Council
USA-	United States of America

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ABSTRACT

The United Nations was formed out of desperation for the maintenance of world peace and security to prevent war, aggression, conflicts, and loss of lives, which was evident in the First and Second World Wars. Its framework on world peace and security places the UNSC at the centre stage of maintaining international peace and security. Article 39 of the UN Charter emboldens the UNSC to determine whether a situation threatens or breaches international peace and security and to choose the remedial action to be undertaken under Articles 40, 41, and 42 of the UN Charter.

The UN Charter envisages that threats to international peace and security have two key characteristics. One, that they are between states. Two, that they involve the use of armed force. This is a problem because contemporary threats to world peace do not exhibit these two key characteristics. They are not necessarily occasioned by states against other states. They do not always involve the use of force.

This study aims to determine whether the UN's framework on world peace and security is well adapted to address contemporary threats to global peace and security. It examines the UN's legal and institutional framework for maintaining international peace and security. It focuses on contemporary threats, such as infectious diseases, climate change, cyber operations, and human trafficking. It also investigates the challenges posed by contemporary threats to the UNSC's primary mandate to maintain global peace.

Using the doctrinal legal research methodology, the study establishes that even though the UNSC has the core mandate to maintain international peace and security, other organs, such as the UNGA, the Secretariat and the Secretary-General, and the ICJ, as well as

regional arrangements carry out some functions in maintaining international peace and security. The study finds that contemporary threats challenge the UN's framework on global peace and security. Non-traditional threats render its legal and institutional framework inadequate. The study finds that the UN faces several difficulties in the quest to maintain international peace and security in the face of contemporary threats, such as anachronism, lack of definitions of key terms like "threat to peace" and "breach of peace", inadequate enforcement action, inconsistency, and double incidence of mandates. It concludes that the UN is not well adapted to address non-traditional threats to international peace and security.

It is in the interest of stakeholders to take steps towards meeting these concerns. The study makes specific recommendations that could alleviate the obstacles faced by the UN's peace and security framework in maintaining international peace and security.

CHAPTER ONE

INTRODUCTION

1.1 Background

We live in interesting times.¹ We suffer one catastrophic disaster after another. As such, there has always been a quest and attempts to create and maintain global peace and security. Such attempts comprise of international arrangements, such as The Peace of Westphalia of 1648, the 1815 settlement through the Congress of Vienna, the Washington Conference of 1885, and The Hague Conferences of 1899 and 1907, and the 1919 Treaty of Versailles.²

Initially, threats to world peace and security were largely military in nature, such as the First World War. This War resulted into extensive, deep-rooted and enduring social, economic and political consequences, including the “end of four great empires, massive financial indebtedness, outbreak of revolutions, and social unrest” across the world.³ It occasioned widespread loss of human lives and material things, which created the need to avoid any similar wars and the need to prohibit states from using war as a legal means of

¹ Emily Hammond, ‘Deference for Interesting Times’ (2015) 28 *Georgetown Environmental Law Review* 441; available at

<<https://heinonline.org/HOL/Page?handle=hein.journals/gintenlr28&id=453&div=&collection=>>. (accessed on 3rd March 2020).

² C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations*, 2nd ed., (Cambridge University Press, Cambridge, 2005), pp. 1, 2, 4.

³ Ruth Beatrice Henig, *The League of Nations* (Haus Publishing, London, 2010), p. 1.

protecting or promoting their interests.⁴ It led to the conception of the “world’s truly international organization”, the League of Nations (LON).⁵

The League of Nations was formed to “promote international co-operation and to achieve international peace and security.”⁶ It resulted from a proposal presented at the Peace Conference of Paris in 1919,⁷ following which the League’s Covenant⁸ was adopted on 28th April 1919. Article 8 of the Covenant of the League of Nations emphasized the disarmament of states. Articles 11, 12, 13, 14, and 15 made provision for the pacific settlement of disputes. Article 10 guaranteed the independence of every member of the League. Articles 16 and 17 provided for enforcement against member states and non-member states by use of war and sanctions, for infringing the Articles or covenants of the League.

The mission of the League was to be accomplished through three principal organs. These were the Council, the Assembly, and the Secretariat.⁹ The Council comprised of the “representatives of the Allied and Associated Powers, together with Representatives of four other Members of the League.”¹⁰ By 1936, it comprised of four permanent and nine non-permanent members. The Council was tasked with dealing with any issue within the

⁴ Anique H.M. van Ginneken, *Historical Dictionary of the League of Nations* (Scarecrow Press, Maryland, 1946), p. 3.

⁵ Henig (n 3) 1.

⁶ The preamble to the Covenant of the League of Nations, 28th April 1919; available at https://avalon.law.yale.edu/20th_century/leagcov.asp (accessed on 1st December 2020).

⁷ Phillipe Sands & Pierre Klein, *Bowett’s Law of International Institutions*, 6th ed. (Sweet & Maxwell, London, 2009), p. 60.

⁸ League of Nations, Covenant of the League of Nations, 28 April 1919; [1920] ATS 1 < <https://www.un.org/unispal/document/auto-insert-199451/> > (accessed on 11th September 2020)

⁹ *Ibid.*, Article 2.

¹⁰ *Ibid.*, Article 4(1).

mandate of the League concerning global peace.¹¹ It, however, failed to fulfil its mandate to maintain global peace as the world was again struck by another catastrophe, the Second World War.

The League was the first of its kind.¹² “Never before had a full-scale international conference convened to discuss, not a specific problem or group of problems, but the whole field of international affairs.”¹³ Thus, the experimentation by the organs of the League, such as the United Nations General Assembly (UNGA) in autonomously determining its own practice was always evolving, which evolution did not always result in the League’s success. For instance, despite the formal requirement for unanimity in Assembly voting, it developed an informal practice of majority decision-making.¹⁴

Some of the tragedies which occasioned the League’s failure were the United States of America’s and Soviet Russia’s absence from its membership, causing a handicap in the successful functioning of the League.¹⁵ In addition, due to their absence, the Great Britain found leeway in determining the policies of the League, which in some instances, were unfavourable to the League, contributing to its failure.¹⁶

It also failed because “of the failure to provide adequate security guarantees for its members, thus encouraging more aggressive policies by authoritarian states leading to an

¹¹ Ibid., Article 4.

¹² Richard Collins, 'The League of Nations and the Emergence of International Administration: Finding the Origins of International Institutional Law' (2019) 71 *The Spanish Journal of International Law* 285.

¹³ F. P Walters, *A History of the League of Nations*, (Oxford University Press, New York, 1952), p. 148.

¹⁴ Collins (n 12).

¹⁵ Eduard Benes, 'The League of Nations: Successes and Failures' (1932) 11 *Journal of Foreign Affairs* 66.

¹⁶ Ibid.

arms race” and “failure to achieve the disarmament goals it set out in the 1920s and 1930s.”¹⁷

The commitment and participation of Member States in the affairs of the League was undermined by the States’ various domestic and political interests. Its functionality was curtailed by the fact that the Great Powers of Europe imposed the needs of their internal politics or domestic interests to their policies at Geneva.¹⁸ For instance, while Germany was under the influence of Hitler’s revolutionary movement, Russia under the communist revolution, and Italy under the fascist revolution, the functionality of the League was inhibited.¹⁹ They regarded the League a medium to achieve their own interests, disregarding the interests, claims, and/or rights of other small or medium-sized powers.²⁰

The failure to establish the League as a “supreme authority” with universal power, and the fact that its Covenant was drafted by the victors of the First World War to primarily protect their interests at the expense of the interests of other member states also led to its failure.²¹ These powers imposed “an artificially depressed status on the defeated states.”²² Some states often saw the League as an instrument of “revenge, revision, and appeasement.”²³

¹⁷ Jari Eloranta, ‘Why Did the League of Nations Fail?’ (2011) 5 *Journal of Historical Economics and Econometric History* 27; available at < <https://link.springer.com/article/10.1007/s11698-010-0049-9> > (accessed on 13th June 2020).

¹⁸ Benes (n 15).

¹⁹ Ibid.

²⁰ Ibid.

²¹ William E Rappard, ‘The Evolution of the League of Nations’ (1927) 21 *American Political Science Review* 792.

²² Michael Smith, ‘League of Nations and International Politics’ (1976) 2 *British Journal of International Studies* 311.

²³ Rappard (n 21).

There was decline in the trust placed in the League as an agency of collective security, accompanied by the withdrawal of members around whom many of the major tensions centred.²⁴ This trend culminated in the ill-fated attempt to apply sanctions in the Italo-Ethiopian war.²⁵

The failure of the League is also attributable to the Locarno treaty system, which enabled the Locarno powers to side-line the League in operating parallel to the League.²⁶ This, coupled with other factors, such as economic distress, made the League's failure inevitable. For instance, the Wall Street crash undermined its ability to combat threats to peace. States dealt with economic issues outside the League. The 'Locarno Powers' placed more importance on private meetings than on League sessions.²⁷

The League also failed because it sought to protect the parameters of the ill-famed Versailles peace settlement.²⁸

Consequently, the League was unsuccessful in securing world peace and security through the cooperation of states.²⁹ It failed to prohibit another global war.

Following the League's miscarriage, in 1943, the governments of the USA, UK, the Soviet Union, and China made a joint Four-Nations Declaration on General Security in Moscow,

²⁴ Smith (n 22).

²⁵ Ibid.

²⁶ Jon Jacobson, 'The Conduct of Locarno Diplomacy' (1972) 34 *Cambridge University Press* 67.

²⁷ Smith (n 22).

²⁸ Frederick Samuel Northedge, *The League of Nations: Its Life and Times, 1920-1946* (Leicester University Press, Leicester, 1986) 32.

²⁹ Sands & Pierre (n 7), 174.

the Moscow Declaration.³⁰ In this Declaration, the governments of the four states referred to themselves as “The United Nations” with their main objective being to establish an international organisation for the “maintenance of international peace and security.”³¹ This was one of the forerunners of the United Nations, whose pre-occupation would be to maintain world peace and security.

The Charter of the United Nations was adopted and signed at San Francisco on 26th June 1945. It resulted from elaborate and extensive discussions, first in Tehran in 1943, Dumbarton Oaks in 1944, Yalta in 1945, and San Francisco in 1945.³² Article 1 of the UN Charter outlines its mission as to “maintain international peace and security, to develop friendly relations among members, and to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character.”³³ Therefore, the primary mandate of the United Nations is the preservation of global peace and security.

Article 6 of the UN Charter establishes six (6) principal organs of the United Nations. They are the United Nations General Assembly (UNGA), United Nations Security Council (UNSC), the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice (ICJ), and the Secretariat. Article 23 of the UN Charter

³⁰ ‘Declaration of Four Nations on General Security (adopted on 30th October 1943 by the governments of the United States of America, United Kingdom, the Soviet Union, and China, at the Moscow Conference); available at < <https://avalon.law.yale.edu/wwii/moscow.asp> > (accessed on 11th September 2020).

³¹ Preamble to the Declaration of Four Nations on General Security, Moscow, Russia, 30th October 1943.

³² Clyde Eagleton, ‘The Charter Adopted at San Francisco’ (1945) 39 *American Political Science Review* 934.

³³ Charter of the United Nations(Adopted on 24th June 1945 and came into force on 24th October 1945); 1 UNTS XVI; available at < <https://www.un.org/en/sections/un-charter/un-charter-full-text/> > (accessed on 13th June 2020).

provides that the composition of the UNSC is made up of permanent and non-permanent members. The five permanent members are France, China, the United Kingdom, the United States of America, and the Russian Federation. Articles 24, 25, and 26 of the UN Charter establish the functions and purposes of the Council. Its primary function is to maintain “international peace and security.”

1.1.1 International Peace and Security

The United Nations was formed out of desperation “for the maintenance of world peace and security so as to prevent war, aggression, conflicts and loss of lives” which was evident in the First and Second World Wars.³⁴

The UN Charter does not define the phrase, “world peace and security.” This is notwithstanding that maintaining global peace and security is listed as its first purpose.³⁵ Article 39 of the UN Charter is indicative of the circumstances under which one may conclude that world peace and security is at stake. They include “threat to the peace”, “breach of the peace”, or an “act of aggression.”

The UN Charter also contains no definition of these three key phrases encapsulated in Article 39. It does not define “threat to the peace.” It does not define “breach of the peace.” It also fails to define an “act of aggression.”³⁶ It omits the definition of “the precise limits” of the phrase “a threat to the peace”, which subjects it to controversy and debate.³⁷

³⁴ Temitope Oludoun, 'Peace and Security as a Catalyst for the Reform of the UN Security Council' (2014) 10 *Review of International Law and Politics* 63.

³⁵ Charter of the United Nations, 24th October 1945; UNTS XVI; Article 1(1).

³⁶ H Harsten Schmidt, 'The Charter of the United Nations: An Instrument to Re-Establish International Peace and Security' (1958) 33 *Indiana Law Journal* 322.

³⁷ Anna Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace' (2015) 16 *Melbourne Journal of International Law* 29.

The UNSC has the primary, not exclusive, mandate to maintain global peace and security.³⁸

Even without definitions, Article 39 of the UN Charter authorizes the UNSC to determine the existence of a “threat to the peace, a breach of the peace or an act of aggression.”³⁹

Even though the UNSC has applied a “subjective” interpretation of these terms, there is confusion on the meaning of these terms due to the lack of precise and concrete definitions.⁴⁰ It is not clear which criteria the UNSC employs in determining which non-military issues amount to threats to global peace and security.

Since the UNSC has the total discretion to interpret the terms "threat to the peace" and "breach of the peace," it may deem a conduct as threat to peace, what is not threat to peace, and as breach of peace, what is not breach of peace.⁴¹ This brings into question the enforcement actions provided for in Articles 39, 41, and 42, which may be used to achieve political, rather than legal ends.⁴²

Historically, a threat to international peace and security was perceived to mean “existence of an international armed conflict.”⁴³ However, the meaning of a term can change over time. Under Article 31(3) (b) of the Vienna Convention on the Law of Treaties, the meaning or the scope of a term may change over time through “any subsequent practice in

³⁸ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 97.

³⁹ Schmidt (n 36).

⁴⁰ Daniel Pickard, 'When Does Crime Become a Threat to International Peace and Security' (1998) 12 *Florida Journal of International Law* 1.

⁴¹ Hans Kelsen, 'Collective Security and Collective Self-Defense under the Charter of the United Nations' (1948) 42 *American Journal of International Law* 783.

⁴² Ibid.

⁴³ Hood (n 37).

the application of the treaty which establishes the agreement of the parties regarding its interpretation.”⁴⁴

The term “threat to peace” has always been intended, and has been taken, to mean traditional threats. Even though the UN Charter does not define threats to international peace and security, the spirit of the UN Charter is anchored in providing solutions to threats of a military character occasioned by states, rather than contemporary threats to international peace and security, which do not possess a military component.

Traditional threats always involve a physical battlefield. They are violent in nature. They are also occasioned by states. They include hegemonism, “local wars and violent conflict.”⁴⁵ Yet, prevailing threats to international peace are inter-connected, are borderless, and not necessarily military in nature or occasioned by states.⁴⁶

1.1.2 International Mechanisms for the Maintenance and/or Restoration of International peace and security

The United Nations has the responsibility to maintain and restore international peace and security, before, during, and after an international violence occurs. The UNSC exercises this mandate on its behalf.

⁴⁴ Vienna Convention on the Law of Treaties (Adopted on 23 May 1969 and came into force on 27 January 1980); 1155 UNTS 331; available at < https://www.oas.org/dil/vienna_convention_on_the_law_of_treaties.pdf >(accessed on 28th October 2020).

⁴⁵ Susan L. Craig, ‘Nontraditional Security Threats’, Chinese Perceptions Of Traditional And Nontraditional Security Threats (Strategic Studies Institute, US Army War College 2004), p. 101.

⁴⁶ United Nations General Assembly, “High Level Panel Report” from the 59th Session, held on 2nd December 2004; UN Doc. A/59/565; available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/565 (accessed on 5th November 2020).

However, before the Security Council is seized of a matter, states may use force against other offending states. This has to be balanced against Article 2(4) of the UN Charter, which, as a general rule, prohibits the use of force by states. The use of force by states must fall within the exceptions to the general rule. There are two exceptions to this rule, namely, when states act in self-defence, and when the Security Council authorizes use of armed collective security measures.

The right to self-defence constitutes the following various key features. A state exercises this right in the interim, at its own volition, and as a response to an armed attack. A state may also join other states in repelling an armed attack.⁴⁷ This unilateral right to “individual self-defence” or “collective self-defence” may be invoked under Article 51 of the UN Charter. It is exercised when there is an armed attack against a Member State, and before the UNSC undertakes any action.

On the other hand, the UNSC may also permit the use of force. Article 42 empowers the UNSC to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”

Before the UNSC sanctions the use of force, it is to explore the use of peaceful means to resolve disputes.⁴⁸ The Charter of the United Nations emphasizes that states use their

⁴⁷ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 415.

⁴⁸ Charter of the United Nations, 24th October 1945; UNTS XVI; Article 33(2).

choice of peaceful means to settle their disputes.⁴⁹ It is after a states fail to settle a dispute that appeal may be made to the UNSC.⁵⁰

Once a matter is in its jurisdiction, the UNSC should seek the parties' consensus on the methods and/or terms of amicable settlement, except in cases of actual breach of the peace.

⁵¹ Article 33(2) of the UN Charter provides that in maintaining the world peace and security, the Council will call upon parties to any dispute to settle such dispute through peaceful means. Peaceful means for settlement of disputes include enquiry, mediation, judicial settlement, arbitration, negotiation, and resort to regional agencies and arrangements.

Article 39 of the UN Charter empowers the UNSC to decide upon which measures it will employ to maintain or restore international peace and security. The Council may thus maintain world peace and security by taking enforcement action under Article 39. Whereas Article 40 provides for provisional enforcement measures, Article 41 provides for measures which do not involve the use of armed force, such as diplomatic and economic sanctions, and Article 42 provides for military enforcement measures.

The UNSC may also call upon parties to adopt interlocutory measures to prevent the deterioration of a situation.⁵² It may also order Members to take collective measures of an economic, political, or military nature.⁵³ Under the arrangement of "collective security", states "collectively guarantee one another's security", based on the idea of "indivisibility

⁴⁹ Charter of the United Nations, 24th October 1945; UNTS XVI; Article 33(1).

⁵⁰ Charter of the United Nations, 24th October 1945; UNTS XVI; Article 37.

⁵¹ Leland M. Goodrich, 'The Maintenance of International Peace and Security' (1965) 19 *International Organisation* 429.

⁵² Charter of the United Nations, 24th October 1945; UNTS XVI; Article 40.

⁵³ Charter of the United Nations, 24th October 1945; UNTS XVI; Articles 41 and 42.

of peace.”⁵⁴ States cannot, on their own, protect themselves against today’s threats to international peace and security, such as infectious diseases or terrorism.⁵⁵

The upsurge of contemporary threats to international peace and security, such as terrorism, intra-state conflicts, and transnational crime is a force threatening international peace and security, and collective efforts by states would be instrumental in fighting against these forces.⁵⁶

Instead of enforcement and peacekeeping, there is advocacy for a shift in the usage of terms to “peace-making, peace-building, peace-enforcement, and humanitarian assistance.”⁵⁷

The shift would mean that peacekeeping would go beyond overseeing cease-fires,⁵⁸ which is typical to the traditional threats to international peace and security. This would take into account contemporary threats to world peace, which do not always involve armed action. The nature of contemporary threats to world peace provides a basis for increased collective action.

There is need for a consensus on what is perceived as a threat to international peace and security, to facilitate the examination of whether the means for the maintenance and/or restoration of international peace and security have stood the test of time.

⁵⁴ Goodrich (n 51).

⁵⁵ United Nations General Assembly, “High Level Panel Report” from the 59th Session, held on 2nd December 2004; UN Doc. A/59/565; available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/565 (accessed on 5th November 2020).

⁵⁶ Victor Chibuikwe Obikaeze and Ifeanyi Chukwu Johah Iheke, ‘Post Cold War World And Contemporary Security Challenges: Re-Visiting New Threats to Global Peace’ (2016) 9 *International Journal of Research in Arts and Social Sciences* 225.

⁵⁷ Rosalyn Higgins, ‘The United Nations Role in Maintaining International Peace: The Lessons of the First Fifty Years’ (1996) 16 *New York Law School Journal of International and Comparative Law* 135.

⁵⁸ *Ibid.*

1.1.3 “New Threats” to International peace and security

Even though the threats to international peace and security have always been perceived to take the form of armed conflict between states, the contemporary grave security threats are beyond “inter-state war.”⁵⁹

In the aftermath of the Second World War, threats were understood to be of a “military character.”⁶⁰ However, the threat of armed conflict has progressively been replaced by other threats to international security.⁶¹ Insecurity has a new paradigm, which may as well be a source of conflict. Whereas traditional threats, such as local wars, still threaten international peace and stability, “events such as the 11 September [2001] terror incident, the pneumonia epidemic, and the Indian Ocean tsunami indicate that non-traditional security threats are becoming more prominent and are becoming interwoven with traditional security threats in threatening human survival and development.”⁶² The contemporary threats to world peace and security also include ecological damage, and threats that disrupt family, and community life.⁶³ They also include “terrorism, proliferation of weapons of mass destruction (WMD), transnational crimes, and infectious

⁵⁹ Ljubo Runjic, ‘Reform of the United Nations Security Council: The Emperor Has No Clothes’ (2017) 14 *Brazilian Journal of International Law* 268.

⁶⁰ Peter G Danchin and Horst Fischer, ‘*United Nations Reform and the New Collective Security*’ (Cambridge University Press, Cambridge, 2010), p. 120.

⁶¹ Adam Daniel Rotfeld, ‘*Towards the UN Reform: New Threats, New Responses: The Warsaw Report of the Regional Conference in Support of the High-Level Panel on Threats, Challenges and Change Appointed by the UN Secretary-General held in Warsaw from 24th - 25th May 2004*’ (Diplomatic Academy of the Ministry of Foreign Affairs 2004), p. 116.

⁶² Craig (n 45), p. 101.

⁶³ United Nations General Assembly ‘Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992; UN Doc A/47/277 - S/24111; available at < https://www.un.org/ruleoflaw/files/A_47_277.pdf > (accessed on 10th March 2020).

diseases.⁶⁴ These, when combined with traditional threats, pose serious threats to international security.⁶⁵

The contemporary threats may affect international peace and security in different aspects. For example, climate change has a bearing on peace and security, in that rising sea levels may lead to migration in large numbers, while scarcity of resources may lead to violence and tensions over control of and access to resources.⁶⁶ Human trafficking and related crimes result into violence, migration concerns, economic loss, environmental risks, social risks, health and safety risks, and as such pose a threat to international peace and security.⁶⁷ Pandemics, such as the Covid-19, the Severe Acute Respiratory Syndrome (SARS) outbreak in China in 2003, pose new and constantly evolving complications to global peace and security.⁶⁸ They pose economic, political, social, and demographic problems that may escalate to serious degrees and pose human, national, and international security threats.⁶⁹ Other contemporary threats to world peace include global piracy, hunger, humanitarian issues, and cyber-attacks.

In Africa, the main concerns and threats to world peace, such as poverty and disease, conflict, environmental degradation, and bad governance, are intrastate, rather than

⁶⁴ Ibid.

⁶⁵ Craig (n 45) , 101.

⁶⁶ Pierre Thielbörger, 'Climate Change and International Peace and Security: Time for a "Green" Security Council', *From Cold War to Cyber War: The Evolution of the International Law of Peace and Armed Conflict over the Last 25 Years* (Springer International Publishing, Berlin, 2015), p. 68.

⁶⁷ Background paper of the United Nations Office on Drugs and Crime, 'An Introduction to Human Trafficking: Vulnerability, Impact and Action' (2008), p. 100; available at < https://www.un.org/ruleoflaw/files/Intro_Human_Trafficking.pdf > (accessed on 11th September 2020).

⁶⁸ Frederick W Smullen, 'New Threats; New Thinking', *Conflict Management and Peacebuilding: (Strategic Studies Institute, US Army War College, Pennsylvania 2013)*, p. 18.

⁶⁹ Alan Collins, *Contemporary Security Studies* (Oxford University Press, Oxford, 2007), p. 332.

interstate.⁷⁰ Some of the contemporary threats to world peace are escalated by globalization. Even though globalization has many benefits, it is also the root cause of challenges in the security of developing states, which challenges include trafficking of persons and violent ethnic conflicts.⁷¹

It is noteworthy that some contemporary threats to world peace, such as infectious diseases, do not give rise to violent clashes.⁷² World peace cannot be achieved by tackling only the military threats confronting the world today.

1.2 The statement of the problem

Article 1(1) of the UN Charter underscores the justification for the United Nations' existence as the maintenance of international peace and security, and in so doing, to take "effective collective measures" to prevent and suppress threats to, or breaches of peace. Article 2(4) of the UN Charter prohibits Member States from using or threatening to use force against other states. The UNSC has the primary mandate to fulfil the objective in Articles 1(1) and 2(4) of the UN Charter. Under Article 39, it has the powers to determine whether a threat to peace exists, or whether peace is being threatened or has been breached, following which it can apply Articles 41 or 42 of the Charter. Articles 41 and 42 of the Charter provide for mechanism of dealing with inter-state military threats to peace. The UN Charter assumes that threats to international peace and security have two major

⁷⁰ Ibid.

⁷¹ Ashok Swain, *Understanding Emerging Security Challenges: Threats and Opportunities*, 1st ed., (Routledge, New York, 2012) 2.

⁷² Hood (n 37).

characteristics. One, that they are occasioned by the acts of States. Two, that they entail the threat or use of force.

Inter-state disputes still pose a threat to international peace and security. For instance, one of the most prominent causes of the First World War was an inter-state dispute between Bosnia, on one hand, and the Austro-Hungarian Empire, on the other hand. This dispute led to the double murder of Archduke Franz Ferdinand and Sophie, Duchess of Hohenberg, which struck the match sparking the First World War.⁷³ Contemporary threats to international security recognize that military aggression or armed conflict is not the only source of instability.⁷⁴ Even if traditional threats, such as armed conflict, still pose danger to international peace and security, there are events that are not military in nature, yet pose a threat to international peace and security.⁷⁵ The Post-Cold War has witnessed contemporary threats to international peace and security, such as lethal terrorist activities, contagious intra-national conflicts, as well as transnational criminal activities, intra-state conflicts, ethnic conflicts, religious militancy, unfair economic competition, and gross violation of human rights.⁷⁶ These contemporary threats do not necessarily involve the threat or use of force. The legal machinery of the UN is ill-suited to deal with non-traditional threats to international peace and security.

⁷³ Margaret MacMillan, *The War That Ended Peace: How Europe Abandoned Peace for the First World War* (Profile Books, London, 2013), p. 513.

⁷⁴ Oli Brown and Robert McLeman, 'A recurring anarchy? The emergence of climate change as a threat to international peace and security' (2009) 9 *Journal of Conflict, Security & Development* 289.

⁷⁵ Susan L. Craig, 'Non-traditional Security Threats; Chinese Perceptions of Traditional and Non-traditional Security Threats' (2004) *Strategic Studies Institute* 1.

⁷⁶ Obikaeze and Iheke (n 56).

What is the mandate of the UNSC under Article 39 of the UN Charter, with reference to the contemporary threats to international peace and security? This question remains unanswered even as the United Nations grapples with non-traditional threats to world peace. It is important for this question to be critically analysed, to determine whether the concept of “peace and security” needs to be revisited before the UNSC’s mandate can be exercised against contemporary threats to international peace.

1.3 Research Hypothesis

This study rests on the premise that the multiplication of new and post-Cold War threats to world peace challenges the mandate of the UNSC in maintaining international peace and security.

The study is further guided by the hypothesis that threats that are not occasioned by states, or do not involve the use or threat to use force were not the kind envisaged to be remedied by Article 39 of the UN Charter.

1.4 Research Questions

This study seeks to answer the following questions:

- a) What is the United Nations’ legal and institutional regime on the maintenance of international peace and security?
- b) What are contemporary threats to international peace and security?
- c) What challenges do the contemporary threats to international peace and security pose to the United Nations in maintaining international peace and security in light of its legal and institutional framework?

- d) How can the United Nations maintain international peace and security in light of the contemporary threats to global peace and security?

1.5 Research Objectives

The goal of this research is to analyse the United Nations' peace and security framework in view of threats to international peace and security, which are not occasioned by states, or do not involve the use of force. In this regard, the specific objectives are to:

- a) Examine the United Nations' legal and institutional regime on the maintenance of international peace and security.
- b) Identify contemporary threats to international peace and security.
- c) Identify the challenges posed by contemporary threats to the United Nations' peace and security framework.
- d) Proffer solutions on how the United Nations can maintain international peace and security in light of the contemporary threats to global peace and security.

1.6 Scope of the Study

The scope of this study covers international law, with a particular reference to the United Nations' peace and security framework and whether it is well adapted to address contemporary threats to international peace and security. It focuses on the UN organisation rather than the UN system. The UN system encompasses the United Nations organisation, various funds, programmes, and 17 specialised agencies, such as the Food and Agriculture Organization of the United Nations, the International Civil Aviation Organization, the International Fund for Agricultural Development, the International Labour Organization, the International Monetary Fund, the International Maritime Organization, the

International Telecommunication Union, the United Nations Educational, the Scientific and Cultural Organization, the United Nations Industrial Development Organization, the World Tourism Organization, the Universal Postal Union, the World Health Organization, the World Intellectual Property Organization, and the World Meteorological Organization. The UN organisation comprises six principal organs. Amongst the six, the Security Council bears the primary mandate to maintain international peace and security.

1.7 Justification

The study focuses on the UN peace and security framework. Under the UN Charter, the Security Council has the primary responsibility to maintain international peace and security. The study builds literature on non-traditional threats to international peace and security. It contributes to the body of knowledge available for students and other researchers to understand the UN peace and security framework, and how it is challenged by contemporary threats to international peace and security. The findings and recommendations if implemented, place the UN in a better position to address contemporary threats to international peace and security.

1.8 Theoretical Framework

This research is based on four major theories. These are the positivism theory, Kantian theory of international law, the systems theory, and Copenhagen school's theory on securitisation. Although this study uses the positivism theory to test its hypotheses, other theories are discussed to shade light on the extent to which the United Nations' legal and institutional framework is suited to address contemporary threats to world peace.

1.8.1 Positivism Theory

Positivism holds that law cannot exist unless states have consented to it, because the validity of all laws depends on the will of sovereign states.⁷⁷ Therefore, agreement between states gives international law its binding force, which consequently makes international law obligatory.

The “Positive Law of Nations” is an outcome of either international treaties, or custom.⁷⁸ When states conclude a treaty, they give their express consent for their future conduct to be bound by the rules of that treaty.⁷⁹ International law includes treaties and conventions, such as The Charter of the United Nations, which was brought about by agreement between the United Nations Member States.

On the international scene, states may also be bound by customs, which is also a source of the “the Law of Nations.”⁸⁰ Customs are created “when a clear and continuous habit of doing certain actions has grown up under the aegis of the conviction that these actions are legally necessary or legally right.”⁸¹ Custom is different from usage. Usage arises “when a habit of doing certain actions has grown up without there being the conviction of their legal character.”⁸²

⁷⁷ Jianming Shen, ‘The Basis of International Law: Why Nations Observe’ (1999)17 *Penn State International Law Review* 287.

⁷⁸ L. Oppenheim, *International Law: A Treatise*, Vol I (Longmans, Green, New York and Bombay 1905), p. 83.

⁷⁹ *Ibid.*, p. 22.

⁸⁰ *Ibid.*, p. 23.

⁸¹ *Ibid.*, p. 22.

⁸² *Ibid.*

William Blackstone advanced this theory. His philosophy was based on the proposition that the law is what a sovereign says it is.⁸³ He compared law to architecture. His idea of amendment of laws was that “our system of remedial law resembles a Gothic castle erected in the days of chivalry, but fitted up for modern inhabitants.”⁸⁴ Bentham furnished some guidance on legislative theory by suggesting that parliament had the authority to enact any law that it chose, thus there was no necessity for legislative reform, because old laws could remedy any shortcoming in the modern society.

His reservation was, however, that constitutional reform would be necessary where it would result into a more complete representation of the people.⁸⁵

The law concerning the maintenance of global peace and security is enshrined in the United Nations Charter. Under Article 39, of the Charter, the UNSC has the mandate to decide whether an act is a “threat to the peace or breach of the peace” after which it shall decide what measures will be taken “to maintain or restore international peace and security.”

This theory is relevant to the study because the study seeks to analyse the mandate of the UNSC in maintaining world peace, as articulated in the law as it is, in Article 39 of the UN Charter.

⁸³ Andrew Forsyth, *Common Law and Natural Law in America: From the Puritans to the Legal Realists* (Cambridge University Press, Cambridge, 2019), p. 55.

⁸⁴ Sir William Blackstone, *Commentaries on the Laws of England*, vol II (WE Dean, New York, 1840), p. 206

⁸⁵ Sir William Blackstone, *Commentaries on the Laws of England in Four Books* (J.B. Lippincott Co., Philadelphia, 1893), p. 173; available at <https://oll.libertyfund.org/titles/blackstone-commentaries-on-the-laws-of-england-in-four-books-vol-1> (accessed on 17th June 2020).

This theory will help in testing the hypotheses of whether the legal and institutional framework of the United Nations is suited to address contemporary threats to international peace and security in light of Article 39 of the UN Charter.

1.8.2 Systems Theory

This study also utilises the Systems Theory. A system is made up of various parts that inherently embody an ongoing and stable relationship with one another, hence being interrelated and interdependent.⁸⁶ Even though the different parts of the system operate within boundaries, change in one part causes change in other parts of the system.⁸⁷ The primary goal of the system is to achieve stability in order to preserve itself. The system is maintained and preserved basing on its ability to maintain order.⁸⁸ Stability in the international system depends on how the system manages threats and responds to the same.⁸⁹

This study focuses on the impediments posed by the contemporary threats to international peace and security to the mandate of the UNSC in maintenance of the peace.

The Systems Theory is important to this study as it provides a basis for understanding and conceptualising the interdependence of nations in their security interactions. Actions taken within the borders of one state may have impact on other states and, subsequently, the entire international community. For instance, environmental strains go beyond the national borders of countries.⁹⁰ In addition, the refugee crisis in Europe is a result of “intra-national

⁸⁶ Obikaeze and Iheke (n 56).

⁸⁷ Ibid.

⁸⁸ Obikaeze and Iheke (n 56).

⁸⁹ Ibid.

⁹⁰ Jessica Tuchman Mathews, 'Redefining Security' (1989) 68 *Foreign Affairs* 162.

conflicts in Syria, Yemen, and Bahrain.”⁹¹ The “sharp dividing line between foreign and domestic policy is blurred, forcing governments to grapple in international forums” with issues that were previously restrained to the domestic arena.⁹²

The UNSC exercises the primary mandate in maintaining international peace and security. It collaborates with states to effectively address these threats. The Systems Theory explains the interdependence between the UNSC and states in maintaining international peace and security.

This theory is also relevant to this study, as it brings into focus the manner in which the UNSC addresses contemporary threats to international peace and security in cooperation with other principal and subsidiary organs of the United Nations, as well as regional organisations.

1.8.3 Copenhagen School’s Theory on Securitisation

The Copenhagen school’s theory on securitisation is a theoretical approach that helps in explaining how issues become threats to international peace and security.⁹³ It posits that limiting security threats to military threats narrows down the definition of security.⁹⁴ It affirms the consideration of non-military issues as security threats, as long as they represent ‘existential threats’.⁹⁵ Contemporary threats and challenges, such as the HIV/AIDS

⁹¹ Obikaeze and Iheke (n 56).

⁹² Jessica Tuchman Mathews, 'Redefining Security' (1989) 68 *Foreign Affairs* 162.

⁹³ Hood (n 37).

⁹⁴ Barry Buzan and Lene Hansen, *The Evolution of International Security Studies*, (Cambridge University Press, Cambridge, 2009), p. 187.

⁹⁵ Peter Hough, *Understanding Global Security*, 2nd ed., (Routledge, London and New York, 2008), p.8.

epidemic, environmental degradation, and immigration, portray that the definition of security may no longer be limited to traditional military threats.⁹⁶

The Copenhagen School is agreeable to the idea that “non-military issues can be securitized.”⁹⁷ An issue is securitised, not necessarily when it meets the definition of security, but rather after it has been through a two-stage process.⁹⁸ In the first stage, a securitising actor declares an issue to be an “existential threat to a referent object.”⁹⁹ A securitising actor may be a political leader, a civil society actor, or the media.¹⁰⁰ In the second and last stage of securitisation, the relevant audience should accept the speech act. In this second stage, the threat to the peace is acknowledged as such, and the securitising actor is granted the authority to employ the requisite measures to address the threat.

Even though the Copenhagen School developed its theory in the context of domestic states, it is useful in deciphering the UNSC’s current approach in determining the existence of a threat to international peace and security.

The objective of this theory is to explain the processes of constructing a shared understanding of what is to be considered and collectively responded to as a threat to international peace.¹⁰¹ This theory further helps in analysing the criteria adopted by the UNSC in declaring an issue as a threat to international peace and security, and its

⁹⁶ Barry Buzan and Lene Hansen, *The Evolution of International Security Studies*, (Cambridge University Press, Cambridge, 2009), p. 187.

⁹⁷ Peter Hough, *Understanding Global Security*, 2nd ed., (Routledge, London and New York, 2008), p. 9.

⁹⁸ Hood (n 37).

⁹⁹ Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: a New Framework for Analysis*, (Lynne Rienner Publishers, London, 1998), p. 36.

¹⁰⁰ Ibid.

¹⁰¹ Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: a New Framework for Analysis*, (Lynne Rienner Publishers, London, 1998), p. 26.

limitations in implementing Article 39 of the UN Charter in light of contemporary threats to international peace and security.

1.8.4 The Kantian Theory of International Law

Under Immanuel Kant's theory of perpetual peace,¹⁰² states are either at war or at peace. In his first Preliminary Article, he introduces the idea that "no treaty of peace shall be held valid in which there is tacitly reserved matter for a future war."¹⁰³ To him, anything contrary to this would mean that such a treaty is only a temporary suspension of hostilities. The Second Preliminary Article proposes, "no independent states large or small shall come under the dominion of another state by inheritance, exchange, purchase, or donation."¹⁰⁴

In the Second Definitive Article, he propounds that, "The Law of Nations shall be founded on a Federation of Free States."¹⁰⁵ He further explains that states are susceptible to injuring one another and that the only remedy to this would be for them to enter into a constitution to secure each state's rights. Under this Constitution, each state would be distinct from another state.¹⁰⁶

In their natural state, Kant advised that states find war as the only means of pleading their case against other states. Therefore, the league of peace seeks eternal peace by ending all that war forever. The goal of such a league would be not to domineer over other states, but

¹⁰² Immanuel Kant, "Perpetual Peace" available at <
<http://fs2.american.edu/dfagel/www/Class%20Readings/Kant/Immanuel%20Kant,%20Perpetual%20Peace.pdf>> (accessed on 16th June 2020).

¹⁰³ Ibid., p. 1.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p. 5.

¹⁰⁶ Ibid., p. 6.

rather to maintain security of other states. He suggested “the law of nations” to promote “perpetual peace.”¹⁰⁷

This theory emphasises the need to put in place a treaty of peace, or a constitution that prohibits war, and the dominion of states by others.

The Kantian theory translates into Article 1(1) of the UN Charter which outlines the purpose of the United Nations as the maintenance of international peace and security and, in doing so, to “take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.”

Article 2(3) of the UN Charter also acknowledges the Kantian theory to the extent that all Member States are to settle any disputes between themselves “by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

This study is centred on the mandate exercised by the UNSC in maintaining international peace and security. The Kantian theory helps in understanding and conceptualising the basis upon which states put in place a treaty of peace, the UN Charter, which prohibits war.

Since it is highly unlikely for countries to have a “total warfare”,¹⁰⁸ this theory provides a basis for examining the extent to which contemporary threats to international peace and security problematizes the mandate of the UNSC.

¹⁰⁷ Ibid., p. 7.

¹⁰⁸ Danchin and Fischer (n 80), p. 120.

1.9 Literature Review

A number of scholars have contributed to the discourse on contemporary threats to world peace and security. Even then, very few of them focus on the question of whether contemporary threats to international peace and security are the threats envisioned in the UN Charter, and whether the legal and institutional structure of the UNSC is suited to address these threats. This study contributes to addressing this gap.

Anna Hood¹⁰⁹ affirms that a threat to peace is usually declared in cases of armed conflict, or situations that may lead to an armed conflict in the short to medium term.

She explores how the UNSC reached the determination that Ebola was a threat to the peace, its justification for classifying it as such, and whether such classification altered the parameters of Article 39 of the UN Charter.¹¹⁰

She avers that recognition of Ebola as a threat to international peace and security has the potential of widening and eroding the scope of Article 39 of the UN Charter. She argues that such widening erodes the limits of Article 39 of the UN Charter and makes the Council's approach of determining threats to international peace resemble the Copenhagen School's theory on securitisation.

She states that Ebola was classified as a threat because it was a threat to the life and health of thousands of persons, it damaged economies, and interfered with the ability of affected states to run smoothly. Further, Ebola was classified as such because it could have been

¹⁰⁹ Hood (n 37).

¹¹⁰ Ibid.

likely to generate conflict, such as the violent protests that arose in West Point, Liberia, from the attempts to quarantine persons infected with Ebola.

She answers the question of whether the classification of Ebola as a threat to the peace alters the parameters of Article 39 in the negative. This, she attributes to the fact that Resolution 2177¹¹¹ has not received worldwide support, and that such resolutions have not been passed consistently for a long period.

She further analyses the viability of interpreting Article 39 of the UN Charter to include non-military threats. She posits that any interpretations falling outside the traditional meaning of threats makes the term “threat to the peace” very wide, vague and broad, meaningless, and an ‘empty shell”, as it could lead to a situation where it would be impossible to determine the objective criteria of determining what amounts to a threat to the peace.

Her study is important to this study because it explains how a non-traditional threat can be classified as a threat to international peace and security, the rationale for such classification, and whether Article 39 of the UN Charter is altered by such classification.

Her study focuses on the criteria adopted by the UNSC in holding Ebola as a threat to the peace under Article 39 of the UN Charter. Her study is limited to Ebola, and does not delve into other threats to international peace and security. This study seeks to bridge this gap.

¹¹¹ UN Security Council, Security Council Resolution 2177 (2014), Adopted at Its 7268th Meeting, Held on 18th September, 2014; UN Doc S/RES/ 11566(2014).

Monica Galvan¹¹² probes the concepts “threat” and “peace”, and “threat to the peace.”¹¹³ She determines that the ordinary meaning of the term ‘peace’ is absence of hostilities, disturbances, or conflict.

She highlights that the UN Charter does not outline the criteria for interpreting what amounts to a “threat to the peace.” Since the end of the Cold War, the UNSC has been adopting resolutions and, in turn, developing a wider definition of the term “threat to the peace” to include terrorism and civil wars.¹¹⁴

She argues that in determining a threat to international peace, the UNSC needs to align to the rules of the Vienna Convention on the Law of Treaties of 1969,¹¹⁵ and the principles and purposes of the UN Charter. She articulates that in passing resolutions, the UNSC is bound by international law, *ius cogens* norms and principles and purposes of the UN Charter, and the Vienna Convention.

She reviews the practice in which the UNSC has been determining what amounts to a threat to the peace to establish whether the UNSC has been conforming to Article 39 of the UN Charter.

¹¹² Mónica Lourdes de la Serna Galván, ‘Interpretation of Article 39 of the UN Charter (Threat to the Peace) by the Security Council. Is the Security Council a Legislator for the Entire International Community?’ (2011) 11 *Mexican Yearbook of International Law* 147.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ Vienna Convention on the Law of Treaties (Adopted on 23 May 1969 and came into force on 27 January 1980); 1155 UNTS 331; available at < https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf > (accessed on 1st March 2021).

She asserts that in determining a threat to the peace, the UNSC must align to Article 1(1) of the UN Charter. In addition, the UNSC should consider the prevailing circumstances at the time of drafting the UN Charter. She propounds that the UNSC has been “implementing new situations different from those envisaged in the San Francisco Conference (terrorism, weapons of mass destruction, civil wars, among others).”¹¹⁶ She suggests that a threat to peace should “correspond to a real, concrete and specific emergency that the Council must address as quickly as possible.”¹¹⁷

She advances that in adopting Resolutions 1373¹¹⁸ and 1540¹¹⁹ declaring international terrorism as a threat to the peace, the UNSC indulged in the law making process, and imposed obligations on all states due to the binding nature of its decisions. She argues that the UN Charter does not expressly, or by implication, bestow any legislative power on the UNSC.

Her study focuses on the new international problems and the practice adopted by the UNSC in determining threats to international peace and security. This, she uses to analyse whether the UNSC has legislative powers to widen Article 39 of the UN Charter.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ UN Security Council, Security Council Resolution 1373 (2001), Adopted by the Security Council at its 4385th Meeting, Held on 28 September 2001; UN Doc. S/RES/1373(2001).

¹¹⁹ UN Security Council, Security Council Resolution 1540 (2004), Adopted by the Security Council at its 4956th Meeting, Held on 28 April 2004; UN Doc. S/RES/1540(2004).

She reaches the conclusion that, since Resolutions 1373¹²⁰ and 1540¹²¹ did not consider specific circumstances, did not determine the time limits for their application, did not apply to specific states, they are a form of international legislation by the UNSC. For instance, that Resolution 1373 was taken two weeks after the 9/11 attacks, and it was implemented immediately to bind all states, without going through “the slow process of treaty ratification.” “In the case of Resolution 1540, it was also adopted as an urgent necessity to incorporate non-state actors and fill the gaps that have existed in the weapons of mass destruction treaties.”¹²²

She notes that there is no provision in the UN Charter that entitles the UNSC to create norms of a legislative nature. Even though the UNSC has wide powers under Chapter VII of the UN Charter, it does not mean that the UNSC is “*legisbus solutus*”, otherwise states cannot be bound by, and cannot comply with, resolutions which do not comply with the provisions of the UN Charter.¹²³ She asserts that the UNSC widened the term ‘threat to peace’ by considering “atypical situations such as human rights violations and the extreme magnitude of human suffering, the heavy loss of human life, and violations of humanitarian law as threats to the peace (Iraq, Somalia, Yugoslavia and Rwanda).”¹²⁴

¹²⁰ UN Security Council, Security Council Resolution 1373 (2001), Adopted by the Security Council at its 4385th Meeting, Held on 28 September 2001; UN Doc. S/RES/1373(2001).

¹²¹ UN Security Council, Security Council Resolution 1540 (2004), Adopted by the Security Council at its 4956th Meeting, Held on 28 April 2004; UN Doc. S/RES/1540(2004).

¹²² Mónica Lourdes de la Serna Galván, ‘Interpretation of Article 39 of the UN Charter (Threat to the Peace) by the Security Council. Is the Security Council a Legislator for the Entire International Community?’ (2011) 11 *Mexican Yearbook of International Law* 147.

¹²³ Ibid.

¹²⁴ Ibid.

Her study is important because it attempts to explain whether the UNSC can, within the parameters of Article 39 of the UN Charter, declare non-traditional threats as threats to international peace and security. It, however, focuses on the two general resolutions, rather than discussing other specific non-military threats to international peace and security. Her study concludes that resolutions that respond to particular situations, and which are not couched in mandatory terms cannot be considered as establishing new rules of international law.

She does not analyse whether the UNSC's determination of specific non-military threats as threats to the peace widens the scope of Article 39 of the UN Charter, as her study focuses on the two general resolutions. This study will fill that gap.

Maxwell Chibundu defines a threat as a "potential harm."¹²⁵ He states that the threats to "international order", other than warfare, have the capacity to generate "interstate and intrastate conflict."¹²⁶ He asserts that there are no clear criteria of determining what, apart from war, amounts to a threat. He argues that what might seem to be a threat today may later on be proved not a threat and, further, that the generalization of threats would lead to exaggeration.¹²⁷ He argues that there is no guarantee that sanctions are effective responses to non-military threats.¹²⁸ He is of the opinion, however, that acceptable solutions to non-military threats can only be preventative in nature.¹²⁹

¹²⁵ Maxwell Chibundu, 'Assessing the High-Level Panel Report: Rethinking the Causes and Consequences of Threats to Collective Security' in Peter G Danchin and Horst Fischer(eds), *United Nations Reform and the New Collective Security* (Cambridge University Press, Cambridge, 2010), p. 121.

¹²⁶ Ibid., p. 121.

¹²⁷ Ibid., p. 126.

¹²⁸ Ibid., p. 139.

¹²⁹ Ibid., p. 189.

Chibundu's contribution is useful to this study because it provides further insights in the contemporary threats to international peace and security, and whether sanctions are an appropriate response thereto.

Nigel White examines the differences between "threat to the peace", "breach of the peace", and "act of aggression." He posits that a threat to the peace is a flexible term, which encapsulates inter-state and intrastate disputes.¹³⁰ That a "breach of the peace" is defined more narrowly as referring to "international" and not "internal" peace.¹³¹ In earlier times, a finding of a "threat to the peace" was viewed as a preliminary to a finding of a "breach of the peace."¹³² An "act of aggression" is a special form of a "breach of the peace." That it condemns "one of the states involved in a conflict as the "guilty" party."¹³³

He highlights two systems of interpretation of the UN Charter. They include the closed Charter system, and the open Charter system. Under the closed Charter system, "the UNSC's ultimate competence is defined by international law in the form of Article 2(4)", meaning that, for a threat to the peace to exist, an issue must be military in nature.¹³⁴ Under the closed Charter system, "'peace" is the antithesis of war" and, thus, there must be a threat of force against another state.¹³⁵ Under the open Charter system, the UNSC applies "the concept of a "threat to the peace" to essentially internal situations."¹³⁶

¹³⁰ Nigel D.White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security*, 2nd ed., (Manchester University Press, Manchester, 1997), p. 42.

¹³¹ *Ibid.*, p. 49.

¹³² *Ibid.*, p. 42.

¹³³ *Ibid.*, p. 47.

¹³⁴ *Ibid.*, p. 34.

¹³⁵ *Ibid.*, p. 34.

¹³⁶ *Ibid.*, p. 34.

He analyses the approach of the UNSC in determining that an issue is a threat to the peace. He states that, to a large extent, a threat to peace is a political decision, which the UNSC makes after determining that a situation has potential international repercussions.¹³⁷

He analyses Article 39 of the UN Charter alongside Article 2(7) of the UN Charter and probes whether sovereignty of states limits the UNSC's mandate under Article 39.¹³⁸ He maintains that the UNSC has adopted practice that, a finding under Article 39, whether accompanied by enforcement action or not, excludes the application of Article 2(7) of the Charter. For instance, if the intervention in Congo had not been recognised as a threat to international peace and security, and sanctions under section 40 imposed, intervention could have been precluded by virtue of Article 2(7) of the Charter of the United Nations.¹³⁹

He submits that the UNSC may apply Article 39 to internal affairs of states to circumvent Article 2(7) of the UN Charter. He suggests that the UNSC can also circumvent Article 2(7) of the Charter by holding that a matter is of "international concern." He argues that this is a "guise of a potential threat to peace."¹⁴⁰

He examines whether Article 39 of the Charter can be equated to Article 2(4). He reasons that answering this question in the affirmative implies that the UNSC can only deal with actual breaches, or likely breaches of Article 2(4). Further, it would be "to accept a direct relationship between "threat or use of force" under Article 2(4) and a "threat to the peace", "breach of the peace" and "act of aggression" under Article 39. In other words, it would

¹³⁷ Ibid., p. 32.

¹³⁸ Ibid., p. 33.

¹³⁹ Ibid., p. 56.

¹⁴⁰ Ibid., p. 57.

affirm that a "threat of force" corresponds with "threat to the peace", and "use of force" to a "breach of the peace" and "act of aggression."¹⁴¹

His work provides insights into the meaning of a “threat to peace”, the systems of interpreting the Charter, and the relationship between Article 39 of the Charter and Articles 2(4) and 2(7) of the UN Charter.

Karel Wellens¹⁴² explores the reasoning of the UNSC in determining new threats to international peace and security after the end of the Cold War.¹⁴³ She notes that the term “threat to peace” is very elastic and vague, and it exists in various degrees.¹⁴⁴

She looks at various resolutions in which the UNSC referred “threats to peace” in varying degrees in response to particular facts, or incidences.

In Resolution 1297,¹⁴⁵ the Council stressed that “renewed hostilities” between Eritrea and Ethiopia constituted a “greater threat” to the security of the sub region. In Resolution 1298,¹⁴⁶ the Council, being deeply distressed by the continuing hostilities between Ethiopia and Eritrea, emphasised that the continuing hostilities between Ethiopia and Eritrea constituted an “increasing threat” to regional security and stability. In Resolution 1193,¹⁴⁷

¹⁴¹ Ibid., p. 33.

¹⁴² Karel Wellens, 'The UN Security Council and the New Threats to the Peace: Back to the Future' (2003) 8 *Journal of Conflict and Security Law* 15.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ UN Security Council, Security Council Resolution 1297 (2000), Adopted by the Security Council at its 4142nd Meeting, Held on 12 May 2000; UN Doc. S/RES/1297(2000).

¹⁴⁶ UN Security Council, Security Council Resolution 1298 (2000), Adopted by the Security Council at its 414th Meeting, Held on 17 May 2000; UN Doc. S/RES/1298(2000).

¹⁴⁷ UN Security Council, Security Council Resolution 1193 (1998), Adopted by the Security Council at its 3921st Meeting, Held on 28 August 1993; UN Doc. S/RES/1193(1998).

the Council expressed its “grave concern” that the conflict in Afghan constituted “a serious and growing threat” to international and regional peace and security. In Resolution 1377,¹⁴⁸ the UNSC declared acts of international terrorism to constitute one of “the most serious threats” to international peace and security. In Resolution 841,¹⁴⁹ the Council noted that humanitarian crises, such as mass displacements of populations was becoming an “aggravated threat” to international peace and security.

According to her, even though the negative notion of peace is clear, understanding of “threats to peace” has undergone immense modification. This, she argues, is “in line with a teleological interpretation of the UN Charter in order “to meet the requirements of world peace, co-operation between men, individual freedom and social progress.”¹⁵⁰

She states that the council has applied innovative strategies to declare situations as threats to international peace, which to some, may mean that it has acted beyond the scope envisioned by the drafters of the UN Charter.

Her focus is on the effect of such determination on other branches of international law, such as human right, international humanitarian law, the law of arms control, individual criminal responsibility, and the law on state responsibility.¹⁵¹

¹⁴⁸ UN Security Council, Security Council Resolution 1377 (2001), Adopted by the Security Council at its 4413th Meeting, Held on 12 November 2001; UN Doc. S/RES/1377(2001).

¹⁴⁹ UN Security Council, Security Council Resolution 841(1993), Adopted by the Security Council at its 3238th Meeting, Held on 16 June 1993; UN Doc. S/RES/841(1993).

¹⁵⁰ Karel Wellens, 'The UN Security Council and the New Threats to the Peace: Back to the Future' (2003) 8 *Journal of Conflict and Security Law* 15.

¹⁵¹ *Ibid.*

She suggests that a finding that there exists a threat to international peace and security does not always have to be followed by “imposition of coercive measures.”

Her study does not evaluate whether the UNSC is justified in assessing non-military issues to constitute a threat to international peace and security, or whether the UNSC acts ultra vires in holding issues without anything to do with the “negative peace” as threats to the peace.

Hitoshi Nasu¹⁵² states that the traditional view of security is defined in military terms. He explains that since the end of the Cold War, the concept of security objects has widened.¹⁵³

This concept now includes security threats arising from technological development, climate change, scarcity of resources, overlapping legal regimes, among others. He states that there is yet to be developed an analytical framework for determining and addressing threats to international peace and security.

He analyses the effectiveness of the United Nations’ collective security mechanism in light of contemporary threats to international peace and security. He states that the collective security mechanism was developed to address military threats to international peace and security. He concludes that this system is not a good match for contemporary threats to international peace and security. He gives the example of the proceedings of the UNSC in addressing the issue of HIV/AIDS in 2000.¹⁵⁴

¹⁵² Hitoshi Nasu, 'The Expanded Conception of Security and International Law: Challenges to the UN Collective Security System' (2011) 3 *Amsterdam Law Forum* 15.

¹⁵³ *Ibid.*

¹⁵⁴ Hitoshi Nasu, 'The Expanded Conception of Security and International Law: Challenges to the UN Collective Security System' (2011) 3 *Amsterdam Law Forum* 15.

He recommends using alternative approaches to the collective security system. He recommends the “ideas of common security, cooperative security, and comprehensive security as a basis for an effective alternative expanded security approach.”¹⁵⁵ His work helps in addressing the research questions.

Jessica Mathews opines that non-traditional threats have been on the rise.¹⁵⁶ She states that one of the direct causes of conflict is ‘environmental decline.’¹⁵⁷ Other non-traditional threats include “terrorism, organized crime, drug trafficking, ethnic conflict, and the combination of rapid population growth, environmental decline, and poverty.”¹⁵⁸ She notes that there is need for redefinition of what amounts to national security.

She posits that globalised crime is a serious threat to international peace.¹⁵⁹ She argues that traditional responses are insufficient to counter globalised crime.¹⁶⁰

In the face of new threats to security, she states that the institutions developed in the post war era are a poor fit.

Ashok Swain names the various threats to security as resource scarcity, climate change, migration, transnational crime, environmental degradation, ethnic conflict, and technology.¹⁶¹ He states that these newly emerging threats have widened the scope of the security agenda and the traditional concept of security.

¹⁵⁵ Ibid.

¹⁵⁶ Jessica T Mathews, 'Power Shift' (1997) 76 *Foreign Affairs* 50.

¹⁵⁷ Jessica Tuchman Mathews, 'Redefining Security' (1989) 68 *Foreign Affairs* 162.

¹⁵⁸ Jessica T Mathews, 'Power Shift' (1997) 76 *Foreign Affairs* 50.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ashok Swain, *Understanding Emerging Security Challenges: Threats and Opportunities*, 1st ed., (Routledge, New York, 2012), p. 5.

Hans Brauch reconceptualises security risks to include threats beyond the traditional armed conflicts.¹⁶² Unlike Ashok Swain, he focuses on the relationship between the environment and human security.¹⁶³ Even though he suggests measures to counter human rights and natural hazards through warnings and disaster preparedness, he does not state whom between the state, individuals, regional arrangements, and the UNSC, would be at the centre of taking such action.

Even though Twain and Brauch do not explain the suitability of the UNSC in managing these challenges, their contributions are useful to this study as they shade light on the contemporary threats to international peace and security.

Ljubo Runjic argues that the Council has not been successful in the maintenance of world peace and security in light of the contemporary threats to international peace and security.¹⁶⁴ He recognizes the need for reform as the Council no longer has the “credibility, legitimacy and representativeness for the implementation of key decisions.”¹⁶⁵

Matthew Stephen asserts that the Council has been successful at operational adaptation.¹⁶⁶ He justifies this by stating that the Council has addressed new demands for its performance regarding contemporary threats in the absence of formal institutional reform, which has largely been dependent on creative reinterpretation of its legal basis.¹⁶⁷

¹⁶² Hans Günter Brauch, *Threats, Challenges, Vulnerabilities and Risks in Environmental and Human Security* (United Nations University-Institute of Environment and Human Security, Bonn, 2005), p. 10.

¹⁶³ *Ibid.*, p. 5.

¹⁶⁴ Runjic (n 59).

¹⁶⁵ *Ibid.*

¹⁶⁶ Matthew D Stephen, ‘Legitimacy Deficits of International Organizations: Design, Drift, and Decoupling at the UN Security Council’ (2018) 31 *Cambridge Review of International Affairs* 96.

<https://www.tandfonline.com/doi/full/10.1080/09557571.2018.1476463> > (accessed on 5th December 2020).

¹⁶⁷ *Ibid.*

He further posits that while the formal structure of the Council remains largely unchanged, it has embarked on new ventures. He notes that Council practice, together with advisory opinions of the ICJ, have developed meanings left ‘implicit’ in the Charter text, such that human rights violations, civil wars, non-traditional armed conflicts, weapons of mass destruction, and the crime of apartheid, have been identified as threats to international peace and security, and, therefore, come under Council authority.¹⁶⁸

Kristen E. Boon suggests that instead of overhauling the structure of the UNSC, there is need for the UNSC to reform on compliance with sanctions associated with post-conflict developments. She notes that it has been successful in “designing and implementing targeted sanctions in the area of arms embargoes, travel bans and commodity sanctions.”¹⁶⁹

Nico J Schrijver observes that in light of the widespread changes in the contemporary threats to international peace and security, there is need to adopt a Charter that takes into consideration all these changes and needs, such as combating poverty, conserving the environment, and promoting the rule of law.¹⁷⁰ He is, however, of the view that increasing the members may not result into the Council being efficient. He suggests that instead of adding individual remembers as permanent members, regional organizations should, instead, be represented.¹⁷¹

¹⁶⁸ Ibid.

¹⁶⁹ Kristen E Boon, ‘Terminating Security Council Sanctions’ (International Peace Institute, 2014) available at < https://www.ipinst.org/wpcontent/uploads/publications/terminating_security_council_sanctions.pdf > (accessed on 30th August 2021).

¹⁷⁰ Nico J Schrijver, ‘The Future of the Charter of the United Nations’ (2006) 10 *Max Planck Yearbook of United Nations Law* 1-14; available at < https://www.mpil.de/files/pdf1/mpunyb_01_schrijver_10.pdf > (accessed on 17th June 2020).

¹⁷¹ Ibid.

The preceding literature gives insights in the new developments in the threats to international peace and security. Minimal scrutiny has been given to the criteria of determining threats to international peace and security, and the question of whether reform of the legal and institutional frameworks of the United Nations would sufficiently address the contemporary threats to international peace and security.

1.10 Research Methodology

The research relied on the doctrinal analysis of the law. It employed a systematic analysis of primary and secondary sources.

This study reviewed primary sources, such as treaties, cases, and protocols. The study also examined resolutions by the UNSC concerning its mandate to maintain international peace and security. Secondary sources were also used, such as books, journals, theses, and any other available literature on the mandate of the UNSC in maintaining international peace and security.

This study was accomplished through a library-based research at the University of Nairobi, School of Law Library. Internet resources were used to supplement the library resources.

1.11 Preliminary Chapter breakdown

Chapter One: Introduction

This Chapter introduces the research paper. It contains the following sub topics:

- 1.0 Background of the Study
- 1.1 Statement of the Problem
- 1.2 Research Hypothesis

- 1.3 Research Questions
- 1.4 Research Objectives
- 1.5 Scope of the Study
- 1.6 Justification
- 1.7 Theoretical Framework
- 1.8 Literature Review
- 1.9 Research Methodology
- 1.10 Chapter Breakdown

Chapter Two: The United Nations’ Legal and Institutional Regime on the Maintenance of International peace and security.

This chapter discusses:

- 2.1 Introduction
- 2.2 The United Nations Organisation
- 2.3 The UNSC
 - 2.3.1 The UNSC and the Maintenance of International peace and security
 - 2.3.2 Pacific Settlement of Disputes
 - 2.3.3 The Effectiveness of the UNSC
- 2.4 The United Nations General Assembly
 - 2.4.1 The United Nations General Assembly and the Maintenance of International peace and security

- 2.4.2 Relationship with the UNSC
- 2.5 The Secretariat and the Secretary-General
- 2.6 The International Court of Justice -
- 2.7 Regional Organisations: The Case of the African Union
- 2.8 Conclusion

Chapter Three: Contemporary Threats to International peace and security

This chapter discusses non-traditional threats to international peace and security. It discusses:

- 3.1 Introduction
- 3.2 Non-traditional Threats to International peace and security
 - 3.2.1 Infectious Diseases
 - 3.2.2 Climate Change
 - 3.2.3 Cyber operations
 - 3.2.4 Human Trafficking
- 3.3 Conclusion

Chapter Four: Challenges posed by the Contemporary Threats to International Peace and Security

This chapter discusses the challenges faced by the United Nations in maintaining international peace and security in light of contemporary threats.

4.1 Introduction

4.1.1 Anachronism

4.1.2 The Definition of “Threats to the Peace” and "Breach of the Peace

4.1.3 Enforcement Action

4.1.4 Inconsistency

4.1.5 Double Incidence of Mandates between the UNSC and Specialised Agencies

4.2 Conclusion

Chapter Five: Conclusion and Recommendations

This chapter summarizes the study, draws conclusions, and makes recommendations. It discusses:

5.1 Introduction

5.2 Conclusion

5.3 Recommendations

CHAPTER TWO

THE UNITED NATIONS' LEGAL AND INSTITUTIONAL REGIME ON THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

2.1 Introduction

This chapter answers the first research question. It examines the legal and institutional framework of the United Nations in light of its objective to maintain international peace and security. In order to respond to the research question, this chapter examines the establishment, functions, and purposes of the principal organs of the United Nations, and incidentally, the role played by regional organisations in maintaining international peace. Taking note of contemporary threats to global peace, it also discusses the effectiveness of the United Nations in executing its mandate.

2.2 United Nations Organisation

The UN is an international organisation created to prevent a third world war and to ensure that the world is in a state of eternal peace. It was established to “save succeeding generations from the scourge of war”, which had twice in a lifetime, “brought untold sorrow to mankind.”¹ It came into being after the League of Nations, an international organisation formed in 1915 to ensure perpetual global peace, failed to prevent the Second World War.

¹ The preamble to Charter of the United Nations (Adopted on 24th June 1945 and came into force on 24th October 1945); 1 UNTS XVI, para 1; available at < <https://www.un.org/en/sections/un-charter/un-charter-full-text/> > (accessed on 6th April 2021).

Even prior to the establishment of the League of Nations, there had been attempts around the world to create international organisations or alliances, whose focus would be to preserve international peace and security. For instance, following the Napoleonic Wars, the Treaty of Chaumont of 1814² and the Treaty of Paris of 1815³ were adopted. The Napoleonic Wars had been a major cause of widespread bouts of conflict. They had been a headache to regional and international peace and stability.

The Treaty of Chaumont of 1814⁴ and the Treaty of Paris of 1815⁵ birthed the Quadruple Alliance, which expanded into a Quintuple Alliance in 1818, after admitting France at Aix-la-Chapelle. The most fundamental preoccupation of the Quintuple Alliance was to preserve peace.⁶ This Alliance did not outlive the test of time, as it did not fit the purpose of preserving international peace.

After the Quintuple Alliance collapsed in 1822, the Great Powers formed the Concert of Europe, which “functioned on an informal and fairly effective basis” to maintain international peace.⁷ This Concert failed to prevent the outbreak of the First World War.

² Treaty of Union, Concert and Subsidy between Austria, Great Britain, Prussia and Russia (Adopted on 9th March 1814); 63 C.T.S 83 < <https://opil.ouplaw.com/view/10.1093/law:ohrt/law-ohrt-63-CTS-83.regGroup.1/law-ohrt-63-CTS-83?prd=OHT> > (accessed on 21st June 2021).

³ Treaty of Paris (Adopted on 20th November 1815); 65 C.T.S. 301 < <https://www.napoleon-empire.com/official-texts/treaty-of-paris-1815.php> > (accessed on 21st June 2021).

⁴ Treaty of Union, Concert and Subsidy between Austria, Great Britain, Prussia and Russia (Adopted on 9th March 1814); 63 C.T.S 83 < <https://opil.ouplaw.com/view/10.1093/law:ohrt/law-ohrt-63-CTS-83.regGroup.1/law-ohrt-63-CTS-83?prd=OHT> > (accessed on 21st June 2021).

⁵ Treaty of Paris (Adopted on 20th November 1815); 65 C.T.S. 301 < <https://www.napoleon-empire.com/official-texts/treaty-of-paris-1815.php> > (accessed on 21st June 2021).

⁶ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 231.

⁷ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 232.

The United Nations organisation was formed following a history of several failed experiments with unsuccessful international organisations and alliances. It is a first of its kind, fashioned especially to prevent states from solving disputes through war, and to ensure that the world will not be at war again.

The Charter of the United Nations⁸ is the originating document of the United Nations. It puts in place a system for maintaining international peace and security. This system presupposes that all governments will play their assigned roles in maintaining international peace.⁹ It requires disputants to avail themselves of all the means of settlement provided for in the Charter, failing which the United Nations Security Council (UNSC) will mobilise members to take the requisite steps to maintain, preserve, or restore international peace and security.¹⁰

The United Nations functions through its organs. Article 7 of its Charter¹¹ classifies these organs into ‘principal organs’ and ‘subsidiary organs’. Whereas the principal organs came into existence at the formation of the United Nations, the subsidiary organs would be formed later on, in due course. The principal organs are the UNSC, the UNGA, the ICJ, the Trusteeship Council, the Secretariat, and the Economic and Social Council.¹² The

⁸ The Charter of the United Nations (Adopted on 24th June 1945 and came into force on 24th October 1945); 1 UNTS XVI; available at < <https://www.un.org/en/sections/un-charter/un-charter-full-text/> > (accessed 23 June 2021).

⁹ Brian Urquhart, ‘Peace and Security: Thoughts on the Twentieth Anniversary of Dag Hammarskjold's Death’ (1981) 60 *Foreign Affairs* 8.

¹⁰ Brian Urquhart, ‘Peace and Security: Thoughts on the Twentieth Anniversary of Dag Hammarskjold's Death’ (1981) 60 *Foreign Affairs* 8.

¹¹ The Charter of the United Nations (Adopted on 24th June 1945 and came into force on 24th October 1945); 1 UNTS XVI; available at < <https://www.un.org/en/sections/un-charter/un-charter-full-text/> > (accessed on 6th April 2021).

¹² Charter of the United Nations; 1 UNTS XVI; Article 7.

Trusteeship Council, though still existing in the text of the Charter of the United Nations, is *de facto* defunct.

The principal organs come into existence through the positive acts of Member States. For instance, the UNGA is constituted when Member States appoint their representatives in accordance with Article 9 of the Charter, and the UNSC is constituted in accordance with Article 23 of the Charter.

The principal and subsidiary organs work *in tandem* in achieving their objectives. In performing their functions, the principal organs are assisted by the subsidiary, or auxiliary organs.¹³ Whereas the principal organs are clearly outlined in the UN Charter, the same Charter does not define what subsidiary or auxiliary organs are. The establishment of these subsidiary organs is derivative from Articles of the UN Charter authorising their formation. Under Article 22 of the UN Charter, the UNGA may establish subsidiary organs as needed to perform its functions. Likewise, the UNSC may establish subsidiary organs under Article 29 of the UN Charter to facilitate the performance of its functions, as it deems fit.

The Rules of Procedure of the UNGA, of the UNSC, of the Economic and Social Council, and of the Trusteeship Council, also allow these organs to constitute committees and commissions as auxiliary organs. The Economic and Social Council may “set up Commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”¹⁴ The Secretary-General shall also appoint the staff of the Secretariat to facilitate the performance

¹³ Hans Kelsen, *The Law of the United Nations*, 2nd ed., (Stevens & Sons Ltd, London, 1951), p. 137.

¹⁴ Charter of the United Nations;1 UNTS XVI; Article 68.

of his functions.¹⁵ Article 21(2) of the Statute of the ICJ¹⁶ permits the Court to appoint its Registrar and such other officers as are necessary to carry out its functions.

Even though their mandates vary by reasonable degrees, both the principal and subsidiary organs have a place in maintaining or restoring international peace and security. This chapter discusses the significance of some of the key principal organs of the United Nations in maintaining international peace and security. Emphasis is laid on the responsibilities of the UNSC, the UNGA, and parenthetically, regional organisations.

2.3 The United Nations Security Council

The special position and role of the UNSC in maintaining international peace and security is ascertainable from its establishment, composition, powers, and functions as set out in the UN Charter.

In order to perform its mandate in dealing with the "rapid and effective actions" of conflict situations, the composition of the UNSC is a key point of consideration.¹⁷ The founders of the United Nations made sure that two objectives would be met by the nature of its structure. The first objective was for the UNSC "to be confined to a small number of members."¹⁸ The second, and most critical requirement, was for it to align the powers of

¹⁵ Charter of the United Nations; 1 UNTS XVI; Article 101(1).

¹⁶ The Statute of the International Court of Justice (Adopted on 26th June 1945 and came into force on 24th October 1945); 33 UNTS 993; available at < <https://www.icj-cij.org/en/statute> > accessed on 9th April 2021.

¹⁷ Ina Raluca Tomescu, 'The Role of the Security Council in the Maintenance of Peace and International Security' (2010) 2010 *AGORA International Journal of Juridical Sciences* 103.

¹⁸ Ina Raluca Tomescu, 'The Role of the Security Council in the Maintenance of Peace and International Security' (2010) 2010 *AGORA International Journal of Juridical Sciences* 103.

the World War II in a binding and permanent structure to facilitate cooperation between them as “a main guarantee for maintaining peace and security in post-war period.”¹⁹

Initially, the UNSC consisted of eleven Members of the United Nations.²⁰ However, following an amendment to the UN Charter in 1965, the number was increased to fifteen. Among the fifteen, five are permanent, and the remainder are non-permanent members.

The permanent members are France, China, the United Kingdom, the United States of America, and Russia. The ten non-permanent members are elected by the UNGA for a term of two years.²¹ In 2021, the non-permanent members were Kenya, Tunisia, Estonia, India, Ireland, Norway, Mexico, Niger, Saint Vincent and the Grenadines, and Vietnam. Article 23(2) of the UN Charter disqualifies a retiring non-permanent member for immediate re-election. The non-permanent members are elected based on geographical representation that is, two from Asia, three from Africa, two from Latin America and the Caribbean, two from Western Europe, and one from Eastern Europe. Each of the Member States appoints one representative or individual to represent them at the UNSC.²²

The United Nations did not materially break the legacy of the League of Nations in constituting the UNSC. Both organisations awarded the then prevailing powerful nations permanent seats on their Councils. Article 4 of the Covenant of the League of Nations²³ provided that “the Council would be composed of Representatives of the Principal Allied

¹⁹ Ina Raluca Tomescu, 'The Role of the Security Council in the Maintenance of Peace and International Security' (2010) 2010 *AGORA International Journal of Juridical Sciences* 104.

²⁰ Charter of the United Nations; 1 UNTS XVI, Article 23(1).

²¹ Charter of the United Nations; 1 UNTS XVI, Article 23(2).

²² Charter of the United Nations; 1 UNTS XVI, Article 23(2).

²³ League of Nations, Covenant of the League of Nations, 28 April 1919; [1920] ATS 1 < <https://www.un.org/unispal/document/auto-insert-199451/> > (accessed on 23rd June 2021)

and Associated Powers, and Representatives of four other Members of the League.” The four other members would be appointed from time to time by the UNGA. The United Nations adopted the same approach by granting permanent special seats in the United Nations to the victor powers.

2.3.1 The United Nations Security Council and the Maintenance of International Peace and Security

Amongst the six principal organs of the United Nations, the UNSC is the only organ whose chief task is to ensure that the world is at peace. Its primary mandate is to maintain international peace and security.²⁴ In order to implement this mandate, the UN Charter gives it special powers of decision and action to prevent and resolve international conflicts.²⁵ It possesses prescribed and discretionary powers exercisable to suit a situation endangering international peace and security.

The UNSC has general powers to discharge its responsibilities under Article 24(1) of the UN Charter. It has the authority to undertake any such action as is necessary to maintain international peace and security. Article 24(1) provides that the Members of the United Nations confer the responsibility to maintain international peace and security on the UNSC. By this section, the Members agree to an automatic ratification, or adoption of all functions and duties carried out by the UNSC, because these are carried out statutorily on their behalf.

Since the UNSC has the primary mandate to maintain international peace and security and to undertake enforcement action, its powers to handle international conflicts are

²⁴ Charter of the United Nations;1 UNTS XVI; Article 24(1).

²⁵ Peter Hulsroj, 'The Legal Function of the Security Council' (2002) 1 *Chinese Journal of International Law* 59.

constitutive in nature, and almost exclusive.²⁶ The UNSC enjoys the capacity and the authority to determine the action to be taken to settle a conflict, and to restore international peace and security. This implies that the UNSC has the authority to exercise its key mandate as it deems fit. It is not subject to the control or supervision of any other organ or international organisation. It is self-sufficient.

Only the Charter of the United Nations limits the exercise of authority by the UNSC. The ICJ, in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia Advisory Opinion*²⁷ affirms this assertion. In this case, it was stated that in exercising its mandate, the UNSC could not act contrary to the fundamental principles and purposes of the United Nations established in Chapter 1 of the Charter.²⁸ Article 1(1) of the UN Charter provides that the UNSC is in maintaining international peace and security to bring about settlement of international disputes likely to breach peace in accordance with international law. Article 1(1) of the UN Charter does not define the relation between international law and the Security Council. This is justifiable by the political logic behind the Council's enforcement power. It cannot be confined within the "bounds of the existing international law,"²⁹ in determining the manner in which its enforcement power is to be exercised. This emboldens it to establish new legal obligations in response to threats to international peace and security.

²⁶ Peter Hulsroj, 'The Legal Function of the Security Council' (2002) 1 *Chinese Journal of International Law* 59.

²⁷ (1971) ICJ Reports 110.

²⁸ (1971) ICJ Reports 110.

²⁹ Ian Hurd, 'The UN Security Council and the International Rule of Law' (2014) 43 *The Chinese Journal of International Politics* 13.

Apart from the provisions of the UN Charter, there are no other checks and balances to the exercise of the UNSC's mandate. The UNSC may "deviate from international legal obligations or rights under international customary, or treaty law."³⁰ Its power of enforcement inherently allows it to deviate from international law, in the manner of infringing on the sovereign rights of independent states, or to impact on rights and duties of Member States in order to maintain or restore international peace and security.³¹ The UNSC's constitutive powers are open ended, in a manner that it decides what to do, when to do it, and how to do it, without any high-handed interruptions from any other authority.

In the discharge of its duties, the UNSC is required to adhere to the purposes and principles of the United Nations, and to act in accordance with the specific powers granted to it by Chapters VI, VII, VIII, and XII of the Charter.³² The principles established in the UN Charter are the ultimate legal constraints to the discretionary powers exercised by the UNSC in the maintenance or restoration of international peace and security. Otherwise, whatever the UN Charter has not outlawed is deemed legal, implying that the UNSC's powers are to a large extent, unbridled.

The mandate of the UNSC is primarily to maintain international peace and security. The UN Charter designates this mandate. In performing this function, the UNSC should determine if there exists a "threat to the peace, breach of the peace, or act of aggression"

³⁰ Wolfgang Weib, 'Security Council Powers and the Exigencies of Justice after War' (2008) 12 *Max Plank Yearbook of United Nations Law* 5.

³¹ Wolfgang Weib, 'Security Council Powers and the Exigencies of Justice after War' (2008) 12 *Max Plank Yearbook of United Nations Law* 5.

³² Charter of the United Nations; 1 UNTS XVI, Article 24(2).

following which it is to “make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42.”³³

At the San Francisco Conference, Committee III/3/4 identified “five graduated steps” by which the UNSC could preserve peace.³⁴ They were: (1) making a decision of whether there exists a threat to peace; (2) instructing the disputing parties to settle their dispute by peaceful means; (3) recommending to the disputants the most appropriate ways of settling their differences; (4) employing diplomatic and economic enforcement measures; and (5) “use of armed force.”³⁵ It is only after the first three measures have failed, that the UNSC may resort to the last two categories.³⁶ This Committee recapitulated the basic constituents of the mandate of the UNSC.

The role of the UNSC involves deciding whether a matter threatens international peace and security. It then orders interim relief if any is required. It also encourages pacific settlement of disputes and recommends the most appropriate means of settling. It carries out enforcement action including enforcing the judgements of the ICJ. It may also refer disputes to the ICJ, and as well cooperate with the UNGA in maintaining global peace. These roles are more elaborately expounded in the following paragraphs.

³³ Charter of the United Nations;1 UNTS XVI; Article 39.

³⁴ United Nations Information Organization, ‘ Summary Report of the Second Meeting of Commission III/3/4 Established at the United Nations Conference of International Organisation held on 8th May 1945 ; UN Doc. 140, p. 178; available at < <https://digitallibrary.un.org/record/1300969?ln=en#record-files-collapse-header> > accessed on 9th April 2021.

³⁵ United Nations Information Organization, ‘ Summary Report of the Second Meeting of Commission III/3/4 Established at the United Nations Conference of International Organisation held on 8th May 1945 ; UN Doc. 140, p. 178; available at < <https://digitallibrary.un.org/record/1300969?ln=en#record-files-collapse-header> > (accessed on 9th April 2021).

³⁶ United Nations Information Organization, ‘ Summary Report of the Second Meeting of Commission III/3/4 Established at the United Nations Conference of International Organisation held on 8th May 1945 ; UN Doc. 140, p. 178.

The UNSC determines threats to international peace and security. It makes the decision of whether a dispute or situation threatens global peace. It determines whether a particular incident threatens peace, breaches peace, or amounts to aggression, following which it decides the remedial action necessary to maintain international peace and security.³⁷ For instance, in 2016, the UNSC determined that acquisition of chemical weapons by non-state actors represented a threat to international peace and security.³⁸ In 2017, it acknowledged that the situation in Mali, which included activities of terrorist groups, constituted a threat to regional peace in the Sahel, West Africa, the North African region, and to international peace and security.³⁹ Also in 2017, it found that the activities of terrorist groups, such as the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), and associated armed groups constituted a threat to international peace and security.⁴⁰ It also determined that the situation in Bosnia and Herzegovina⁴¹ and Lebanon⁴² constituted threats to regional and international peace. In 2020, the Security Council established that the situation in Yemen, which included an “ongoing escalation in Marib, Yemen, including the Houthi operation

³⁷ Charter of the United Nations; 1 UNTS XVI, Article 39.

³⁸ UN Security Council, Security Council Resolution 2298 (2016), Adopted by the Security Council at its 7743rd Meeting, Held on 22 July 2016; UN Doc. S/RES/2298 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2298\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2298(2016)) > (accessed on 17th April 2021).

³⁹ UN Security Council, Security Council Resolution 2359 (2017), Adopted by the Security Council at its 7979th Meeting, Held on 14th July 2017; UN Doc. S/RES/2359 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359(2017)) > (accessed on 17th April 2021).

⁴⁰ UN Security Council, Security Council Resolution 2367 (2017), Adopted by the Security Council at its 8003rd Meeting, Held on 14th July 2017; UN Doc. S/RES/2359 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359(2017)) > (accessed on 17th April 2021).

⁴¹ UN Security Council, Security Council Resolution 2384 (2017), Adopted by the Security Council at its 8089th Meeting, Held on 7th November 2017; UN Doc. S/RES/2384 (2017).

⁴² UN Security Council, Security Council Resolution 2373 (2017), Adopted by the Security Council at its 8037th Meeting, Held on 30th August 2017; UN Doc. S/RES/2373 (2017).

on 7 February 2020, and the continuation of Houthi attacks on Saudi Arabia”, constituted a threat to international peace and security.⁴³ The UNSC exercises discretion in determining which situations constitute a threat to peace in accordance with Article 39 of the UN Charter.

The UNSC entertains disputes likely to breach international peace and security. Members of the United Nations have the liberty to bring to the attention of the UNSC disputes with a probability of breaching international peace.⁴⁴ Non-Member States may also bring disputes to the UNSC for purposes of peaceful settlement.⁴⁵ The UNSC also invites non-Member States to the UNSC, or the United Nations to engage in discussions concerning disputes, to which they are parties.⁴⁶ Through this initiative, disputes with the potential of disrupting international peace and security can be solved through pacific means, thus maintaining international peace and security.

A Member State does not usurp the power of the UNSC under Article 39 of the UN Charter when it brings a dispute before the UNSC. The UNSC will still bear the authority and discretion to determine whether the reported threat merits classification as a threat to international peace and security.

After the UNSC finds that a dispute or situation threatens or breaches international peace, it may then adopt any of the measures prescribed under Articles 40, 41, 42, and 43. The

⁴³ UN Security Council, Security Council Resolution 2564 (2021), Adopted by the Security Council at its Meeting, Held on 25th February 2021; UN Doc. S/RES/2564 (2021); available at < [http://undocs.org/en/S/RES/2564\(2021\)](http://undocs.org/en/S/RES/2564(2021)) > (accessed on 17th April 2021).

⁴⁴ Charter of the United Nations; 1 UNTS XVI, Article 35(1).

⁴⁵ Charter of the United Nations; 1 UNTS XVI, Article 35(2).

⁴⁶ Charter of the United Nations; 1 UNTS XVI, Article 32.

Charter of the United Nations does not prescribe the criteria by which the UNSC is to intervene in any particular situation. It gives the UNSC the discretion to determine whether, when, and how to intervene.⁴⁷ The Council has the prerogative to choose which mechanism to use to intervene, and on what basis to intervene.

The UNSC may, in the first instance, issue interim measures. It may call upon parties to take interim measures under Article 40 of the UN Charter. Article 40 of the Charter provides that the UNSC may call upon parties to a dispute to take provisional measures to prevent aggravation of a situation, before deciding upon a case under Article 39 of the UN Charter. The UNSC may require parties to comply with provisional measures to avoid the aggravation of a dispute or a situation likely to disrupt international peace and security.⁴⁸ For instance, in 2016, the UNSC demanded, as an interim measure, all armed groups in Mali to “put aside their arms, cease hostilities, reject the recourse to violence, cut off all ties with terrorist organisations, and to take concrete steps to enhance their cooperation and coordination with the Government of Mali to eliminate the terrorist threat.”⁴⁹ Issuing interim measures prevents a threat of peace from escalating into a breach of peace. It preserves the status quo, pending further intervention by the UNSC.

Secondly, the UNSC may take coercive measures, not involving the use force, in accordance with Article 41 of the UN Charter. Article 41 provides that it may “decide what measures not involving the use of armed force are to be employed to give effect to its

⁴⁷ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 104.

⁴⁸ Charter of the United Nations; 1 UNTS XVI, Article 40.

⁴⁹ UN Security Council, Security Council Resolution 2295 (2016), Adopted by the Security Council at its 7727th Meeting, Held on 29th June 2016; UN Doc. S/RES/2295 (2016).

decisions, and it may call upon the Members of the United Nations to apply such measures.” These measures include “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” For instance, in the UNSC Resolution 1156 adopted on 30th July 2004, the UNSC determined that the situation in Darfur constituted a threat to international peace and security and stability in the region. Acting under Chapter VII of the Charter, the Council imposed an arms embargo on all non-governmental entities and individuals operating in Darfur.⁵⁰

The UNSC has adopted various decisions concerning sanctions and measures under Article 41 of the UN Charter. In 2017, the UNSC adopted UNSC Resolution 2385 imposing an arms embargo on Somalia and Eritrea.⁵¹ There have been resolutions, such as UNSC Resolution 1390, freezing assets, imposing arms embargos, and imposing travel bans, or restrictions on the Taliban, their associated individuals, and entities.⁵² Sanctions have also been imposed on ISIL (Da’esh), Al-Qaida and their associated individuals and entities whose assets have been frozen, individuals have been subjected to travel bans, and arms

⁵⁰ UN Security Council, Security Council Resolution 1156 (2004), Adopted by the Security Council at its Meeting, Held on 30th July 2004; UN Doc. S/RES/1156 (2004).

⁵¹ UN Security Council, Security Council Resolution 2385 (2017), Adopted by the Security Council at its 8099th Meeting, Held on 14th November 2017; UN Doc. S/RES/2385 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2385\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2385(2017)) > (accessed on 17th April 2021).

⁵² UN Security Council, Security Council Resolution 1390 (2002), Adopted by the Security Council at its 4452nd Meeting, Held on 16th January 2002; UN Doc. S/RES/1390 (2002); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1390\(2002\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1390(2002)) > (accessed on 17th April 2021).

embargos imposed.⁵³ Using enforcement action not involving the use of force has the potential of abating hostilities.

Thirdly, the UNSC carries out enforcement action involving the use of force. Enforcement action, as determined in Chapter VII, is the specific action reserved for the UNSC. No other organ of the UNSC can use force or authorise the use of force. Members of the United Nations may only use force under Article 51 of the UN Charter in self-defence, in acting against an ex-enemy state under Article 53(1) and Article 107. An enemy state in accordance with Article 53(2) is one that was an enemy to a signatory of the Charter during the Second World War. Enemy states are, however, no longer in existence. Members of the United Nations may undertake individual self-defence or collective self-defence immediately following an armed attack. There is no requirement for a Member State to await the direction of or action by the UNSC prior to acting in self-defence. Nevertheless, acting in self-defence is framed for military threats to international peace and security, rather than non-conventional threats.

The UNSC uses armed force where necessary to maintain international peace and security. It also takes the necessary armed action to enforce its decisions. Where the enforcement measures excluding the use of force are ineffective or insufficient, it may take the necessary armed action.⁵⁴ For instance, the UNSC authorised use of force and “all necessary means”

⁵³ UN Security Council, Security Council Resolution (2017), Adopted by the Security Council at its 8007th Meeting, Held on 20th July 2017; UN Doc. S/RES/2368 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368(2017)) > (accessed on 17th April 2021).

⁵⁴ Charter of the United Nations; 1 UNTS XVI, Article 42.

by United Nations Mission for Justice Support in Haiti (MINUJUSTH).⁵⁵ The UNSC extended the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) for 14 months and authorised it to use all necessary force in Côte d'Ivoire.⁵⁶ Even though the UNSC requires using armed force when necessary, it lacks a police force, or an army.

The UNSC does not have a standing army. It relies on the support of Member States to constitute an ad hoc army. The UNSC may call upon Member States to provide the necessary assistance, such as armed force.⁵⁷ For instance, the Council requested Member States to contribute police and troops with sufficient capabilities and equipment to enable the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) to carry out its operations in Mali.⁵⁸ In Sudan, with regard to the United Nations Mission in South Sudan (UNMISS), the Council urged Member States in the region to contribute “rapidly deployable troops to ensure the full deployment of the Regional Protection Force as soon as possible.”⁵⁹

⁵⁵ UN Security Council, Security Council Resolution 2350 (2017), Adopted by the Security Council at its 7924th Meeting, Held on 13th April 2017; UN Doc. S/RES/2350 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2350\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2350(2017)) > (accessed on 17th April 2021).

⁵⁶ UN Security Council, Security Council Resolution 2284 (2016), Adopted by the Security Council at its 7681st Meeting, Held on 28th April 2016; UN Doc. S/RES/2284 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2284\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2284(2016)) > (accessed on 17th April 2021).

⁵⁷ Charter of the United Nations; 1 UNTS XVI, Article 43(1).

⁵⁸ UN Security Council, Security Council Resolution 2295 (2016), Adopted by the Security Council at its 7727th Meeting, Held on 29th June 2016; UN Doc. S/RES/2295 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2295\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2295(2016)) > (accessed on 17th April 2021).

⁵⁹ UN Security Council, Security Council Resolution 2304 (2016), Adopted by the Security Council at its 7754th Meeting, Held on 12th August 2016; UN Doc. S/RES/2304 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2304\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2304(2016)) > (accessed on 17th April 2021).

The UNSC has the liberty to procure armed assistance by other means. It may enter into agreements with states to supply the necessary assistance to aid armed enforcement action.⁶⁰ It may also collaborate with the Military Staff Committee in planning on how to apply armed force.⁶¹ The Military Staff Committee is however not functional, and is largely defunct. It also determines which action Member States are to undertake to maintain international peace and security.⁶² For instance, the UNSC authorized Member States “to acquire, control, transport, transfer and destroy chemical weapons” in order to “eliminate Libya’s chemical weapons stockpile in the soonest and safest manner.”⁶³

The United Nations failed to pick lessons from the League of Nation’s mistake of not establishing a standing army. This creates a risk of ineffectiveness in carrying out enforcement action, as its army will only be as strong as the Member States are willing to contribute. Article 16(2) of the League’s Covenant provided that the Council would advise all member states on what kind of military, naval, or air force support they would contribute to counter an attack by an aggressor. Article 16(2) further required Member States to also sever all trade and fiscal dealings, and prevent all types of dealings between their nationals and the nationals of the aggressor. The United Nations’ replication of the League’s model could be attributable to the fact that no state would be willing to cede power to an army stronger than its own, as this would risk its sovereignty.

⁶⁰ Charter of the United Nations; 1 UNTS XVI, Article 43(2) and (3)

⁶¹ Charter of the United Nations; 1 UNTS XVI, Article 46

⁶² Charter of the United Nations; 1 UNTS XVI, Article 48.

⁶³ UN Security Council, Security Council Resolution 2298 (2016), Adopted by the Security Council at its 7743rd Meeting, Held on 22nd July 2016; UN Doc. S/RES/2298 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2298\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2298(2016)) > (accessed on 17th April 2021).

The UNSC plays a role in restoring international peace and security. This entails its role in ending war and restoring sustainable peace.⁶⁴ It performs this function in two parts. In the first part, the UNSC enforces peace and ends the military phase of an armed conflict. In the second phase, the UNSC exercises a “peace and stability building and organising function which directs reconstruction and reconciliation.”⁶⁵

The UNSC may also order a peacekeeping operation. This is determined in a Resolution of the UNSC and “relates to the use of military personnel under the authority of United Nations in other purposes than those of coercive measures: surveillance ceasefire, respect the armistice, and border controls.”⁶⁶ For instance, this was effected in the “maintenance of legality and order in a country at the government request” in Congo, and “the temporal administration” of Western Iran.⁶⁷ In 2021, in South Sudan, the UNSC extended UNMISS’s term by three years, “to build durable peace at the local and national levels, and to support inclusive and accountable governance and free, fair, and peaceful elections in accordance with the Revitalised Agreement.”⁶⁸

Even while the mandate to maintain international peace and security is exercised by the security through the mechanisms noted in the preceding paragraphs, the UNSC is sometimes

⁶⁴ Wolfgang Weib, ‘Security Council Powers and the Exigencies of Justice after War’ (2008) 12 *Max Plank Yearbook of United Nations Law* 6.

⁶⁵ Wolfgang Weib, ‘Security Council Powers and the Exigencies of Justice after War’ (2008) 12 *Max Plank Yearbook of United Nations Law* 9.

⁶⁶ Peter Hulsroj, ‘The Legal Function of the Security Council’ (2002) 1 *Chinese Journal of International Law* 59.

⁶⁷ Peter Hulsroj, ‘The Legal Function of the Security Council’ (2002) 1 *Chinese Journal of International Law* 59.

⁶⁸ UN Security Council, Security Council Resolution 2567 (2021), Adopted by the Security Council at its Meeting, Held on 12th March 2021; UN Doc. S/RES/2567 (2021); available at < [http://undocs.org/en/S/RES/2567\(2021\)](http://undocs.org/en/S/RES/2567(2021)) > (accessed on 17th April 2021).

prohibited from reaching a decision when one or more of its permanent members exercises veto. Thus, UNSC may be unable to reach a decision hindering the exercise of its mandate under Article 39 of the UN Charter.

Each of the five permanent members has the right to veto a decision of the UNSC. However important a decision is, it cannot be taken against the will, and the direct or indirect interests of a permanent member of the Council.⁶⁹ Chapter VII “which forms the core of the Charter is practically inapplicable if directed against a permanent member of the UNSC, or a state protected by a permanent member.”⁷⁰ Exercise of the right to veto has the potential to stagnate or block critical decisions necessary for the maintenance of international peace and security.

2.3.2 Pacific Settlement of Disputes

International disputes do not have to escalate into war. They can be settled by peaceful means. One of the fundamental reasons that led to the formation of the United Nations was to prevent a third world war and to ensure that all international disputes would be settled peacefully. Settlement of disputes that threaten to breach international peace may be brought about by the UNSC, the UNGA, or by the ICJ.

The UNSC recommends methods or procedures of adjustment to disputants. It may “at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.”⁷¹ In making such

⁶⁹ Hans Kelsen (n 13), p. 265.

⁷⁰ Hans Kelsen (n 13), p. 266.

⁷¹ Charter of the United Nations; 1 UNTS XVI, Article 36(1).

recommendations, the UNSC takes into consideration the “procedures for the settlement of the dispute which have already been adopted by the parties.”⁷²

It may investigate any dispute according to Article 34 of the Charter, following which it may upon its findings, recommend adjustment procedures. From a legal perspective, the Council's recommendations have a "statement" value.⁷³ However, “if the situation requires, it may make decisions with binding effect, exercising its prerogatives and authority invested with the attributes of collective self-defence law.”⁷⁴

In recommending to the disputants the most appropriate ways of settling their differences, the Council maintains international peace and security. It has the mandate of deciding which approach to take, and recommending that approach to conflicting states.⁷⁵ It may, further, recommend to parties the mode of peaceful settlement of disputes.⁷⁶

The UNSC calls upon disputants to settle their disputes by pacific means because it has the responsibility to resolve international disputes peacefully. It may require parties to a dispute likely to endanger international peace and security to resolve the same through peaceful means.⁷⁷ Article 33(1) of the UN Charter provides that if the continuance of a dispute may disrupt international peace and security, parties to that dispute are to settle it by pacific means in the first instance. Such peaceful means may take the form of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to

⁷² Charter of the United Nations; 1 UNTS XVI, Article 36(2).

⁷³ Peter Hulsroj, 'The Legal Function of the Security Council' (2002) 1 *Chinese Journal of International Law* 59.

⁷⁴ Peter Hulsroj, 'The Legal Function of the Security Council' (2002) 1 *Chinese Journal of International Law* 59.

⁷⁵ Charter of the United Nations; 1 UNTS XVI, Article 37.

⁷⁶ Charter of the United Nations; 1 UNTS XVI, Article 38.

⁷⁷ Charter of the United Nations; 1 UNTS XVI, Article 33(2).

regional organisations or any other peaceful means as they choose.⁷⁸ Article 12 of the League's Covenant only prescribed three means of peaceful settlement, namely; judicial settlement, arbitration, or enquiry, at the behest of the Council by the Council. Article 33(1) places more means of settlement at the discretion of disputants, which is an improvement on the peaceful dispute resolution system in existence at the time when the United Nations was formed.

The aforementioned examples of peaceful procedures for peaceful dispute settlement can be classified under two broader categories. They are judicial settlement, and diplomatic means.⁷⁹ Diplomatic means of settlement include mediation, inquiry, conciliation, and negotiation. Diplomatic settlement may also be referred to as political settlement.⁸⁰ With the goal to settle a dispute by peaceful means, the Council in some cases undertakes mediation, investigations, appoints a special representative, or requests the Secretary-General to do so, or to use his good offices. For instance, in 2021, the UNSC welcomed the report of the Secretary-General in assisting to “bring the Cyprus conflict and division of the island to a comprehensive and durable settlement.”⁸¹ Through the Secretary-General's intervention, significant strides had been made in settling the crisis in Syria through negotiations.

⁷⁸ Charter of the United Nations; 1 UNTS XVI, Article 33(1).

⁷⁹ John Merrills, 'The place of international litigation in international law' in Natalie Kleins (ed), *Litigating International Law Disputes: Weighing the Options, 1st ed.*, (Cambridge University Press, 2014), p. 3.

⁸⁰ Alf Ross, *A Textbook of International Law: General Part, 2nd ed.*, (The Lawbook Exchange Ltd., New Jersey, 2006), p. 298.

⁸¹ UN Security Council, Security Council Resolution 2561 (2021), Adopted by the Security Council at its Meeting, Held on 29th January 2021; UN Doc. S/RES/2561 (2021); available at < [http://undocs.org/en/S/RES/2561\(2021\)](http://undocs.org/en/S/RES/2561(2021)) > (accessed on 17th April 2021).

The UNSC may recommend either, or a combination of the methods of peaceful dispute settlement. For instance, inquiry may be recommended alongside negotiation.

The UNSC also advocates for the pacific settlement of disputes through regional organisations. It encourages states to make use of regional organisations in peacefully settling their disputes.⁸² When it deems fit, it also makes use of regional organisations to enforce its decisions.⁸³ Even where disputants are members of both the United Nations and a regional organisation, the UNSC may, nevertheless, encourage using the regional organisation to settle a dispute in the first instance. The same may be recommended even when both, either or none, of the disputants are members of the United Nations, but members of a regional organisation.

The UNSC may refer disputants to the ICJ. Article 36(3) of the UN Charter allows the UNSC to make recommendations referring disputes to the ICJ. Legal disputes should, as a general rule, be referred to the ICJ, in accordance with the Statute of the Court.⁸⁴ The UNSC can oblige the parties to refer the dispute to the ICJ regardless of their predisposition for this.⁸⁵

The ICJ is the only Court established by the UN Charter, to adjudicate disputes between parties who have conferred jurisdiction upon the ICJ through a declaration accepting compulsory jurisdiction of the Court. For the UNSC to oblige states to refer their disputes to the ICJ, the ICJ must be having compulsory jurisdiction over the parties and the dispute.

⁸² Charter of the United Nations; 1 UNTS XVI, Article 52(3).

⁸³ Charter of the United Nations; 1 UNTS XVI, Article 53.

⁸⁴ The Statute of the International Court of Justice; 33 UNTS 993, Article 1.

⁸⁵ Charter of the United Nations; 1 UNTS XVI, Article 36(3).

The ICJ's power to preside over a matter is disabled when it becomes apparent that the disputants have either not accepted the Optional Clause, or that a particular dispute is exempted from the jurisdiction of the Court through a reservation in the declaration accepting the jurisdiction of the Court. This makes it impossible for the UNSC to involve the ICJ when parties or certain disputes threatening international peace are not justiciable before the ICJ, due to lack of jurisdiction.

The UNSC facilitates the enforcement of the decisions of the ICJ. After receiving a complaint from a state that another state has failed to comply with a decision of the ICJ, the UNSC makes recommendations on the enforcement action to be taken. Article 94(2) of the Charter of the United Nations provides that where a defaulting party fails to perform its obligations as stipulated by a judgment of the ICJ, the other party may seek the help of the UNSC in sanctioning enforcement action, and the Council may recommend or decide upon appropriate measures of enforcement.

The UNSC enforces decisions of the ICJ to facilitate compliance with the same. Compliance means "acceptance of the judgment as final and reasonable performance in good faith of any binding obligation."⁸⁶ States are required to comply with the ICJ's decisions in good faith. Good faith has been defined by the ICJ in the *Case Concerning the Gabčíkovo-Nagymaros Project* as the duty "to give effect to the Judgment of the Court."⁸⁷ This is a measure to ensure that the decisions of the ICJ are not made in vain. There is no other enforcement mechanism employable by the ICJ. Judgment creditors can only enjoy

⁸⁶ Aloysius P. Llamzon, 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice' (2008)18 *The European Journal of International Law* 815.

⁸⁷ Hungary vs. Slovakia (1997) ICJ Reports 79.

the fruits of their judgments either through voluntary compliance by judgment debtors, or through enforcement action through the UNSC's intervention.

2.3.3 The Effectiveness of the Security Council

Bearing in mind that the central mandate of the UNSC is to maintain international peace and security, the interpretation of the term "peace" defines the scope and power of the UNSC. The construction of Article 39 of the UN Charter reveals that peace means the silence of weapons.⁸⁸ Under Chapter VII of the Charter, it is not possible to de-link a threat to peace from a threat of outbreak of hostilities.⁸⁹ The mechanisms put in place to maintain international peace and security under Chapter VII are specifically tailored to cater for military threats to international peace and security occasioned by states. Non-conventional threats do not fit within the provisions of Chapter VII.

The effectiveness of the UNSC in maintaining international peace and security is limited by the fact that the Charter only foresaw the use of force at the behest of states as the only possible threats to global peace. It aimed at saving future generations from war. However, war is no longer the only threat to global peace. A variety of non-conventional threats, such as climate change and infectious diseases, do not involve armed forces. For the UNSC to exercise its powers in a meaningful manner to maintain international peace in light of contemporary threats to international peace, it is pertinent for it to possess the power to address non-conventional threats for the sustainability of international peace and security.

⁸⁸ Wolfgang Weib, 'Security Council Powers and the Exigencies of Justice after War' (2008) 12 *Max Plank Yearbook of United Nations Law* 10.

⁸⁹ Wolfgang Weib, 'Security Council Powers and the Exigencies of Justice after War' (2008) 12 *Max Plank Yearbook of United Nations Law* 31.

2.4 The United Nations General Assembly

The UNGA is made up of all the Members of the United Nations.⁹⁰ Individuals represent every Member State, implying that the UNGA is made up of the representatives of the Member States.⁹¹ At the UNGA, all Members are equal, and have one vote each, which bears the same weight.⁹² This reflects the principle of equality apparent in the constitution of the defunct League of Nations. In the same spirit of upholding the principle of equality of states, Article 4 of the Covenant of the League of Nations provided that every Member of the League of Nations represented at the Council be entitled to only one vote. These provisions affirm that all states are equal.

There is no express provision allowing Member States to withdraw from the United Nations. By implication, Member States can similarly not withdraw their membership from the UNGA, since membership in the UNGA derives from membership in the United Nations. The United Nations has maintained its membership by avoiding fundamental mistakes committed by the League, such as expelling its Members. Instead, it has only admitted new members in accordance with Article 4 of the UN Charter. Consequently, the United Nations' membership has enlarged from the initial 51 Member States as at 1945, to 193 Member States. Ninety nine percent (99%) of the states in the universe are its members. This enhances the performance of the UNGA as it promotes stability, durability, and inspires predictability of the organ's membership, unlike the League of Nations, where

⁹⁰ Charter of the United Nations; 1 UNTS XVI, Article 9.

⁹¹ Hans Kelsen (n 13), p. 155.

⁹² Charter of the United Nations; 1 UNTS XVI, Article 18(1).

Member States could withdraw their membership at will, in accordance with Article 1(3) of the Covenant, after giving a two years' notice of withdrawal.

2.4.1 The United Nations General Assembly and the Maintenance of International Peace and Security

The UN Charter defines the responsibilities, functions, and powers of the UNGA. It, unlike the UNSC, does not have the primary responsibility to maintain international peace and security. It, nevertheless, is not left without a role to play in the maintenance of international peace and security.

The functions performed by the UNGA in the maintenance of international peace and security include taking measures to restrain threats to peace, discussing threats to international peace and security, restoring peace after it has been breached, developing binding law, formulating principles of political cooperation, and settlement of specific disputes. It may perform any of the outlined functions in the maintenance of international peace and security.

The UNGA discusses motions concerning a wide range of issues tabled before it. It has wide powers to discuss any matter within the confines of the Charter of United Nations.⁹³ Under Articles 10, 11, 13, and 14, the UNGA has the authority to discuss and make recommendations on matters that concern the maintenance of international peace and security. Under Article 11(1), the UNGA may consider the general principles of maintenance of international peace and security at the request of a Member State, on its own initiative, or at the request of other organs of the United Nations.

⁹³ Charter of the United Nations; 1 UNTS XVI, Article 10.

Article 12 of the UN Charter permits the UNSC to request the UNGA to make a recommendation on a dispute it is handling. When the UNSC's operation is paralysed by the exercise of the veto power, it may refer the matter to the UNGA to deal with the stalemate.⁹⁴ In the *Uniting for Peace* Resolution, the UNGA stated that where the UNSC cannot reach unanimity in order to exercise its mandate, the UNSC might request for an emergency special session of the UNGA,⁹⁵ to deliberate on the measures to be taken by its Members to prevent the escalation of a threat or breach of peace.

In the *Certain Expenses of United Nations advisory opinion*,⁹⁶ the ICJ stated that the responsibility placed on the UNSC in Article 24 of the UN Charter is primary, but not exclusive. In issue, was the question of whether certain expenses authorised by the General Assembly would be considered expenses of the organisation in accordance with Article 17(2) of the UN Charter. These expenses included some operational expenses incurred by the UNGA and the UNSC in performing their mandates in the maintenance of international peace and security in Congo. It was stated that the UN Charter does not limit the UNGA's power to provide for the financing of measures aimed at maintaining international peace and security.⁹⁷

Article 11(2) of the UN Charter allows the UNGA to “discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the UNSC.” Article 10 of the Charter provides that it may make

⁹⁴ Charter of the United Nations; 1 UNTS XVI, Article 10.

⁹⁵ United Nations General Assembly Resolution /377 (1950), Adopted at its 302nd Meeting, Held on 3rd November 1950; U.N Doc. A/RES//377.

⁹⁶ (1962) ICJ Reports 163.

⁹⁷ (1962) ICJ Reports 164.

recommendations to the UNSC, or the members regarding the issue. The outcome of such discussions are, however, not obligatory. The Members or the UNSC have the discretion to choose whether to implement the recommendations, or to ignore the outcome of its deliberations.

The powers of the UNGA to consider matters under Article 10 are potentially limited by Article 12(1) of the UN Charter. Article 12(1) provides that while the UNSC is exercising its functions under the Charter, the UNGA shall not make any recommendation on that matter, unless the UNSC requests it. Therefore, two limitations to this authority inherently forbid the Assembly from undermining, or encroaching on the function of the UNSC.

First, under Article 12(1) of the UN Charter, the UNGA should abstain from making recommendation(s) on any dispute, or situation over which the UNSC is exercising its mandate. This provision does not clarify whether the UNGA can exercise its mandate over matters that are on the Council's agenda, yet not under its consideration, or who should decide whether a matter is under the consideration of the UNSC.⁹⁸ Second, Article 11(2) requires the UNGA to make recommendations to the UNSC after considering questions of international co-operation and disarmament. The role of the UNGA in maintaining international peace and security is subservient to that of the UNSC. It cannot handle a threat to international peace, while the same is under the consideration of the UNSC. It cannot contradict measures taken by the Council in the maintenance, restoration, or preservation of international peace and security.

⁹⁸ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 248.

The UNGA develops law and principles. It is a good fit for this function due to its composition. The constitution of the UNGA gives the representatives of members an opportunity to express their views and reach consensus on issues. The UNGA serves as the “town meeting” of the world.⁹⁹ It is a forum where “public opinion and political pressure can be mobilized and brought to bear on Members and other organs, especially the UNSC insofar as questions of peace and security are concerned.”¹⁰⁰

The General Assembly develops a body of law binding upon states in their relations with each other. It performs functions of a quasi-legislative character. In the UNGA Resolution 95(1946),¹⁰¹ the UNGA affirmed the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal. It also directed the Committee on Codification to draft an International Criminal Code codifying “offences against the peace and security of mankind” taking into consideration the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal.¹⁰²

⁹⁹ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 252.

¹⁰⁰ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 252.

¹⁰¹ United Nations General Assembly Resolution 95 (1946), Adopted at its 55th Meeting, Held on 11th December 1946; U.N Doc. A/RES/95.

¹⁰² United Nations General Assembly Resolution 95 (1946), Adopted at its 55th Meeting, Held on 11th December 1946; U.N Doc. A/RES/95.

The UNGA has also drafted several agreements for consideration by members, such as the Convention on Genocide,¹⁰³ and the Convention Relating to the Status of Refugees.¹⁰⁴

The UNGA formulates principles of policy, which provide a basis to enhance the effectiveness of the UNSC. For instance, in 1947, the UNGA adopted a resolution condemning all forms of war propaganda fashioned to provoke the breach of peace.¹⁰⁵ In the Uniting for Peace Resolution,¹⁰⁶ the UNGA recommended cooperation between the UNSC and the UNGA in maintaining international peace and security. It advised the UNSC to take all necessary steps to ensure that it discharges its mandate under the Charter. That where the UNSC fails to discharge its functions due veto by a permanent member, the UNGA shall take over the matter immediately “with a view to making appropriate recommendations to Members for collective measures.”¹⁰⁷ This implies that where the UNSC cannot act in a matter likely to breach world peace, the UNGA may salvage the situation through mobilising Members to undertake collective measures.

The UNGA may make recommendations on the principles of disarmament and international co-operation between states.¹⁰⁸ Article 11 of the UN Charter is definitive of

¹⁰³ Convention on the Prevention and Punishment of the Crime of Genocide, (Adopted on 9th December 1948 and came into force on 12th January 1951); 78 UNTS 277; available at < https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4 > (accessed on 21st June 2020).

¹⁰⁴ Convention Relating to the Status of Refugees, (Adopted on 28th July 1951 and came into force on 22nd April 1954); 189 UNTS 137; available at < <https://www.unhcr.org/4ca34be29.pdf> > (accessed on 21st June 2020).

¹⁰⁵ United Nations General Assembly Resolution 110 (1947), Adopted at its 108th Meeting, Held on 3rd November 1947; U.N Doc. A/RES/110.

¹⁰⁶ United Nations General Assembly Resolution /377 (1950), Adopted at its 302nd Meeting, Held on 3rd November 1950; U.N Doc. A/RES//377.

¹⁰⁷ United Nations General Assembly Resolution /377 (1950), Adopted at its 302nd Meeting Held on 3rd November 1950; U.N Doc. A/RES//377.

¹⁰⁸ Charter of the United Nations; 1 UNTS XVI, Article 35(3).

how the UNGA may exercise its powers in maintaining international peace and security. Under paragraph 1, the UNGA may make recommendations to the UNSC after considering questions of international co-operation and disarmament. Paragraph 3 appears to equate the role of the UNGA to a whistle blower, who will bring to the attention of the UNSC situations which it suspects may breach world peace. It cannot directly abate situations endangering international peace. It can only bring these to the attention of the UNSC.

The UNGA has always concerned itself with questions of regulating armament and, more specifically, the international control of atomic energy. To this extent, in its first session convened in 1946, the UNGA established the Atomic Energy Commission to deal with the problems arising from the discovery of atomic energy and incidental matters.¹⁰⁹

The Assembly has also called upon states to “to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at the regional and sub-regional levels.”¹¹⁰ It also re-affirmed its commitment “to achieve a universal nuclear weapons convention prohibiting the development, production, stockpiling and use of nuclear weapons, leading to their ultimate destruction.”¹¹¹

The UNGA facilitates the settlement and adjustment of disputes and situations. When the United Nations was formed, “the Security Council was supposed to handle conflicts, and

¹⁰⁹ United Nations General Assembly Resolution 1(1) (1946), Adopted at its 1st Meeting, Held on 24th January 1946; U.N Doc. A/RES/1(1).

¹¹⁰ United Nations General Assembly Resolution /72/34 (2017), Adopted at its 72nd Meeting, Held on 11th December 2017; U.N Doc. A/RES/72/34.

¹¹¹ United Nations General Assembly Resolution 53/78 (D) (1998), Adopted at its 79th Meeting Held on 4 December 1998; U.N Doc. A/RES/53/78 (D).

disputes of a serious nature: constituting a fairly immediate threat to the peace.”¹¹² The UNGA “would deal with situations which had not yet developed into disputes or impaired friendly relations without threatening war.”¹¹³ The UNGA brings threats to peace to the UNSC’s attention.

The UNGA is instrumental in facilitating the peaceful settlement of disputes. On 15th November 1982, it passed a resolution, adopting the Manila Declaration on the Peaceful Settlement of International Disputes.¹¹⁴ The declaration re-affirms the fundamental principles of the UN Charter requiring states to settle their international disputes by peaceful means to avoid endangering world peace. Paragraph 2 of Section 1 of the Declaration requires states to settle international disputes exclusively through peaceful means. Paragraph 1 of Section II encourages members to “make full use and provisions of the Charter of the United Nations, including the procedures and means provided therein, concerning the peaceful settlement of disputes.”¹¹⁵ However, UNGA’s recommendations for peaceful dispute settlement are not binding on states.

2.4.2 Relationship with the Security Council

Article 11(3) confines the role of the UNGA to an informer, who should bring to the attention of the United Nations Security Council situations which are likely to breach global peace. Where Member States or non-Member States bring to the attention of the

¹¹² Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 258.

¹¹³ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 258.

¹¹⁴ United Nations General Assembly Resolution 37 (1982), Adopted at its 37th Meeting, Held on 15th November 1982; U.N Doc. A/RES/37/10.

¹¹⁵ United Nations General Assembly Resolution 37 (1982), Adopted at its 37th Meeting, Held on 15th November 1982; U.N Doc. A/RES/37/10.

UNGA disputes which may breach global peace, in accordance with Article 35, its role in the dispute will be limited to making recommendations on the principles of disarmament and international co-operation between states. In the Korean case, which was the subject of UNGA Resolution 37, the UNGA restricted itself to making recommendations to states. For instance, it recommended that states do apply an embargo on the shipment “of arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items useful in the production of arms, ammunition and implements of war.”¹¹⁶ This is because the primary mandate to maintain world peace is vested in the UNSC, and not the UNGA.

2.5 The Secretariat and the Secretary-General

According to Article 97, the Secretary-General is the chief administrative officer of the Organisation. However, not all functions performed by the Secretary-General are of an administrative character. He may perform a number of functions in the maintenance of world peace.

Under Article 99 of the UN Charter, the Secretary-General may bring a matter which, in his opinion, is likely to threaten global peace to the attention of the UNSC. This function is exercised at the discretion of the Secretary-General.¹¹⁷ In 1959, when there was an uprising in Laos threatening the peace and the neutrality agreed to in 1954, Dag Hammarskjöld, who was then the Secretary-General of the United Nations, out of his own

¹¹⁶ United Nations General Assembly Resolution 500 (1951), Adopted at its 5th Meeting, Held on 18th May 1951; U.N Doc. A/RES/500.

¹¹⁷ Hans Kelsen (n 13), p. 303.

initiative, brought the crisis before the UNSC.¹¹⁸ It is not mandatory for the Secretary-General to bring threats to or breaches of the peace to the attention of the UNSC. He does so at his own discretion.

The Secretary-General keeps the UNGA updated of matters concerning international peace, which are under the consideration of the UNSC. Article 12(2) of the UN Charter provides that the Secretary-General shall at every session of the UNGA, and with the consent of the UNSC, inform the UNGA of matters relating to global peace that are being dealt with by the UNSC.

The UNSC may assign other duties relating to global peace to the Secretary-General. Article 98 of the UN Charter mandates the Secretary-General to perform such other functions as shall be entrusted to him by the UNSC. Under Article 20, the Secretary-General may convene special sessions of the UNGA at the request of the UNSC or of a majority of the Members of the United Nations. For instance, in 2017, the UNSC requested the Secretary-General to continue reporting to the Council “on the implementation of Resolution 1701(2006) intended to resolve the 2006 Lebanon war, every four months, or at any time as he deems appropriate, and to include in his reporting a prompt and detailed breakdown of all Resolution 1701(2006) violations.”¹¹⁹ In another scenario, the UNSC welcomed the intention of the Secretary-General to convene “an informal five plus UN meeting with the leaders of the two Cypriot communities and the Guarantor powers at the earliest opportunity” aimed at finding a common ground to “negotiate a sustainable lasting

¹¹⁸ Brian Urquhart, ‘Peace and Security: Thoughts on the Twentieth Anniversary of Dag Hammarskjöld's Death’ (1981) 60 *Foreign Affairs* 5.

¹¹⁹ UN Security Council, Security Council Resolution 2373 (2017), Adopted by the Security Council at its 8037th Meeting, Held on 30th August 2017; UN Doc. S/RES/2373 (2017).

solution to the Cyprus problem.”¹²⁰ Therefore, the UNSC has the power to mandate the Secretary-General to perform certain functions aimed at maintaining global peace as it deems fit.

2.6 The International Court of Justice

In the period between the close of the Napoleonic Wars until the outbreak of World War I, arbitration was emphasised for the settlement of disputes. This “trend culminated in the establishment, first, of the Permanent Court of International Justice and, then, of its successor the ICJ.”¹²¹ The ICJ is the principal judicial organ of the United Nations. It is an international agency that adjudicates over disputes of consenting states. The decision of this international agency is distinguishable from other settlement mechanisms by virtue of its binding effect.¹²² Its judgments are final and binding on parties.

The Court facilitates the maintenance of world peace through delivering interim or final judgments to that end. For instance, in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*,¹²³ the Court affirmed the principle of pacific settlement of international disputes. The Court found that the United States was "in breach of its obligations under customary international law not to use force against another

¹²⁰ UN Security Council, Security Council Resolution 2561 (2021), Adopted by the Security Council at its Meeting, Held on 29th January 2021; UN Doc. S/RES/2561 (2021); available at < [http://undocs.org/en/S/RES/2561\(2021\)](http://undocs.org/en/S/RES/2561(2021)) > (accessed on 17th April 2021).

¹²¹ Leland M Goodrich, 'Expanding Role of the General Assembly: The Maintenance of International Peace and Security' (1951) 29 *Journal of International Conciliation* 231.

¹²² Hans Kelsen (n 13), p. 463.

¹²³ (1986) ICJ Reports 1.

State"¹²⁴ by using force against Nicaragua. The Court emphasised that the principle of pacific settlement of disputes had acquired the status of customary international law.

2.7 Regional Organisations

Chapter VIII of the UN Charter, consisting of Articles 52, 53, and 54 concerns regional organisations. Article 52 permits the United Nations' Member States to form regional arrangements or agencies to deal with matters relating to the maintenance of international peace and security, as are appropriate for regional action. There are a number of regional organisations formed with an objective to maintain world peace. They include the African Union (AU), the European Union (EU), the Organisation of American States (OAS), the Arab League, and the Association of South East Asian Nations (ASEAN). The "UNSC, however powerful it might be, cannot effectively take measures to maintain world peace in all corners of the world."¹²⁵ It is not the "only and exclusive organisation" established for the maintenance of peace."¹²⁶ This reality compels the UNSC to rely upon regional organisations to carry out elements of its mandate on its behalf."¹²⁷

The UNSC Resolution 1631 underpins the role played by regional organisations in maintaining international peace and security.¹²⁸ In this Resolution, the Council encouraged

¹²⁴ (1986) ICJ Reports 1.

¹²⁵ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 145.

¹²⁶ Hans Kelsen (n 13), p. 319.

¹²⁷ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 145.

¹²⁸ UN Security Council, Security Council Resolution 1631 (2005), Adopted by the Security Council at its 5282nd Meeting, Held on 17th October 2005; UN Doc. S/RES/1631 (2005); available at < <http://unscr.com/en/resolutions/doc/1631> > (accessed on 17th April 2021).

more cooperation between the United Nations and regional organisations. It also encouraged “states and all relevant international organizations to contribute to strengthening the capacity of regional and sub-regional organizations, in particular of African regional and sub-regional organizations.”¹²⁹ The UNSC also adopted Resolution 1197, in which it emphasised the need to provide support to regional organisations and sub-regional organisations in Africa, to improve coordination between regional organisations and the UN to facilitate the maintenance of international peace and security.¹³⁰

The practice of regional organisations in maintaining peace and security shows that the UNSC delegates its Chapter VII powers to them, where appropriate.¹³¹ This is evident in the operations of the African Union on the African Continent. The African Union was established with the aim of maintaining regional peace and security in Africa. Article 3 of its Constitutive Act¹³² outlines its objectives, which include maintaining peace and security. This implies that the UNSC can collaborate with the African Union in maintaining peace and security on the African Continent.

The UNSC collaborates with regional arrangements and agencies in as far as the arrangements’ purposes and objectives permit. For instance, Article 4 of the Constitutive

¹²⁹ UN Security Council, Security Council Resolution 1631 (2005), Adopted by the Security Council at its 5282nd Meeting, Held on 17th October 2005; UN Doc. S/RES/1631 (2005); available at < <http://unscr.com/en/resolutions/doc/1631> > (accessed on 17th April 2021).

¹³⁰ UN Security Council, Security Council Resolution 1197 (1998), Adopted by the Security Council at its 3928th Meeting, Held on 18th September 1998; UN Doc. S/RES/1197 (1998); available at < <http://unscr.com/en/resolutions/doc/1197> > (accessed on 26th August 2021).

¹³¹ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 97.

¹³² Constitutive Act of the African Union adopted 11 July 2000, entered into force 26th May 2001 OAU Doc. CAB/LEG/23.15 (2001); 2158 UNTS 3.

Act of the African Union which establishes the principles of the African Union, prohibits Member States from using or threatening to use force against one another.¹³³ It advocates for the peaceful co-existence amongst Member States and accords Member States the liberty to request for the Organization's intervention in restoring peace and security. The UNSC's mandate to maintain international peace and security coincides with that of the African Union. The Peace and Security Council was created by the African Union to promote peace and security in African states. It is the primary organ, under the Constitutive Act of the Africa Union, which addresses peace and security issues in Africa. Article 6 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union establishes its functions.¹³⁴ They include promoting peace and stability, peaceful settlement of disputes through conciliation, enquiry, mediation, and peace support operations. Article 4 of the Protocol provides that the principles in the Constitutive Act and the UN Charter shall guide the Peace and Security Council. The UNSC may thus collaborate with African Union and its Peace and Security Council in maintaining regional peace and security in the African Region. The same applies to other regional agencies and arrangement.

There are multiple ways, in which the UNSC collaborates with regional arrangements to maintain international peace and security. They are outlined hereunder.

¹³³ The Constitutive Act of the African Union July (2000); 2158 UNTS 3.

¹³⁴ Protocol Relating to the Establishment of the Peace and Security Council of the African Union (Adopted on 9th July 2002 and came into force on 26 December 2003); AU Doc 2002; available at < <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> > (accessed on 19th April 2021).

The UNSC collaborates with regional arrangements and agencies to prevent conflict. This entails the peaceful settlement of disputes. Article 52(2) of the UN Charter provides that “the Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional organisations or by such regional organisations before referring them to the Security Council.” Article 52(3) of the UN Charter authorises the UNSC to either encourage the peaceful settlement of disputes through regional organisations, on its own initiative, or after states have referred a dispute to it. This Article confers power on regional organisations to settle local disputes by pacific means.

The UNSC collaborates with regional arrangements in building and sustaining peace. There are multiple scenarios where the UNSC has collaborated with regional arrangements and agencies to settle disputes amicably. For instance, in 2021, it collaborated with the African Union and the African Union Mission in Somali (AMISOM) in building sustainable peace in Somalia.¹³⁵ Whereas the AMISON would be the principal security provider in Somalia, the UNSC would impose sanctions against the Al-Shabaab, which it termed a “non-military means of degrading” the Al-Shabaab and other armed opposition groups.¹³⁶ In addition, the AMISOM received logistical and financial support from the United Nations Support Office in Somalia (UNSOS) and the United Nations Assistance Mission in Somalia (UNSOM). In 2011, the UNSC called for the Peace and Security

¹³⁵ UN Security Council, Security Council Resolution 2568 (2021), Adopted by the Security Council at its Meeting, Held on 12th March 2021; UN Doc. S/RES/2568 (2021); available at < [https://undocs.org/en/S/RES/2568\(2021\)](https://undocs.org/en/S/RES/2568(2021)) > (accessed on 26th August 2021).

¹³⁶ UN Security Council, Security Council Resolution 2568 (2021), Adopted by the Security Council at its Meeting, Held on 12th March 2021; UN Doc. S/RES/2568 (2021); available at < [https://undocs.org/en/S/RES/2568\(2021\)](https://undocs.org/en/S/RES/2568(2021)) > (accessed on 26th August 2021).

Council of the African Union to send its ad hoc High Level Committee to Libya to facilitate dialogue leading to political reforms prerequisite for a peaceful and sustainable solution to the crisis in Libya.¹³⁷ The UNSC expressed its appreciation for the role played by the Organisation of American States in cooperating with the United Nations Mission in Haiti (UNMIH) to promote a solution to the political crisis and for restoring democracy in Haiti.¹³⁸ The UNSC welcomed the European Union's readiness to continue maintaining its military operation (EUFOR ALTHEA) in Bosnia and Herzegovina to maintain peace and security.¹³⁹ In 2017, in Mali, the UNSC welcomed "the African Union Nouakchott process on the enhancement of the security cooperation and the operationalization of the African Peace and Security Architecture in the Sahel and Sahara region (APSA)," and acknowledged the "steps taken by the African Union to operationalize the African Standby Force."¹⁴⁰

The UNSC collaborates with regional arrangements in imposing and implementing sanctions to maintain international peace and security. Regional organisations "may act as organs of the United Nations not only in settling local disputes, but also in taking

¹³⁷ UN Security Council, Security Council Resolution 1973 (2011), Adopted by the Security Council at its 6498th Meeting, Held on 17th March 2011; UN Doc. S/RES/1973 (2011); available at < [https://www.undocs.org/S/RES/1973%20\(2011\)](https://www.undocs.org/S/RES/1973%20(2011)) > (accessed on 26th August 2021).

¹³⁸ UN Security Council, Security Council Resolution 867 (1993), Adopted by the Security Council at its 3282ND Meeting, Held on 23rd September 1993; UN Doc. S/RES/867 (1993); available at < <http://unscr.com/en/resolutions/doc/867> > (accessed on 26th August 2021).

¹³⁹ UN Security Council, Security Council Resolution 2549 (2020), Adopted by the Security Council at its Meeting, Held on 5th November 2020; UN Doc. S/RES/2549 (2020); available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2549.pdf > (accessed on 17th April 2021).

¹⁴⁰ UN Security Council, Security Council Resolution 2359 (2017), Adopted by the Security Council at its 7979th Meeting, Held on 21st June 2017; UN Doc. S/RES/2359 (2017); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359\(2017\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2359(2017)) > (accessed on 17th April 2021).

enforcement action under the authority of the Security Council.”¹⁴¹ The enforcement action “may be taken to maintain or restore peace within the regional community, that is to say, against a party to the regional organisation which is guilty of a threat to the peace or breach of the peace in relation to another party to this arrangement.”¹⁴²

Article 53 of the UN Charter authorises the UNSC to utilise regional organisations for enforcement Action. Utilising regional organisations for enforcement action directly implies the utilisation of their Member States, or the agency constituted by such a regional organisation.¹⁴³ Allowing the UNSC to use regional organisations in enforcement of its decisions infers that the UNSC is superior to the regional organisation in maintaining world peace.¹⁴⁴ For instance, “during the civil wars in Liberia and Sierra Leone, the UNSC delegated its powers to maintain and restore peace and security in these countries to the Economic Community of West African States Monitoring Group (ECOMOG).”¹⁴⁵ Those powers were carried out by Nigeria and a few other states acting within the structure of the regional organisation. The UNSC adopted Resolution 1526 focusing on the role of regional organisations and states in dealing with threats to international peace and security caused by terrorists and terrorist organisations.¹⁴⁶ The resolution focused on tackling terrorism by

¹⁴¹ Hans Kelsen (n 13), p. 326.

¹⁴² Hans Kelsen (n 13), p. 328.

¹⁴³ Hans Kelsen (n 13), p. 327.

¹⁴⁴ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 145.

¹⁴⁵ Charles Riziki Majinge, 'Regional Arrangements and the Maintenance of International Peace and Security: The Role of the African Union Peace and Security Council' (2010) 48 *Canadian Yearbook of International Law* 107.

¹⁴⁶ UN Security Council, Security Council Resolution 1526 (2004), Adopted by the Security Council at its 4908th Meeting, Held on 30th January 2004; UN Doc. S/RES/1526 (2004); available at < [https://www.undocs.org/S/RES/1526%20\(2004\)](https://www.undocs.org/S/RES/1526%20(2004)) > (accessed on 26th August 2021).

freezing the financial assets, economic resources, and funds of the Taliban Al-Qaeda and those of their associates. The UNSC encouraged regional and sub-regional organisations to get more directly involved in offering technical assistance and capacity building in identified areas.

2.8 Conclusion

This chapter discussed the purposes of the principal organs of the United Nations vis-à-vis contemporary threats to world peace. It also considered the role of regional organisations.

The gist of this chapter is that the UNSC, the UNGA, the ICJ, the Secretary-General, and regional organisations have defined powers in the maintenance of world peace. Whereas the UNSC bears the primary mandate to ensure that the world is at peace, the other organs carry out secondary roles. Whether these have been exercised effectively against contemporary threats to international peace and security is discussed in the next two chapters. Chapter three analyses contemporary threats to international peace, and how they have strained the United Nations' mandate to maintain world peace.

CHAPTER THREE

CONTEMPORARY THREATS TO INTERNATIONAL PEACE AND SECURITY

3.1 Introduction

The mandate of the United Nations Security Council (UNSC) in maintaining international peace and security is inhibited by the multiplication of threats to world peace. This chapter discusses the non-traditional threats that endanger world peace. The discussion of the non-contemporary threats to world peace informs the analysis of the challenges facing the United Nations in the next chapter.

3.2 Non-traditional Threats to International Peace and Security

Threats to global peace have evolved. The threats to world peace in the 21st century are not the same threats that galvanised the world into adopting the Charter of the United Nations. For instance, terrorism and extremism accentuated by religion, regionalism, and ethnicity, are some of the threats to global peace today.¹

The actors in non-traditional threats to world peace vary extensively. The traditional approaches to world peace presuppose that threats to world peace are occasioned by, and target states. These approaches designate states as the only actors in world peace.

The evolution of threats to world peace does not favour this connotation of the concept of “security.” Contemporary threats place several actors in international peace affairs. Non-

¹ Krishna Mohan Reddy and Sheela Reddy, ‘Global Peace and the Role of the United Nations’ (2015)19 *The Journal of International Issues* 10.

traditional threats do not involve the threat or use of force in inter-state relations. Neither do they involve state actors.

Security issues not only concern states, but also extend to individual persons and non-state actors. Threats to human security may arise from within, or from outside states.² Human security calls for the protection of people from severe and pervasive widespread threats.³ Threats to human security include disease, hunger, threats from violence, and threats of use of force.⁴ Human security shifts the referent from states to individuals, and shifts threats from military threats to environmental, economic, political, and gender-based threats.⁵ This means that traditional militarised state-centred approaches to security are not entirely effective in maintaining world peace.⁶

Even if non-state actors are not subjects of international law, they are capable of destabilising world peace. Threats to international peace are not only occasioned by states, but also by individual persons, terrorist groups, criminal gangs, pirates, and natural forces. One of the major events that highlighted the role of non-state actors in international peace was the terror attack of 11th September 2001. On the morning of Tuesday 11th September 2001, a series of four coordinated attacks were launched by the Al-Qaeda against the United States of America. The perpetrators of these attacks were individuals from Egypt,

² Kreidenweis Alex and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015)16 *Journal of Global Security Studies* 67.

³ Kreidenweis Alex and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015)16 *Journal of Global Security Studies* 70.

⁴ Kreidenweis Alex and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015)16 *Journal of Global Security Studies* 71.

⁵ Kreidenweis Alex and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015)16 *Journal of Global Security Studies* 71.

⁶ Kreidenweis Alex and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015)16 *Journal of Global Security Studies* 72.

Saudi Arabia, and the United Arab Emirates.⁷ This attack was categorized by UNSC as a terrorist attack, and thus an armed attack amenable to self-defence in accordance with Article 51 of the Charter of the United Nations.⁸ Following the terror attack, the United States of America launched a global attack against suspected terrorist groups in Yemen, Somalia, and Afghanistan.⁹ NATO also, for the first time in its history, declared a case of collective self-defence against terrorism in line with Article 5 of the North Atlantic Treaty.¹⁰ Following these responses, hundreds of suspected persons were captured and transferred to detention centres like the Guantanamo Bay Naval Station in Cuba.¹¹

The degree to which non-state actors are capable of destabilising global peace is also reflected in cases of other trans-national organised crimes, where states resort to use of military means, or other means to protect their external and international security. For instance, in cases where states engage in “large-scale counter-narcotics campaigns, in multinational counter-piracy operations at sea, or even in particularly dramatic cases of urban gang warfare or mass hostage-taking.”¹²

⁷ Assaf Moghadam, ‘Motives for Martyrdom: Al-Qaida, Salafi Jihad, and the Spread of Suicide Attacks’ (2008) 33 *International Security* 55.

⁸ UN Security Council, Security Council Resolution 1373 (2001), Adopted by the Security Council at its 4385th Meeting, Held on 28th September 2001; UN Doc. S/RES/1373 (2001); available at < https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf > (accessed on 8th August 2021).

⁹ Nils Melzer, *International Humanitarian Law: A comprehensive Introduction* (International Committee of the Red Cross, Geneva, 2016), p. 39

¹⁰ North Atlantic Treaty (Adopted on 4th April 1949 and came into force on 24th August 1949); 34 UNTS 243; available at < https://www.nato.int/cps/en/natolive/official_texts_17120.htm > (accessed on 26th August 2021).

¹¹ Nils Melzer, *International Humanitarian Law: A comprehensive Introduction* (International Committee of the Red Cross, Geneva, 2016), p. 39.

¹² Nils Melzer, *International Humanitarian Law: A comprehensive Introduction* (International Committee of the Red Cross, Geneva, 2016), p. 39.

Using infectious diseases, climate change, human trafficking, and cyber operations as examples, this chapter examines the implication of contemporary threats to world peace.

3.2.1 Infectious Diseases

There is no doubt that bullets, bombs, and other artillery used in warfare unsettle world peace and security. This has been true, since the olden days, when the world evidenced two global wars in the 19th century.

Seventy-five years after the Second World War, on 30th January 2020, the World Health Organisation declared the outbreak of COVID-19 as a “public health emergency of international concern.”¹³ As the disease rapidly spread through countries like a wild inferno, on 11th March 2020, it was declared a pandemic.¹⁴ Since then, one state after another has imposed rules synonymous with those operational during a state of emergency. Governments world over have imposed policies restricting various fundamental freedoms and rights, such as education, movement, association, religion, and trade.

Evidence of the ability of pandemics to ravage the human race is apparent in the visible and invisible tragic imprints of COVID-19 on humans, economies, and social interactions. Infectious diseases have the potential to destabilize world peace.

¹³ World Health Organisation Press Release, ‘Statement on the second meeting of the International Health Regulations (2005); Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV); (2020); available at < [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)) > (accessed on 8th June 2021).

¹⁴ World Health Organisation Press Release, ‘WHO Director-General's opening remarks at the media briefing on COVID-19’ (2020); available at < <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> > (accessed on 8th June 2021).

The disastrous effects of the COVID-19 pandemic have transcended all geographical borders, and no country has been spared. Yet, even though the UNSC has the mandate to maintain world peace, it has not declared COVID-19 as a threat to global peace. Some commentators suggest that the COVID-19 virus originated from the Wuhan Institute of Virology, in Wuhan, where COVID-19 was first diagnosed.¹⁵ A review of viral genomics suggests that the genetic fingerprint of SARS-Cov-2 present in the COVID-19 virus indicates that COVID-19 was developed in a laboratory.¹⁶ Through science and research, a single microbiologist can create a lethal virus, occasioning infectious diseases, with the capability of ruining global peace and security. The Supreme Court of the United States in *Diamond, Commissioner of Patents and Trademarks v Chakraborty*¹⁷ acknowledged that science and genetic research pose a “serious threat to the human race.” It stated, further, that genetic research and technological developments might bring about diseases that human ingenuity may not be able to control.

In April 2020, the United Nations Secretary-General, António Manuel de Oliveira Guterres, warned that the pandemic was a major threat to world peace.¹⁸ He acknowledged

¹⁵ Steven Quay and Richard Muller, ‘The Science Suggests a Wuhan Lab Leak’ Wall Street Journal (New York, 6th June 2021); available at < <https://www.wsj.com/articles/the-science-suggests-a-wuhan-lab-leak-11622995184> > (accessed on 2nd August 2021). See also Nicholson Baker, ‘The Lab-Leak Hypothesis’ New York Magazine (New York, 4th January 2021); available at < <https://www.coronavirusblog.uk/The%20Lab-Leak%20Hypothesis.pdf> > (accessed on 2nd August 2021).

¹⁶ Steven Quay and Richard Muller, ‘The Science Suggests a Wuhan Lab Leak’ Wall Street Journal (New York, 6th June 2021); available at < <https://www.wsj.com/articles/the-science-suggests-a-wuhan-lab-leak-11622995184> > (accessed on 2nd August 2021).

¹⁷ (1980) U.S. 447.

¹⁸ UN News, ‘COVID-19 Threatening Global Peace and Security, UN Chief Warns’ (10 April 2020); available at < <https://news.un.org/en/story/2020/04/1061502> > (accessed 11th August 2020).

that the pandemic had the potential of causing and increasing violence and social unrest. He called for action by the UNSC to mitigate the impact of the pandemic.

The UNGA adopted the “United Response Against Global Health Threats: Combating COVID-19” Resolution on 14th April 2020.¹⁹ It called for “intensified international cooperation and multilateral efforts in handling disease outbreaks.”²⁰ It also stressed the “urgency of stepping up global efforts to fight health crises.” On 10th September 2020, it adopted a resolution calling for “intensified international cooperation and solidarity to contain, mitigate and overcome the pandemic and its consequences.”²¹

Even though the UNSC is long past its nascent years, since the Charter of the United Nations did not intend to treat infectious diseases as threats to international peace and security, its action to contain infectious diseases has been hesitant, and half-hearted. It was not until February 2021, that the Council adopted a resolution,²² attempted at containing the pandemic. This resolution did not recognise the COVID-19 pandemic as a threat to world peace, but merely stated that it had the potential to endanger world peace.²³ The

¹⁹ United Nations General Assembly Resolution 74/L.57(2020), Adopted by the General Assembly at its 74th meeting, Held on 14th April 2020; U.N Doc. A/RES/74/L.57; available at < <https://undocs.org/A/74/L.57> > (accessed 8th June 2021).

²⁰ United Nations General Assembly Resolution 74/L.57(2020), Adopted by the General Assembly at its 74th meeting, Held on 14th April 2020; U.N Doc. A/RES/74/L.57; available at < <https://undocs.org/A/74/L.57> > (accessed 8th June 2021).

²¹ United Nations General Assembly Resolution 74/L.92(2020), Adopted by the General Assembly at its 74th meeting, Held on 20th September 2020; U.N Doc. A/RES/74/L.92; available at < <https://undocs.org/A/74/L.92> > (accessed 8th June 2021).

²² UN Security Council, Security Council Resolution 2565 (2021), Adopted by the Security Council at its Meeting, Held on 26th February 2021; UN Doc. S/RES/ 2565 (2021); available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2565.pdf > (accessed 8th June 2021).

²³ UN Security Council, Security Council Resolution 2565 (2021), Adopted by the Security Council at its Meeting, Held on 26th February 2021; UN Doc. S/RES/ 2565 (2021); available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2565.pdf > (accessed 8th June 2021).

UNSC did not address the pandemic in its own right, but vis-à-vis armed conflict. It called for a temporary cessation of hostilities in conflict areas like Syria, Yemen, the Central African Republic, Mali, South Sudan, and Somalia to enable the warring areas to access the COVID-19 vaccine.

The World Health Organisation has the core mandate to deal with infectious diseases and pandemics. It is a specialized agency of the United Nations established on 7th April 1948, within the terms of Article 57 of the Charter of the United Nations. The World Health Assembly, the Executive Board, and the Secretariat carry out the work of the World Health Organisation.²⁴ The World Health Assembly is its plenary organ and, as such performs several functions. These include establishing committees necessary to perform the functions of the Organisation, establishing any necessary institutions, promoting and conducting research in health, and considering recommendations made by the organs of the United Nations.²⁵

The Preamble to the Constitution of the World Health Organisation recognizes that health plays a significant role in “attaining peace and security.”²⁶ Article 1 of the Constitution of the World Health Organisation provides that its objective is to attain the highest standard of health for all people.²⁷ This notwithstanding, the mandate of the World Health Organisation in dealing with infectious diseases ranks much lower than the mandate

²⁴ Constitution of the World Health Organization; 14 UNTS 186; Article 9.

²⁵ Constitution of the World Health Organization; 14 UNTS 186; Article 18.

²⁶ Constitution of the World Health Organization (Adopted on 22 July 1946 and entered into force on 7 April 1948): 14 UNTS 186; available at < <https://www.who.int/publications/m/item/constitution-of-the-world-health-organization> > (accessed on 11th August 2020).

²⁷ Constitution of the World Health Organization (Adopted on 22 July 1946 and entered into force on 7 April 1948): 14 UNTS 186; available at < <https://www.who.int/publications/m/item/constitution-of-the-world-health-organization> > (accessed on 11th August 2020).

exercisable by the UNSC in preventing, containing, or mitigating the impacts of a threat to global peace.

The following reasons bring into perspective why the World Health Organization's mandate cannot adequately address the global pandemic, justifying the classification of infectious diseases as threats to world peace, to be dealt with primarily by the UNSC under Article 39 of the UN Charter.

The mandate of the World Health Organisation in fighting pandemics cannot be equated to the mandate the UNSC exercises in dealing with infectious diseases as threat to peace. The UNSC stands a better chance to sanction binding action and take enforcement action against its Members, which the World Health Organisation cannot. For instance, when Tanzania, in 2020, declared that COVID-19 was non-existent, the WHO was not in a position to impose enforcement action against Tanzania to subdue it into joint global concerted action aimed towards eradicating the pandemic. Thus, the UNSC, whose primary purpose is to maintain world peace in accordance with Article 21(1) of the Charter of the United Nations is better placed to handle pandemics, as threats to global peace, than is the World Health Organisation.

Additionally, the UNSC has stable membership, unlike the World Health Organisation, whose membership may fluctuate on withdrawal of membership by Member States. Whereas Article 3 of the Constitution of the World Health Organisation provides that its membership is open to all States, Article 4 provides that one does not become a Member automatically by virtue of being a Member of the United Nations. One must sign the Constitution in order to be a Full Member. The World Health Organisation currently has

194 Member States, all of which are Member States of the United Nations, except Liechtenstein. The World Health Organisation has also admitted Associate Members in accordance with Article 8 of the UN Charter. Associate Members are admitted after a State responsible for the governance and international relations of a territory makes an application for admission to the Health Assembly for admission. The Associate Members of the World Health Organisation include Tokelau, which is dependent on New Zealand, and the Commonwealth of Puerto Rico, which is dependent on the United States of America.

States are not automatic members of the WHO by virtue of being members of the United Nations. Member States may withdraw their membership from the World Health Organisation, even while they retain their membership with the United Nations. For instance, in July 2020, the Secretary of State of the United States of America, Mike Pompeo, notified the UN Secretary-General of the United States of America's decision to withdraw from the World Health Organisation, effective July 2021. This, he said, was in accordance with a joint resolution²⁸ made on 14th June 1948 between the United States of America and the World Health Organisation authorising withdrawal of membership on a one year's notice.

Furthermore, whereas the decisions of the UNSC are binding, and there are mechanisms to enforce them, those of the World Health Organisation, though binding, cannot be enforced

²⁸ Act of June 14, 1948, Public Law 80-643, 62 STAT 441, providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor; 6/14/1948; General Records of the United States Government, Record Group 11 available at < <https://www.docstoc.org/documents/document/act-of-june-14-1948-public-law-80643-62-stat-441-providing-for-membership-and-participation-by-the-united-states-in-the-world-health-organization-and-authorizing-an-appropriation-therefor> > (accessed on 8th August 2021).

in a similar manner as the UNSC's. This means that any decrees or resolutions made by the UNSC in enforcing action aimed at containing a pandemic would be binding and practically enforceable against its Member States, which would ensure that none of its resolutions is made in vain.

The UNSC has previously attempted to address the question of infectious diseases, and other non-infectious diseases as security threats. It expressed “grave concern about the outbreak of the Ebola virus in, and its impact on, West Africa, in particular Liberia, Guinea and, Sierra Leone, as well as Nigeria and beyond”, and recognized it as a threat to world peace.²⁹ Once the UNSC recognises or declares a situation as a threat to international peace and security, it may sanction the application of the measures provided for in Articles 40, 41, and 42 of the UN Charter.

The UNSC expressed “concern about the devastating impact of the COVID-19 pandemic across the world, especially in countries ravaged by armed conflicts, or in post-conflict situations, or affected by humanitarian crises.”³⁰ It, however, did not affirm COVID-19 as a threat to world peace, but rather as “likely to endanger the maintenance of international peace and security.”³¹ Attempts to expand the concept of a threat to the peace to include contemporary threats to international peace, such as infectious diseases, have not acquired

²⁹ UN Security Council, Security Council Resolution 2177 (2014), Adopted at its 7268th Meeting, Held on 18th September 2014; UN Doc. S/RES/2177 (2014); Security Council Resolution, Adopted at its 8385th Meeting, Held on 30th October 2018; UN Doc. S/RES/2439 (2018).

³⁰ UN Security Council, Security Council Resolution 2532 (2020), Adopted at its Meeting, Held on 1st July 2020; UN Doc. S/RES/2532 (2020).

³¹ UN Security Council, Security Council Resolution 2532 (2020), Adopted at its Meeting, Held on 1st July 2020; UN Doc. S/RES/2532 (2020).

widespread support.³² This is attributable to the fact that infectious diseases are not traditional threats to international peace and security. They do not involve the use of force between states.

Would the World Health Organisation prevent, contain, or mitigate the effects of a COVID-20? Taking into consideration the global toll of the COVID-19, there is need to define in express terms, whether non-conventional threats to global peace, such as infectious diseases, fall under the mandate of the UNSC.

3.2.2 Climate Change

Climate change means a variation in climate caused, either directly or indirectly, by human activity, which changes the makeup of the “global atmosphere” which is “observed over comparable time periods.”³³ There are social, economic, security, and developmental justifications for tackling climate change and understanding the relationship between climate change and security.³⁴

On 3rd June 2009, the UNGA called upon the “relevant organs” of the United Nations “to intensify their efforts in considering and addressing climate change, including its possible security implications” as falls within their mandates.³⁵ The Pacific Small Island

³² Anna Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace' (2015) 16 *Melbourne Journal of International Law* 29.

³³ United Nations Framework Convention On Climate Change, (Adopted on 9 May 1992 and came into force on 21 March 1994); 1771 UNTS 107 ; available at < https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf > (accessed on 6th October 2020).

³⁴ UN Security Council, Security Council Provisional Resolution 5663 (2007), Adopted at its 5663rd Meeting, Held on 17th April 2007; UN Doc. S/PV.5663; available at < <https://undocs.org/S/PV.5663> > (accessed on 10/6/2021).

³⁵United Nations General Assembly Resolution 63 (2009), Adopted at its 85th Meeting, Held on 3rd June 2009; UN Doc. A/RES/63/281; available at < <https://undocs.org/en/A/RES/63/281> > (accessed on 11/6/2021).

Developing States (Federated States of Micronesia, Fiji, Kiribati, Nauru, Palau, Papua New Guinea, and Republic of the Marshall Islands, Samoa, Solomon Islands, Tuvalu, Tonga, and Vanuatu) proposed this resolution. The UNGA requested the Secretary-General to prepare and present a report on the security implications of climate change.

In September 2009, the Secretary-General presented the report, which highlighted the fact that climate change aggravates other threats to global peace, and is, therefore, a “threat multiplier.”³⁶ The Report did not suggest whether climate change threatens global peace. Since then, the UNSC has adopted resolutions to acknowledge that climate change and world peace are related. For instance, it adopted Resolution 2349 wherein the need to address climate related risks in the context of the Lake Chad basin conflict was highlighted.³⁷

The extent to which the UNSC has considered climate change has been limited to the extent to which it relates to armed conflict. In 2007, it examined climate change as a threat to international peace, in the context of it being a root cause of armed conflict.³⁸

In 2011, the UNSC held an elaborate discussion on the interface between climate change and global peace. The Secretary-General urged that not only does climate change intensify other threats to global peace, but that it is also a threat to world peace.³⁹ The President of

³⁶ United Nations General Assembly Resolution 64 (2009), Adopted at its 64th Meeting, Held on 11th September 2009; UN Doc. A/64/350; available at < <https://undocs.org/A/64/350> > (accessed on 11/6/2021).

³⁷ UN Security Council, Security Council Resolution 2349 (2017) , Adopted by the Security Council at its 7911th Meeting, Held on 31st March 2017; UN Doc. S/RES/ 2349 (2017); available at < <https://digitallibrary.un.org/record/863830?ln=en> > (accessed on 9th August 2021).

³⁸ UN Security Council, Security Council Provisional Resolution 5663 (2007), Adopted at its 5663rd Meeting, Held on 17th April 2007; UN Doc. S/PV.5663 at < <https://undocs.org/S/PV.5663> > (accessed on 10/6/2021).

³⁹ UN Security Council, Security Council Provisional Resolution 6587 (2011), Adopted at its 6587th Meeting, Held on 20th July 2011; UN Doc. S/PV.6587; available at <

the Republic of Nauru, Marcus Stephen, explained the implication of climate change on world peace on behalf of the Pacific Small Island Developing States, which are most vulnerable to climate change. These states include Fiji, the Marshall Islands, Micronesia, Palau, Papua New Guinea, Samoa, Solomon Islands, Tuvalu, Tonga, Vanuatu, Nauru, the Republic of Nauru, and Maldives, Seychelles and, Timor-Leste. The president of the UNSC argued that climate change threatens world peace in a similar manner as does terrorism and nuclear proliferation and that it has the ability to “destabilize Governments and ignite conflict.”⁴⁰ In contrast, he stated that neither terrorism nor nuclear proliferation had led to the disappearance of a whole nation, as climate change was likely to do. In another meeting of the UNSC, Afelee F. Pita, on behalf of Tuvalu stated that climate change endangers environmental security.⁴¹ He highlighted Tuvalu’s vulnerability to climate change, which had affected Tuvalu’s coral reefs and fish stocks. He explained that Tuvalu was facing increased threats from water shortages and cyclones. The possibility of it suffering rising sea levels had caused many people to migrate from Tuvalu. He concluded by stating that the world had moved from “the cold war to the “warming war.”⁴²

https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_6587.pdf > (accessed on 18/6/2021).

⁴⁰ UN Security Council, Security Council Provisional Resolution 6587 (2011), Adopted at its 6587th meeting Held on 20th July 2011; UN Doc. S/PV.6587; available at <

https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_6587.pdf > (accessed on 18/6/2021).

⁴¹ United Nations Security Council Press Release SC/9000, ‘Security Council Holds First-Ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers’ 9000(2007); available at < <https://www.un.org/press/en/2007/sc9000.doc.htm> > (accessed on 2nd August 2021).

⁴² United Nations Security Council Press Release SC/9000, ‘Security Council Holds First-Ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers’ 9000(2007); available at < <https://www.un.org/press/en/2007/sc9000.doc.htm> > (accessed on 2nd August 2021).

The UNSC, yet again, convened in 2018 to discuss climate change-related risks and world peace.⁴³ Cohen, on behalf of the United States of America, reiterated the seriousness with which the Council focuses on armed conflict, and not on non-conventional threats to world peace. He stated that “natural phenomena and disasters such as droughts, monsoons, tsunamis, earthquakes, hurricanes, desertification, volcanic eruptions, and other such events” threaten global security.⁴⁴ These have “taken lives, destroyed homes, impacted resources, and caused widespread displacement both within and beyond national borders.”⁴⁵

The UNSC has not addressed climate change as an independent threat to global peace. Yet, climate change, by itself threatens global peace in a number of ways. For instance, sea-level rise erodes coastlines, leading to loss of territory, which may in turn disrupt traditional land ownership systems, leading to conflicts over land. Some islands may as well disappear because of rising sea levels, forcing large numbers of persons to migrate across borders.⁴⁶

⁴³ UN Security Council, Security Council Provisional Resolution 8307(2018), Adopted at its 8307th Meeting, Held on 11th July 2018; UN Doc. S/PV.8307; available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8307.pdf > (accessed on 18/6/2021).

⁴⁴ UN Security Council, Security Council Provisional Resolution 8307(2018), Adopted at its 8307th Meeting, Held on 11th July 2018; UN Doc. S/PV.8307; available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8307.pdf > (accessed on 18th June 2021).

⁴⁵ UN Security Council, Security Council Provisional Resolution 8307(2018), Adopted at its 8307th Meeting, Held on 11th July 2018; UN Doc. S/PV.8307; available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8307.pdf > (accessed on 18th June 2021).

⁴⁶ UN Security Council, Security Council Provisional Resolution 6587 (2011), Adopted at its 6587th Meeting, Held on 20th July 2011; UN Doc. S/PV.6587; available at < https://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_6587.pdf > (accessed on 18th June 2021)

Climate change also brings about climate migration leading to refugee influxes. When climate refugees are forcefully displaced from their homes, their migration may bring about conflict over water and land. In the UNSC Resolution 13677, it was acknowledged that through massive displacement of people and “competition for scarce natural resources”, climate change threatens world peace.⁴⁷

Climate change brings about human/population displacement, leading to climate refugees leaving their places of habitual residence to other states. Environmental refugees are people who involuntarily leave their “traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people)” which endangers their existence, or seriously affects their quality of life.⁴⁸

The question of whether climate refugees merit protection under the Refugee Convention⁴⁹ is a contentious one. On 17th August 2000, New Zealand’s Refugee Status Appeals Authority dismissed Refugee Appeal Nos. 72189/2000, 72190/2000, 72191/2000, 72192/2000, 72193/2000, 72194/2000, and 72195/2000 brought by seven citizens of Tuvalu against the decision by a New Zealand refugee status officer declining their refugee status applications.⁵⁰ The seven appellants were members of the same nuclear family. They had fled Tuvalu due to environmental and economic difficulties. Their appeal was

⁴⁷ UN Security Council, Security Council Resolution 13677(2019), Adopted at its 8451st Meeting, Held on 25th January 2019; UN Doc. S/RES/13677(2019); available at < <https://www.un.org/press/en/2019/sc13677.doc.html> > (accessed on 8/2/2021).

⁴⁸ Essam El-Hinnawi, *Environmental Refugees*, (United Nations Environment Programme, Nairobi, 1985), p. 5.

⁴⁹ Convention Relating to the Status of Refugees, (Adopted on 28th July 1951 and came into force on 22nd April 1954); 189 UNTS 137; available at < <https://www.unhcr.org/4ca34be29.pdf> > (accessed on 8th August 2021).

⁵⁰ [2000] NZRSAA 355.

dismissed on the ground that the fears articulated by the appellants did not show that they feared returning to Tuvalu in fear of prosecution on the grounds of “race, religion, nationality, membership of a particular group, and political opinion.”⁵¹ The Authority ruled against their grounds of appeal stating that Tuvalu citizens face the “same environmental problems and economic difficulties living in Tuvalu.”⁵² The Authority referred to the appellants as unfortunate victims of “the forces of nature.”⁵³ According to the Authority, their fears were not for the kind of harm directed to the appellants because of their political or social statuses.

A similar case was decided in Australia on 10th December 2009. In Refugee Review Tribunal Appeal No. 0907346,⁵⁴ the Applicant, a citizen of Kiribati, sought the Tribunal’s intervention in reviewing the decision of the Minister for Immigration and Citizenship, who had denied his application for a Protection (Class XA) visa. The applicant had been forced out of Kiribati, which was being threatened by sea level rise. The Applicant’s claim was that due climate change, Kiribati was experiencing sea level rise, and as such, the future of the pacific country, made of several islands was in jeopardy, because the islands were disappearing. The Court rejected the Appellant’s application on grounds that his fears had no place in the Refugee Convention. His fear of persecution by climate change did not arise out of him being a member to any particular group. The carbon emissions causing climate change were found insufficient to amount to persecution under the Refugee Convention.

⁵¹ [2000] NZRSAA 355.

⁵² [2000] NZRSAA 355.

⁵³ [2000] NZRSAA 355.

⁵⁴ [2009] RRTA 1168.

The 1951 Refugee Convention⁵⁵ does not protect persons displaced by climate change. Article 1(A)(2) of the Convention Relating to the Status of Refugees defines a refugee as one who cannot be protected by his or her country of origin or country of residence due to a “well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.” The Refugee Convention was adopted as part of “the United Nations' response to the mass exodus of refugees fleeing Falangist, Quisling, and Nazi regimes in Europe during and after the Second World War.”⁵⁶ The Refugee Convention was enacted at a time when perception of threats to peace and security were synonymous with war. Several provisions of the Convention sought to protect persons forcibly displaced during war.⁵⁷ Therefore, climate refugees are not accommodated in the definition of persons meriting protection under the Refugee Convention.

In a bid to broaden the definition of a refugee, the OAU adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵⁸ On its face, this Convention widens the definition of a refugee in Article I(2). It provides that a refugee is a person who is compelled to leave his place of habitual residence to seek refuge in another country due to “external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality.” It expands the

⁵⁵ Convention Relating to the Status of Refugees, (Adopted on 28th July 1951 and came into force on 22nd April 1954); 189 UNTS 137; available at < <https://www.unhcr.org/4ca34be29.pdf> > (accessed on 8th August 2021).

⁵⁶ Alice Edwards, ‘Refugee Status Determination in Africa’ (2006) 14 *African Journal of International and Comparative Law* 204.

⁵⁷ Convention Relating to the Status of Refugees; 28th July 1951; 189 UNTS 137, Articles 9, 10, 11,

⁵⁸ Convention Governing the Specific Aspects of Refugee Problems in Africa (Adopted on 10th September 1969 and came into force on 20th January 1974); 1001 UNTS 45; available at < https://au.int/sites/default/files/treaties/36400-treaty-oau_convention_1963.pdf > (accessed on 26th August 2021).

scope of this definition to include people who flee from other indiscriminate types of harm without a well-founded fear of persecution.⁵⁹ It applies an objective approach, focusing on specific cases that are placed within the causes of flight.⁶⁰ However, the expanded definition of a refugee in the Convention Governing the Specific Aspects of Refugee Problems in Africa though wide, is subject to vagueness and is, thus, not sufficient to address obstacles faced in determining of refugees on the expanded terms.

Further to the manner in which climate change is a stand alone threat to international peace, is that declining natural resources, such as decreased water supply, may lead to involuntary migration, thus creating pressure on other areas or countries of destination. For instance, due to drought, the Turkana people migrate from Kenya to Northern Uganda, causing tensions as they scramble for scarce pastures and water points with the Karamojong herders in Northern Uganda.⁶¹ Turkana is an arid area characterised by two rainy seasons. These are the long *akiporo* rains, which occur between March and May, and the short *akecheres* rains experienced from October to November. With both seasons leading to an average of 300-400mm of rainfall annually, access to water is minimal to support their livelihoods, and cattle, leading to cross-border migration into South Sudan and Uganda in search for water sources and pasture.⁶² This is a major cause of cross-border conflict between Turkana

⁵⁹ Wood Tamara, 'Who Is a Refugee in Africa: A Principled Framework for Interpreting and Applying Africa's Expanded Refugee Definition' (2019) 31 *International Journal of Refugee Law* 290.

⁶⁰ Azfer Ali Khan, 'Can International Law Manage Refugee Crises?' (2016) 5 *The Oxford Undergraduate Law Journal* 1 54.

⁶¹ United States Agency for International Development, ' Technical Report on Lessons Learned From PEACE III: A Mid-Cycle Portfolio Review' (June 2019); available at < https://www.climatelinks.org/sites/default/files/asset/document/2019_USAID_ATLAS_Lessons%20Learned%20PEACE%20III.pdf > accessed on 3rd August 2021.

⁶² United States Agency for International Development, ' Technical Report on Lessons Learned From PEACE III: A Mid-Cycle Portfolio Review' (June 2019), p. 17 available at <

pastoralists and Karamojong pastoralists. Cross-border disputes have been recurrent between the Turkana and the Toposa in South Sudan, the Dassenech and Nyangatom in Ethiopia, and the Matheniko and Dodoth in Uganda.”⁶³

In addition, there may be conflicts over the use of trans-boundary natural resources between non-state actors, or between state actors and non-state actors threatening global peace. At “the international level, a state's exercise of its sovereign rights is limited by the duty not to cause injury or damage to the environment of its neighbour or areas beyond the limits of national jurisdiction.”⁶⁴ It is also noteworthy, that the “implementation of environmental protection policies and obligations more often leads to disputes arising from the encroachment upon perceived property interests and national sovereign rights.”⁶⁵ This may breed conflict occasioned by either state actors or non-state actors likely to be affected by the use of transboundary resources.

Environmental damage may be used as a warfare technique. For instance, the UNSC, following its Resolution 660 cautioned Iraq against unleashing further environmental disaster on Kuwait, and depletion of Kuwait’s natural resources.⁶⁶

https://www.climatelinks.org/sites/default/files/asset/document/2019_USAID_ATLAS_Lessons%20Learned%20PEACE%20III.pdf > (accessed on 3rd August 2021).

⁶³ United States Agency for International Development, ‘Technical Report on Lessons Learned From PEACE III: A Mid-Cycle Portfolio Review’ (June 2019), p. 16 available at < https://www.climatelinks.org/sites/default/files/asset/document/2019_USAID_ATLAS_Lessons%20Learned%20PEACE%20III.pdf > (accessed on 3rd August 2021).

⁶⁴Francis D. P. Situma, ‘The Efficacy Of International Environmental Law: A Personal Reflection’ (1995) 2 *ILSA Journal of International Comparative Law* 63.

⁶⁵Francis D. P. Situma, ‘The Efficacy Of International Environmental Law: A Personal Reflection’ (1995) 2 *ILSA Journal of International and Comparative Law* 63.

⁶⁶ UN Security Council, Security Council Resolution 660 (1990), Adopted by the Security Council at its 2932nd meeting, Held on 2nd August 1990; UN Doc. S/RES/660(1990); available at < <http://unscr.com/en/resolutions/doc/660> > (accessed on 12th August 2020).

Finally, there may be sudden environmental disasters or changes leading to strains on the environment, and conflict.

Just like infectious diseases, climate change is a non-traditional threat to global peace. It, however, was not envisioned under the Charter of the United Nations, and does not fall under the mandate of the UNSC, as the inherent nature of the threat does not involve interstate war. The UNSC has not fully addressed threats to security involving disasters, yet it is the organ in charge of addressing international “threats to the peace.”⁶⁷ It has shied away from addressing climate change as a global peace and security threat.

3.2.3 Cyber Operations.

Estonia has one of the highest internet penetration rates on the globe. On 27th April 2007, it was attacked. Within four hours of the attack, Estonia’s leading banks, all its principal newspaper websites, critical websites, and e-government communications, crashed. A nuclear, chemical, or biological weapon of mass destruction did not occasion the attack. It was a cyber-assault. The consequences of the attack were “potentially just as disastrous as a conventional attack.”⁶⁸

Cyber operations may take various forms. These include cyber-attacks, cyber-crime, cyber-warfare, and information attacks. A cyber-attack is aimed towards compromising how a computer network operates through using worms, trojan horses, and viruses, all of which

⁶⁷ Susan L. Craig, ‘Non-traditional Security Threats; Chinese Perceptions of Traditional and Non-traditional Security Threats’ (2004) *Strategic Studies Institute* 7.

⁶⁸ Scott J. Shackelford, ‘From Nuclear War to Net War: Analogizing Cyber Attacks in International Law’ (2009) 27 *Berkeley Journal of International Law* 192.

are all syntactic attacks aimed at disrupting a computer's operating system.⁶⁹ One of the key characteristics of a cyber-attack is that it must be offensive, with political or national security motivations. On the other hand, a cyber-crime is not motivated by political or national security reasons. Cyber-crime involves using a computer system to violate the criminal law of a state. Such violation may be in the form of identity theft, fraud, and intellectual property piracy.⁷⁰

Cyber-warfare means the use of computer systems in a manner that undermines the function of a computer within the context of an armed conflict, or to bring about the effects of a conventional armed attack.⁷¹ There are several classifications of warfare. These include "kinetic (conventional, physical) warfare, biological warfare, chemical warfare, nuclear warfare, intelligence-based warfare, network-based warfare, or guerrilla warfare."⁷² Cyber-warfare may also be motivated by a political or national security purpose.⁷³

Related to cyber-attacks, cyber-crime, and cyber-warfare are information operations. Information operations refer to "any non-consensual actions intended to discover, alter, destroy, disrupt or transfer data stored in a computer manipulated by a computer or

⁶⁹ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 828.

⁷⁰ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 830.

⁷¹ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 830.

⁷² Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 826.

⁷³ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 833.

transmitted through a computer network.”⁷⁴ These actions may be in the form of electronic warfare, military deception, psychological operations, physical attacks, or special information operations.⁷⁵ Information war constitutes information operation conducted to achieve specific results against a targeted opponent in times of conflict or crisis.⁷⁶

Cyber-attacks, cyber-crime, cyber-warfare, and information war are all carried out by means of a computer. Computers are more than just a laptop or a desktop. They include “devices that control elevators and traffic lights, regulate pressure on water mains, and are ubiquitous in appliances, such as cell phones, televisions, and even washing machines.”⁷⁷

There are several instances where cyber-attacks, cyber-crime, and cyber-warfare may overlap. Cyber-crime and cyber-attacks are seen to overlap when a non-state actor “commits an illegal act by means of a computer network, undermines a computer network, and has a political or national security purpose.”⁷⁸ Cyber-warfare, cyber-crime, or cyber-attack overlap when a non-state actor uses a computer system or network to commit a crime in a manner that undermines the function of another computer network to achieve political ends, or for a national security purpose in the context of an armed conflict, or to bring about an impact equivalent to that of an armed attack.⁷⁹

⁷⁴ Michael N. Schmitt, ‘Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework’, (1999) 37 *Columbia Journal of Transnational Law* 890.

⁷⁵ Michael N. Schmitt, ‘Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework’, (1999) 37 *Columbia Journal of Transnational Law* 891.

⁷⁶ Michael N. Schmitt, ‘Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework’, (1999) 37 *Columbia Journal of Transnational Law* 932.

⁷⁷ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, ‘The Law of Cyber-Attack’ (2012) 100 *California Law Review* 830.

⁷⁸ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, ‘The Law of Cyber-Attack’ (2012) 100 *California Law Review* 836.

⁷⁹ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, ‘The Law of Cyber-Attack’ (2012) 100 *California Law Review* 837.

Cyber operations occur in the cyberspace, which is “an ethereal place which does not neatly fit into the land, sea, air, space dichotomy.”⁸⁰ Cyberspace is sometimes referred as to the “fifth domain of warfare next to land, sea, air and space.”⁸¹ Cyber operations bring into perspective Sun-Tzu’s “concept of indirect warfare, where a war could be fought and won without laying siege to the cities.”⁸² Actions in cyberspace do not “come cloaked in military garb.”⁸³ Cyber operations transcend national boundaries. The cyber space is “a haven for criminals, terrorists, and other actors whose intentions could undermine the value of the cyberspace commons for the majority of its users.”⁸⁴ Cyber operations blur the “traditional boundaries between offence and defence.”⁸⁵

Even though it is not contested that the laws of war apply to “cyber operations conducted in relation to an existing armed conflict”, the question of whether cyber operations can give rise to threat or use of force to trigger the applicability of international law, is a contentious one.

A well-coordinated cyber operation has the potential of bringing the entire world at a standstill, as did the two world wars. With the advance of technology, digitalisation, artificial intelligence, internet connectivity, the whole world is a web which can be

⁸⁰ Richard Aldrich, 'The International Legal Implications of Information Warfare', (1996)1 *Airpower Journal* 102.

⁸¹ Nils Melzer, *International Humanitarian Law: A comprehensive Introduction* (International Committee of the Red Cross, Geneva, 2016), p. 43

⁸² Sitara Noor, 'Cyber (In)security: A Challenge to Reckon With' (2014) 34 *Institute of Strategic Studies Islamabad* 15.

⁸³ Richard Aldrich, 'The International Legal Implications of Information Warfare', (1996)1 *Airpower Journal* 103.

⁸⁴ Bob Butler a, 'Multilateral Approaches for Improving Global Security in Cyber Space' (2012)11 *Georgetown Journal of International Affairs* 5

⁸⁵ Sitara Noor, 'Cyber (In)security: A Challenge to Reckon With' (2014) 34 *Institute of Strategic Studies Islamabad* 2.

accessed by either state or non-state actors, and can bring critical services, such as medical, education, financial, transportation, water supply, electricity, fire control, police services, to a stop. A young adventurous boy sited in Kakamega, Kenya, armed with a computer and internet connectivity has the potential of launching a cyber operation on an entire nation. Terrorist groups can also carry out cyber-attacks against target states bringing about immense losses in lives and property. For instance, where the information management system of all hospitals is attacked, critical operations of hospitals could be shut down at once, leading to catastrophe in the health care system of a state. Such “would constitute an electronic Pearl Harbor that would destroy most of a nation’s information infrastructure, just as an electromagnetic pulse (“EMP”) from a nuclear weapon causes destruction, dislocation and loss of life.”⁸⁶ With the increased access to computers, the potential for widespread damage is very high. The “information attack against a military computer could be the work of a curious teenager down the street, the work of terrorists in a nearby country, or the work of a belligerent government halfway around the world.”⁸⁷

Cyber-attacks, cyber-crime, information wars, and cyber-warfare have become increasingly common. Even though non-state actors can use cyber-attacks to assault states, and other private entities or establishments, they are non-traditional threats to security, and thus do not fit within the traditional threats likely to trigger action by the UNSC under Article 39 of the Charter of the United Nations.

⁸⁶ Scott J. Shackelford, ‘From Nuclear War to Net War: Analogizing Cyber Attacks in International Law’ (2009) 27 *Berkeley Journal of International Law* 194.

⁸⁷ Richard Aldrich, ‘The International Legal Implications of Information Warfare’, (1996)1 *Airpower Journal* 103.

The source of the cyber operations is seldom traceable. For instance, in 2010, stuxnet, a computer worm was used to attack Iran's nuclear program. On investigation of the source of the attack, it appeared that the worm had several authors across the world.⁸⁸ Sometimes, investigations into the author of a cyber operation leads to anonymous, or unidentifiable individuals, or gangs. For instance, in 2021, though a ransomware attack, a cyber-criminal gang took the Colonial Pipeline's networks offline.⁸⁹ On investigation, the FBI disclosed that a criminal gang called "DarkSide" had perpetrated the ransomware attack on the US fuel pipeline.⁹⁰ Even though there were speculations that the cyber-criminal gang was Russian, there were no leads to any particular individual. Colonial Pipeline was only able to get back online after paying the cyber-criminal gang USD 5,000,000 in ransom.⁹¹ DarkSide had also launched a ransomware against Toshiba Tec France Imaging System on 4th May 2021.⁹² In October 2020, a ransomware attack against the University of Vermont Medical Centre "knocked out" 5,000 computers from the hospital's information

⁸⁸ Oona A. Hathaway, Rebecca Crootof, Philip Levitz, Haley Nix, Aileen Nowlan, William Perdue and Julia Spiegel, 'The Law of Cyber-Attack' (2012) 100 *California Law Review* 819.

⁸⁹ Mary-Ann Russon, 'US fuel pipeline hackers 'didn't mean to create problems' British Broadcasting Company (London, 10 May 2021); available at < <https://www.bbc.com/news/business-57050690> > (accessed on 6th August 2021).

⁹⁰ Mary-Ann Russon, 'US fuel pipeline hackers 'didn't mean to create problems' British Broadcasting Company (London, 10 May 2021); available at < <https://www.bbc.com/news/business-57050690> > (accessed on 6 August 2021).

⁹¹ Mary-Ann Russon, 'US fuel pipeline 'paid hackers \$5m in ransom' British Broadcasting Company (London, 14 May 2021); available at < <https://www.bbc.com/news/business-57112371> > (accessed on 6th August 2021).

⁹² Mary-Ann Russon, 'US fuel pipeline 'paid hackers \$5m in ransom' British Broadcasting Company (London, 14 May 2021); available at < <https://www.bbc.com/news/business-57112371> > accessed on 6th August 2021.

technology network.⁹³ This disrupted the hospital’s radiology services, patient care, sleep studies, and financial systems for thirty days amidst a global pandemic.⁹⁴

The increased dependence and reliance on internet, computers, and digital networks increases the threat of cyber-attacks, cyber-crime, information wars, and cyber-warfare. The “advent and abundance of new technologies like smart phones and cloud computing, cyber vulnerability has increased manifold and poses a greater challenge.”⁹⁵

On whether a cyber-attack constitutes an armed attack or use of force, Michael Schmitt proposes the use of an effects-based approach.⁹⁶ The impact of the cyber-attack should be measured against six factors. The first pointer is the severity of the attack, measured by the scale and type of the harm. The second factor is the directness of the attack, which involves assessing the causation link between the harm and the link. The third factor is immediacy, meaning how fast the harm occurs after the attack. The fourth factor is invasiveness, meaning the extent of penetration of the attack into the target territory. The sixth factor is measurability, meaning the extent to which the harm can be quantified or measured. The sixth, and last factor, is presumptive legitimacy, meaning that weight is given to the fact

⁹³ Brian Fung, ‘Hundreds of health care facilities were hit by ransomware last year amid pandemic’ British Broadcasting Company (London, 19 January 2021); available at < <https://edition.cnn.com/2021/01/19/tech/ransomware-2020-review/index.html> > accessed on 17th August 2021.

⁹⁴ Brian Fung, ‘Hundreds of health care facilities were hit by ransomware last year amid pandemic’ British Broadcasting Company (London, 19 January 2021); available at < <https://edition.cnn.com/2021/01/19/tech/ransomware-2020-review/index.html> > accessed on 17th August 2021.

⁹⁵ Sitara Noor, ‘Cyber (In)security: A Challenge to Reckon With’ (2014) 34 *Institute of Strategic Studies Islamabad* 15.

⁹⁶ Michael N. Schmitt, ‘Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework’, (1999) 37 *Columbia Journal of Transnational Law* 914, 915.

that cyber-attacks constituting an armed attack are an exception, rather than the rule in the field of cyber operations.

Conventional armed attacks require a physical confrontation and a physical entry. Characterising an information attack as force is problematic.⁹⁷ The same is true for cyber-attacks and cyber-crimes. The use of non-traditional weapons does not fit into Article 39 of the UN Charter of the United Nations.

Articles 2(4) of the UN Charter outlaws the use or threat of use of force by states against other states. Since cyber-space transcends territorial and geographical borders, questions as to whether cyber operations constitute the use of force under Article 2(4) of the UN Charter, and activate the right to self-defence under Article 51 of the Charter, linger on.

It is important to determine whether cyber operations amount to “use of force” in order for a state to justify resort to self-defence, or the Security Council to determine the measures to take against the aggressor under Article 39 of the UN Charter.⁹⁸ Not all cyber operations constitute the use of force. Information war poses unique hiccups to the legal regime concerning self-defence and the use of force.⁹⁹

⁹⁷ Richard Aldrich, 'The International Legal Implications of Information Warfare', (1996)1 *Airpower Journal* 102.

⁹⁸ Alexandru Nitu, 'International Legal Issues and Approaches Regarding Information Warfare' (2011) 10 *Journal of Information Warfare* 52.

⁹⁹ Scott J. Shackelford, 'From Nuclear War to Net War: Analogizing Cyber Attacks in International Law' (2009) 27 *Berkeley Journal of International Law* 195.

3.2.4 Human Trafficking

In the eighth century, people would purchase other human beings, and acquire a “good title” to them.¹⁰⁰ The purchased persons were human chattels, who could be bought and sold at will. For instance, when Africans arrived in their ports of destination, “The New World”, they were delivered as commodities with paperwork to facilitate their sale.¹⁰¹ Courts recognized the buying and selling of human beings as just another form of trade, protected by commercial law.¹⁰² The “transatlantic slave trade (ancient slavery) in which Africans were captured, chained, and transported to Latin America, the Caribbean, and the United States, to work as slaves was officially abolished around 1807.”¹⁰³ Thirteen centuries later, slave trade has materially changed in form. Even though “chattel slavery has been abolished to a greater extent, modern forms of human enslavement exist.”¹⁰⁴ These include slavery, debt bondage, and forced labour.

Article 3(a) of the Palermo Protocol¹⁰⁵ defines human trafficking as the process of recruitment, transportation, reception, and keeping of individuals by using force, deception, false promises, threats, financial baits, abduction, abuse of power, or of a vulnerability to procure their consent to obtain control over them in order to exploit them.

¹⁰⁰ Paul Finkelman and Seymour Drescher, ‘The Eternal Problem of Slavery in International Law: Killing the Vampire of Human Culture’ (2017)17 *Michigan State Law Review* 755.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Job Elom Ngwe and Oko Elechi, ‘Human Trafficking: The Modern Day Slavery of The 21st Century’ (2012) 6 *African Journal of Criminology and Justice Studies* 103.

¹⁰⁴ Marley S Weiss, ‘Human Trafficking and Forced Labor: A Primer’ (2015) 31 *ABA Journal of Employment and Labour Law* 1.

¹⁰⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Adopted on 15 November 2000 and came into force on 25 December 2003); 2237 UNTS 319; available at < <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> > (accessed on 26th August 2021).

Exploitation may be in the form of forced labour, slavery, organ harvesting, debt bondage, and sexual exploitation.

In 2014, the International Labour Office (ILO) estimated that every year, around 21,000,000 people endure human trafficking in the form of compulsory or forced labour, slavery, and debt bondage.¹⁰⁶ Of these, 11,400,000 (55%) are women and girls, compared to 9,500,000 (45%) being boys and men.¹⁰⁷ Africa accounts for 3,700,000(18%) of the victims.¹⁰⁸ It is further estimated that each year, USD 152,000,000,000 is generated from forced labour globally.¹⁰⁹ In 2016, further research disclosed that on any given day of the year, there were 40,300,000 victims of modern day slavery, 24,900,000 being trafficked into forced labour, and 15,400,000 being enslaved in forced marriages.¹¹⁰ That was 5 years ago. The numbers of victims have since risen. Even in 2016, the numbers of trafficked victims were far beyond the reported 40,300,000 on account of the research being biased to only two forms of human trafficking, namely, forced marriages and forced labour.

Human trafficking is one of the forms of modern-day slavery. It entails “one of the most egregious violations of human rights because it goes to the core of each victim's privacy, freedom, sexuality, and personhood.”¹¹¹ Some of the most known human trafficking

¹⁰⁶ International Labour Office, *Profits and Poverty: The Economics of Forced Labour* (ILO 2014) 1 < <http://www.ilo.org/public/libdoc/ilo/2014/485559.pdf> > (accessed on 3rd August 2021).

¹⁰⁷Susan L. Craig, 'Non-traditional Security Threats; Chinese Perceptions of Traditional and Non-traditional Security Threats' (2004) *Strategic Studies Institute* 7.

¹⁰⁸ Susan L. Craig, 'Non-traditional Security Threats; Chinese Perceptions of Traditional and Non-traditional Security Threats' (2004) *Strategic Studies Institute* 7.

¹⁰⁹Susan L. Craig, 'Non-traditional Security Threats; Chinese Perceptions of Traditional and Non-traditional Security Threats' (2004) *Strategic Studies Institute* 13.

¹¹⁰ International Labour Office, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO 2017) 1 < https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf > (accessed 3rd August 2021).

¹¹¹Claire Sundstrom, 'Is There a Solution to Human Trafficking?' (2017) 21 *Adelphia LJ* 23.

criminal gangs include the Snakeheads based in China, the Yakuza from Japan, and the Russian Mafia.¹¹²

The East African region is severely affected by human trafficking.¹¹³ For instance, organised trafficking rings traffic women from East Africa and subdue them to sex trafficking in Botswana.¹¹⁴ Traffickers subject women and men from East Africa “to forced labour in domestic service, construction, cleaning, and begging, as well as sex trafficking.”¹¹⁵ Ugandan and Nigerian traffickers exploit Kenyan women in sex trafficking in Thailand. Ugandan girls are exploited in sex trafficking and forced labour in Kenya, especially in Nairobi’s Eastleigh neighbourhood.¹¹⁶ Nepali, Indian, and Pakistani women are enslaved in Mujra dance clubs in Nairobi and Mombasa, where they are held in debt bondage, until they clear the debts through offering commercial sex to benefit traffickers.¹¹⁷ Children and individuals with physical disabilities are brought into Kenya from Tanzania and other neighbouring countries for exploitation through forced

¹¹² Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a More Holistic Approach*, (Martinus Nijhoff Publishers, Leiden, 2006), p. 2.

¹¹³ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed 3rd August 2021).

¹¹⁴ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed 3rd August 2021).

¹¹⁵ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed 3rd August 2021).

¹¹⁶ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed 3rd August 2021).

¹¹⁷ Ibid.

begging.¹¹⁸ Victims from East Africa are exploited by subjection to domestic servitude in Saudi Arabia.¹¹⁹

Human trafficking is endemic in Africa. Several crises have engulfed Africa in the past, and still do in the present, breeding several push and pull factors favourable to the thriving of human trafficking. While “the push factors are those issues and circumstances that drive or force people into accepting demands that render them susceptible to trafficking, the pull factors encapsulate those that influence people into accepting dehumanising offers.”¹²⁰ The push factors include poverty, hunger, political instabilities, social instabilities, greed, peer pressure, unemployment, high unemployment levels, internal displacements, political instability, greed, peer pressure, and corruption. The pull factors include “high demand for organs and body parts, the demand for cheap and low-skilled labour, and the effect of globalisation, weak border control, economic disparities between developed and developing countries.”¹²¹ Criminal gangs thrive on these misfortunes by promising victims better lives.¹²² Most organized criminal groups operate in developing countries with minimal or no economic opportunities.¹²³

Just as violations of human rights are the root causes of a refugee influx, human trafficking violates the rights of its victims, forcing them to seek protection for their lives away from

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Jane Reeves, *Modern Slavery and Human Trafficking*, (IntechOpen, London, 2021), p. 22.

¹²¹ Jane Reeves, *Modern Slavery and Human Trafficking*, (IntechOpen, London, 2021), p. 22.

¹²² Jane Reeves, *Modern Slavery and Human Trafficking*, (IntechOpen, London, 2021), p. 15.

¹²³ Job Elom Ngwe and Oko Elechi, ‘Human Trafficking: The Modern Day Slavery Of The 21st Century’ (2012) 6 *African Journal of Criminology and Justice Studies* 103.

their countries of origin or residence.¹²⁴ This is especially true in cases of cross-border human trafficking. However, even though refugees are protected under the Refugee Convention, the question of whether the protection available to refugees would be available to victims of human trafficking is yet to be settled, notwithstanding that their human rights are abused at various stages of the trafficking process.

In *Moldova v. Secretary of State for the Home Department*,¹²⁵ the appellant filed an application for asylum in United Kingdom, on grounds that she had been trafficked for sexual exploitation. A United Kingdom Asylum and Immigration Tribunal held that "people who have been trafficked" do not form a social group under the meaning of a refugee in the Convention. Therefore, they cannot seek protection under the pretext of belonging to a particular social group. Similar to this decision, in *Cheba and Others v Minister of Police and Others*,¹²⁶ a High Court in South Africa dismissed the Applicants' prayer for an Asylum Seekers Permit, and instead ordered that they obtain a visitor's visa. In this case, the Appellants were Ethiopian nationals, who had been locked up in Polokwane Welfare Centre in South Africa. Their application sought release from the Centre, and an order for them to be issued with asylum seeker permits on the basis that they were victims of human trafficking.

Even while it remains unclear whether victims of human trafficking are protected by the Refugee Convention, an immeasurable number of people are increasingly falling victim to

¹²⁴ Mahalu, Costa Ricky, 'The Legal Regime for Refugees in Eastern African States' (1988) 26 *Archives of International Law Journal* 23.

¹²⁵ CG (2008) UKAIT 00002.

¹²⁶ (2018) ZALMPPHC 6.

human trafficking in developed and less developed countries.¹²⁷ Human trafficking is not a loud crime, and as such, victims rarely cry out for help, leaving many cases unnoticed.¹²⁸ Instead, victims of human trafficking are usually considered criminals owing to their illegal entry in destination states.¹²⁹ In addition, the legal regime protecting victims of human trafficking who are not willing to be repatriated to their countries of origin or residence, or whose repatriation will expose them to further victimization is inadequate. Protection of the victims of human trafficking is even more important now, as the world grapples with the scourge of the infectious disease, COVID-19, which is likely to intensify the vulnerabilities exploited by human-traffickers.

Just like terrorism, drug dealing, trafficking in prohibited wildlife products, and money laundering, human trafficking may, in some instances, be transnational in nature, involving organised criminal groups operating in two, or more countries. Organised crime leads to violence, migration concerns, economic loss, environmental risks, social risks, and health and safety risks and, as such, poses a threat to world peace.¹³⁰

The UNSC, in its Resolution 660, condemned organized crime, such as domestic and transnational terrorism and drug trafficking.¹³¹ It recognized that transnational terrorism is

¹²⁷ Kathryn Mcpherson Serio, 'Identifying and Better Serving Victims of Human Trafficking: An Approach to Addressing the Growing Human Trafficking Crisis in Louisiana' (2014) 5 *Journal of Race, Gender, and Poverty* 189.

¹²⁸ Claire Sundstrom, 'Is There a Solution to Human Trafficking?' (2017) 21 *Adelphia Law Journal* 23.

¹²⁹ Idil Atak and James C Simeon, 'Human Trafficking' (2014) 12 *Journal of International Criminal Justice* 1019.

¹³⁰ United Nations Office On Drugs And Crime, 'An Introduction to Human Trafficking: Vulnerability, Impact and Action' (2008); available at < https://www.un.org/ruleoflaw/files/Intro_Human_Trafficking.pdf > accessed on 19/6/2021.

¹³¹ UN Security Council, Security Council Resolution 660 (1990), Adopted by the Security Council at its 2932nd meeting, Held on 2nd August 1990; UN Doc. S/RES/660(1990); available at < <http://unscr.com/en/resolutions/doc/660> > (accessed on 12th August 2020).

a threat to world peace.¹³² The UNSC, in this resolution, did not affirm whether trafficking in persons threatens world peace.

In November 2016, the Secretary-General submitted a report¹³³ to the UNSC concerning counter-trafficking measures. The Report was made pursuant to the statement of the President of the UNSC requesting the Secretary-General to report on the progress of counter-trafficking in persons measures put in place on 16th December 2015. The Report stated that humanitarian crises and armed conflict “expose those caught in the crossfire to increased risk of being trafficked both in and beyond conflict zones and exacerbate many factors that increase individual and group vulnerability to human trafficking”, such as gender-based violence, discrimination, and lack of economic livelihood.¹³⁴ The Report established that “migrants who move out of necessity rather than free choice are at greater risk of trafficking in persons throughout their migratory experience.”¹³⁵

The Report made several recommendations to the UNSC. These included calling upon Member States to ratify several conventions addressing human trafficking, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

¹³² United Nations Security Council, Security Council Resolution 2482(2019) Adopted by the Security Council at its 8582nd meeting, Held on 19th July 2019; UN Doc. S/RES/2482 /2019; available at < [https://undocs.org/S/RES/2482\(2019\)](https://undocs.org/S/RES/2482(2019)) > (accessed on 12th August 2020).

¹³³ United Nations Security Council, - S/2016/949, “Report of the Secretary-General on Implementation of measures to counter trafficking in persons” (10 November 2016); available at < https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/949 > (accessed on 9th June 2021).

¹³⁴ United Nations Security Council, - S/2016/949, “Report of the Secretary-General on Implementation of measures to counter trafficking in persons” (10 November 2016); available at < https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/949 > (accessed on 9th June 2021).

¹³⁵ United Nations Security Council, - S/2016/949, “Report of the Secretary-General on Implementation of measures to counter trafficking in persons” (10 November 2016); available at < https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/949 > (accessed on 9th June 2021).

Children.¹³⁶ The Report also called upon the UNSC to encourage Member States to train peacekeeping personnel on how to respond to trafficking situations in conflict and post-conflict zones.

None of the nine recommendations fronted in the Report called for treatment of trafficking as a threat to global peace. The Report dwells on human trafficking in conflict areas. It concentrates on the linkages between conflict and human trafficking and suggests action plans to deal with human trafficking during, and after, an armed conflict. This Report gives a glimpse into the mind of the UNSC on the premise upon which it attempts to address transnational human trafficking. It deals with human trafficking as a threat to international peace, only in as much as it relates to, or arises, during armed conflict, and not as a stand alone threat to international peace.

In 2016, the UNSC condemned trafficking in persons as a tool of terrorism.¹³⁷ It condemned “all acts of trafficking, particularly the sale or trade in persons undertaken by the “Islamic State of Iraq and the Levant.”¹³⁸ The UNSC also expressed “its intention to

¹³⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Adopted on 15 November 2000 and came into force on 25 December 2003); 2237 UNTS 319; available at < <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> > (accessed on 26th August 2021).

¹³⁷ UN Security Council, Security Council Resolution 2331(2016), Adopted at its 7847th Meeting, Held on 20th December 2016; UN Doc. S/RES/2331 (2016) at < [https://www.undocs.org/S/RES/2331%20\(2016\)](https://www.undocs.org/S/RES/2331%20(2016)) > (accessed on 9th June 2021).

¹³⁸ UN Security Council, Security Council Resolution 2331(2016), Adopted at its 7847th Meeting, Held on 20th December 2016; UN Doc. S/RES/2331 (2016); available at < [https://www.undocs.org/S/RES/2331%20\(2016\)](https://www.undocs.org/S/RES/2331%20(2016)) > (accessed on 9th June 2021).

consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict and in sexual violence in conflict.”¹³⁹

At its 7898th meeting held on 15 March 2017, the UNSC once again dealt extensively with the problem of human trafficking.¹⁴⁰ It, however, restricted itself to dealing with trafficking in persons, only to the extent that it relates to armed conflict.

The UNSC has always addressed the question of trafficking in persons in the context of armed conflict. In 2016, it expressed its concern that trafficking persons into and out of Libya’s territory, exacerbated the conflict in Libya.¹⁴¹ It authorised the use of all commensurate measures to disrupt organized criminal enterprises from engaging in human trafficking in Libya and its territorial sea. In 2020, the UNSC, in condemning human trafficking off the coast of Libya, acknowledged that the same was standing in the way against the stabilisation of Libya. It allowed Member States, acting under Chapter VII, of the Charter to capture vessels used for human trafficking.¹⁴²

Human trafficking may jeopardise world peace in a number of ways. It has a correlation with armed uprisings and terrorist attacks occasioned by non-state actors. Human trafficking also manifests when a governmental armed group, a paramilitary organization,

¹³⁹ UN Security Council, Security Council Resolution 2331(2016), Adopted at its 7847th, meeting Held on 20 December 2016; UN Doc. S/RES/2331 (2016); available at < [https://www.undocs.org/S/RES/2331%20\(2016\)](https://www.undocs.org/S/RES/2331%20(2016)) > (accessed on 9th June 2021).

¹⁴⁰ UN Security Council, Security Council Provisional Resolution 7898(2017) Adopted at its 7898 meeting Held on , 15 March 2017; UN Doc. S/PV.7898 (2017) available at < https://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7898 > (accessed on 9th June 2021).

¹⁴¹ UN Security Council, Security Council Resolution 2312 (2016), Adopted by the Security Council at its 7783rd Meeting, Held on 6 October 2016; UN Doc. S/RES/2312 (2016); available at < [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2312\(2016\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2312(2016)) > (accessed on 10th June 2021).

¹⁴² UN Security Council, Security Council Resolution 2546 (2020), Adopted at its 8763rd Meeting, Held on 2nd October 2020; UN Doc. S/RES/2546 (2020); available at < [https://www.undocs.org/S/RES/2546\(2020\)](https://www.undocs.org/S/RES/2546(2020)) > accessed on (accessed on 9th June 2021).

rebel group, or other non-state armed group recruits or uses children illegally through coercion, fraud, or force, to work as combatants or to support such roles.¹⁴³ They may use children as cooks, porters, guards, messengers, servants, or spies, and as sex slaves.¹⁴⁴ Between 1st April 2019 and 31st March 2020, several countries are reported to have had cases of recruiting and using child soldiers. These include Afghanistan, Burma, Cameroon, Democratic Republic of the Congo (DRC), Iran, Iraq, Libya, Mali, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.¹⁴⁵ In Burkina Faso, between September 2019 and December 2020, violent extremist groups exploited women and children in forced labour and sex servitude.¹⁴⁶

Human trafficking has far-reaching security implications. Security has always been understood to be “something that states seek to acquire and achieve in relation to one another.”¹⁴⁷ This means that states are secure when they are in a position to defend themselves against attacks on their sovereign integrity by other states.¹⁴⁸ With human trafficking, non-state actors being Criminal organisations and extremists groups threaten

¹⁴³ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed on 3rd August 2021).

¹⁴⁴ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed on 3rd August 2021).

¹⁴⁵ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed on 3rd August 2021).

¹⁴⁶ Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, ‘Trafficking In Persons Report’ (2021) < https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf > (accessed on 3rd August 2021).

¹⁴⁷ Wylie Gillian, ‘Securing States or Securing People? Human Trafficking and Security Dilemmas’ (2006) 95 *Irish Quarterly Review Publications* 7.

¹⁴⁸ Wylie Gillian, ‘Securing States or Securing People? Human Trafficking and Security Dilemmas’ (2006) 95 *Irish Quarterly Review* 7.

peace and security. It is unsafe to assume that the citizens of a state are secure if they are protected from external threats from other states.¹⁴⁹ World peace is not achieved by erecting ‘good fences’ between countries.¹⁵⁰

Terrorist groups use human trafficking as a tool to recruit and retain foreign fighters, while providing rewards to successful combatants. Human trafficking also generates revenue for terrorist gangs and other criminal gangs, providing a constant income stream to finance terrorist activities and other transnational criminal activities. Human trafficking can also be used as a ‘tactic of warfare’, leading to intimidation of populations and enslavement, just as does rape of women. “Human trafficking is one of the fastest growing and serious forms of transnational crime in the world today.”¹⁵¹

While “human trafficking is an age-long, border-less crime of global proportions, its current form and dimensions have enormous negativity on the human race (generally)”¹⁵² and pose large threats to international peace and security.

The practice of the UNSC reveals that it deals with transnational human trafficking as a secondary variable, in the context of armed conflict as the primary threat. Attention is not given to human trafficking as an independent threat to international peace, because the Charter of the United Nations did not foresee it as being a threat to world peace because it involves non-state actors using or threatening to use force. The measures employed to

¹⁴⁹ Wylie Gillian, ‘Securing States or Securing People? Human Trafficking and Security Dilemmas’ (2006) 95 *Irish Quarterly Review* 8.

¹⁵⁰ Wylie Gillian, ‘Securing States or Securing People? Human Trafficking and Security Dilemmas’ (2006) 95 *Irish Quarterly Review* 8.

¹⁵¹ Job Elom Ngwe and Oko Elechi, ‘Human Trafficking: The Modern Day Slavery Of The 21st Century’ (2012) 6 *African Journal of Criminology and Justice Studies* 103.

¹⁵² Jane Reeves, *Modern Slavery and Human Trafficking*, (IntechOpen, London, 2021), p. 15.

address human trafficking are only limited to an armed conflict situation, yet transnational human trafficking does not only occur on battlefields, but rather in varied circumstances.

3.3 Conclusion

This chapter has discussed human trafficking, infectious diseases, cyber operations, and climate change as examples of contemporary threats to international peace and security. It has explored instances where the UNSC has attempted to deal with these contemporary threats.

Did Stalin, Roosevelt, Churchill, and de Gaulle, really believe that they were founding an Organization which would "save succeeding generations from the scourge of war"?¹⁵³ The primary objective of major global powers in maintaining international peace and security has always been to contain wars among nations, which approach equates peace with the "absence of war."¹⁵⁴ The UN Charter was drafted with the tragedies of previous years in mind. As such, discussions on international peace automatically create a perception of wars waged between or among states, or military threats of war on an international scale.¹⁵⁵ Yet, non-traditional threats to international peace and security may cause economic, social, and political ramifications on the scale of a world war.

¹⁵³ Brian Urquhart, 'Peace and Security: Thoughts on the Twentieth Anniversary of Dag Hammarskjöld's Death' (1981) 60 *Foreign Affairs* 7

¹⁵⁴ Krishna Mohan Reddy and Sheela Reddy, 'Global Peace and the Role of the United Nations' (2015) 19 *The Journal of International Issues* 11.

¹⁵⁵ Krishna Mohan Reddy and Sheela Reddy, 'Global Peace and the Role of the United Nations' (2015) 19 *The Journal of International Issues* 11.

The UNSC has sluggishly pedalled when it comes to non-conventional threats to world peace such as climate change, infectious disease, human trafficking, and artificial intelligence.

CHAPTER FOUR

CHALLENGES FACED BY THE UNITED NATIONS IN ADDRESSING CONTEMPORARY THREATS TO INTERNATIONAL PEACE AND SECURITY

4.1 Introduction

Contemporary threats to international peace and security occasion several drawbacks to the United Nations. In particular, these threats challenge the United Nations Security Council's (UNSC) exercise of its primary mandate to maintain international peace and security.

This chapter explores five challenges to the United Nations' mandate to maintain global peace. In so doing, it tests the hypothesis that contemporary threats to world peace challenge the United Nations' mandate to maintain global peace.

4.1.1 Anachronism

The UNSC came into existence in 1945 as an organ of the United Nations. It was specially formed to fight the threats to peace which were, as of 1945, arising from armed activities between states. The UNSC is "anachronistic", meaning that it was tailored to appeal to the factors prevailing as of 1945.¹ The current structure, roles, and functions of the UNSC reflect the international order, which came up when the Second World War ended.² It is a reflection of the traditional concept of security, which is that of "violent threats."³ Yet, the

¹ Essaga Bipouna Nadege, 'The Security Council's Enlargement Issue' (2019) 84 *Journal of Law, Policy and Globalization* 99.

² Takashi Inoguchi Muthiah Alagappa (ed), *International Security Management and the United Nations* (United Nations University Press, Tokyo, 1999) 2.

³ Ashok Swain, *Understanding Emerging Security Challenges: Threats and Opportunities*, 1st ed., (Routledge, New York, 2012) 132.

factors that led to the UNSC's establishment and advancement are no longer exclusively prevalent in the present international context.⁴ The international use of force between states is no longer the only threat to world peace. The international security system is plagued by contemporary threats. Yet the UN Charter has not extended adequate protection to the new dimension to threats to world peace and security.

Even though there has been a dramatic change in the nature of threats to world peace, the legal and institutional regime governing threats to global peace has not experienced a similar transformation.⁵ It has remained the same. Thus, there is “a disconnect between states' security needs and the international law security architecture.”⁶

Despite the fact that the international security architecture is troubled by contemporary threats, the structure of the UNSC does not have a significant bearing on how the UNSC's mandate against contemporary threats is exercised. The competing interests of the Permanent Members are not likely to give rise to a “gridlock in the UNSC with respect to collective action against the new security threats.”⁷ The architecture of the UNSC is better suited to address contemporary threats, more “than it was to countering the state versus-state conflicts for which it was designed.”⁸

⁴ Ibid.

⁵ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 415.

⁶ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 415.

⁷ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 415.

⁸ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 416.

COVID-19, climate change, terrorist attacks, cyber-attacks, and cases of trans-national organised crime, affect the Permanent Members of the UNSC indiscriminately. These common vulnerabilities do not involve “balance-of-power rivalries among the Permanent Members.”⁹ Permanent Members of the UNSC are likely to struggle with common contemporary threats, which inherently sanction their unity and concerted action. The common interests of all the Permanent and Non-permanent Members of the UNSC improves harmony and coordination in dealing with the non-traditional threats to global peace. Therefore, the composition of the UNSC and exercise of veto power by Permanent Members is not an obstacle to the UNSC’s mandate to maintain world peace.

The problem is with the nature of powers donated to the UNSC by Article 39 of the UN Charter, and whether such powers embolden the UNSC to apply itself to contemporary threats not involving armed action, or threats originating from non-state actors. The anachronism of the UNSC hinders it from effectively discharging its function to maintain world peace when contemporary threats come into play. This is because the powers of the UNSC under Article 39 of the Charter of the United Nations were fashioned to apply against military state-to-state threats.

The UNSC has attempted to break the barriers of Article 39 of the Charter, by holding that some contemporary threats endanger world peace, through the exercise of its discretionary powers. One of such attempts has been in the case of terrorism. In UNSC Resolution 1373, the UNSC categorised the terrorist attack by the Al-Qaida against the United States of

⁹ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 504.

America on 11th September 2001 as a threat to international peace and security.¹⁰ The UNSC affirmed that such an attack attracted the right to self-defence under Article 51 of the UN Charter.¹¹ This was despite the fact that the masterminds behind the attack were non-state actors. The conduct of the terrorists was not attributable to a state.

Following Resolution 1373, the use of force against terrorist groups has increasingly been deemed to fit within the confines of Article 51 of the Charter.¹² The United States has severally asserted this right in tracking down, and bringing terrorists to account. It has severally used force against international terrorists, wherever they are found.¹³

The case of terrorism is one of its kind. It is an exception, rather than the norm, in the measures undertaken by the UNSC under Article 39 in confronting non-traditional threats to international peace. Assuming the terrorist attack of 11th September 2001, had occurred on the territory of a State that was not a permanent member of the UNSC, could the Council have readily declared terrorism a threat to international peace and security and allowed a counter attack under Article 51 of the UN Charter? Did the US use the attack to bulldoze its agenda through the Council? The rise of collective security as relates to terrorism has been largely as a result of the strong backing of one of the most powerful permanent

¹⁰ UN Security Council, Security Council Resolution 1373 (2001), Adopted by the Security Council at its 4385th Meeting, Held on 28th September 2001; UN Doc. S/RES/1373 (2001); available at < https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf > (accessed on 8th August 2021).

¹¹ UN Security Council, Security Council Resolution 1373 (2001), Adopted by the Security Council at its 4385th Meeting, Held on 28th September 2001; UN Doc. S/RES/1373 (2001); available at < https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf > (accessed on 8th August 2021).

¹² Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 443.

¹³ Allen S Weiner, 'The Use of Force and Contemporary Security Threats: Old Medicine for New Ills' (2006) 59 *Stanford Law Review* 443.

member of the UNSC, the United States of America (USA).¹⁴ The USA applied hegemonic strategies to influence categorisation of terrorism as a threat to world peace and security.¹⁵ The absence of procedures to guide how an incident merits categorisation as a threat to international peace and security challenges the exercise of the UNSC's mandate to maintain world peace and security. The enthusiasm with which the UNSC responded to terrorism has not been replicated in other cases of non-traditional threats to international peace, because of the UNSC's anachronistic nature.

4.1.2 The Definition of "Threats to the Peace" and "Breach of the Peace"

The UN Charter does not define some key terms. This is a problem. For instance, a "threat to the peace" and "breach of the peace" are not defined by the Charter. Yet the UNSC must determine what a "threat to peace" or "breach of peace" is, in order to determine how to exercise its mandate of maintaining international peace.

To understand what a threat to peace entails, it is important to decipher the meaning of the word 'peace'.¹⁶ Peace can be defined negatively (narrowly) as the absence of use of armed force, or positively (widely) as "friendly relations between states, as well as other political, economic, social, and environmental conditions"¹⁷ necessary for a peaceful international community. Since the UNSC has the total discretion to interpret the terms "threat to the

¹⁴ Thomas M. Franck, 'Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States' (1970)64 *The American Journal of International Law* 809.

¹⁵ Thomas M. Franck, 'Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States' (1970)64 *The American Journal of International Law* 811.

¹⁶ Rene Vark, 'Terrorism as a Threat to Peace' (2009) 16 *Juridica International* 216.

¹⁷ Ibid.

peace" and "breach of the peace," it may deem conduct as a threat to peace, what is not a threat to peace, and as a breach of peace, what is not a breach of peace.¹⁸

The interpretation of the terms "threat to the peace" and "breach of the peace" is left to the unbridled discretion of the UNSC.¹⁹ Discretion is amenable to abuse, especially when there are no checks and balances governing its exercise. The UNSC is not supervised by any organ of the United Nations. There are no checks on its discretion. Thus, the manner in which it exercises discretion may be spontaneous, not following any particular criteria, which could attract abuse of the discretionary powers by hegemonies. Some permanent members of the UNSC may also abuse this power to illegitimately and forcefully settle disputes or scores with other states. They may generalize indeterminate occurrences as threats to peace.

When inter-state armed conflict threatens international peace, the exercise of discretion by the UNSC in determining whether a "threat to the peace" exists is not troublesome. It becomes a challenge when contemporary threats come on the scene. The UNSC has attempted to include non-traditional threats in the "threats-to-peace" bracket. It recognized that climate change poses a threat to world peace and that it has the potential to "aggravate certain existing threats to international peace and security."²⁰ According to Marcus Stephen, who spoke on behalf of the Pacific small island developing States, the Maldives, Seychelles, and Timor-Leste, in the UNSC's meeting held on 20th July 2021, climate

¹⁸ Hans Kelsen, 'Collective Security and Collective Self-Defense under the Charter of the United Nations' (1948) 42 *American Journal of International Law* 783.

¹⁹ Rene Vark, 'Terrorism as a Threat to Peace' (2009) 16 *Juridica International* 216.

²⁰ United Nations Security Council Press Release SC/10332 'Contextual Information on Possible Security Implications Of Climate Change Important When Climate Impacts Drive Conflict' (20th July 2011); available at, < <https://www.un.org/press/en/2011/sc10332.doc.html> > (accessed on 9th April, 2020)'.

change is a threat as great as terrorism or nuclear proliferation.²¹ He stated that the UNSC would become irrelevant if it ignored the largest security threats of the 21st century.²²

Several UNSC resolutions have acknowledged that climate change is a major vector of security risks. Resolution 2349²³ was adopted by the UNSC in relation to Chad in 2017. This was the very first Resolution in which the UNSC recognised that there was a direct correlation between climate change and regional stability. In this Resolution, the UNSC cited that the effects of Climate change, such as desertification, drought, land degradation, water scarcity, and food insecurity contributed to the rise of violent extremists. It encouraged governments to adopt measures to deal with the effects of climate change. Even though this Resolution confirmed that the UNSC was competent, and was willing to deal with climate change as a security threat, it did not give any tangible guidance on how the UNSC would deal with climate change as a catalyst for instability.

The UNSC adopted Resolution 2423²⁴ on Mali and Resolution 2429²⁵ concerning Darfur. In both Resolutions, it recognised that there was a direct correlation between climate change and conflict. These resolutions proposed that governments and the United Nations should carry out adequate risk assessment and risk management strategies. The Resolutions

²¹ Ibid.

²² Ibid.

²³ UN Security Council, Security Council Resolution 2349 (2017) , Adopted by the Security Council at its 7911th Meeting, Held on 31st March 2017; UN Doc. S/RES/ 2349 (2017); available at < <https://digitallibrary.un.org/record/863830?ln=en> > (accessed on 9th August 2021).

²⁴ UN Security Council, Security Council Resolution 2423 (2018), Adopted by the Security Council at its 8298th Meeting, Held on 28th June 2018; UN Doc. S/RES/2423 (2018); available at < https://minusma.unmissions.org/sites/default/files/n1820250_0.pdf > (accessed on 9th August 2021).

²⁵ UN Security Council, Security Council Resolution 2429 (2018), Adopted by the Security Council at its 8311th Meeting, Held on 13th July 2018; UN Doc. S/RES/2429 (2018); available at < [https://undocs.org/S/RES/2429\(2018\)](https://undocs.org/S/RES/2429(2018)) > (accessed on 9th August 2021).

limited themselves to managing the impacts of climate change, than dealing with climate change as the problem, or threat. They dealt with climate change as a threat multiplier, and not as a threat, in itself to international peace and security.

The UNSC geared towards addressing the HIV/AIDS pandemic in Resolution 1983.²⁶ It encouraged its prevention, treatment, and care to be included in peacekeeping mandates. In this Resolution, the UNSC was deeply concerned that since the HIV epidemic began, as of 2011, over 60,000,000 people had been infected, with over 25,000,000 dying, and more than 16,000,000 children being orphaned by AIDS. The UNSC made a total of eleven recommendations to tackle the HIV epidemic. It called for co-ordinated international action by the United Nations and governments to curb the impact of HIV in conflict and post-conflict areas. It recognised that UN peacekeeping operations could contribute to an integrated response to the HIV epidemic. It also called for the intensifying of HIV prevention activities in UN missions. Just like in the case of climate change, the UNSC's approach in dealing with the HIV epidemic was centred on how it affects persons in conflict or post-conflict situations. It did not deal with HIV as an independent security threat.

In UNSC Resolution 2482, the UNSC called upon Member States to strengthen their national systems and to improve regional and international cooperation, in a bid to address the threats caused by “illicit cultivation, production, trafficking, and consumption of narcotic drugs and psychotropic substances” which fuel the activities of terrorist groups, posing a threat to global peace.²⁷ In this Resolution, the UNSC acknowledged that

²⁶UN Security Council, Security Council Resolution 1983 (2011) , Adopted at Its 6547th Meeting, Held on 7th June, 2011; UN Doc. S/RES/1983 (2011).

²⁷ UN Security Council, Security Council Resolution 2482 (2019), Adopted at its 8582nd Meeting, Held on 19th July, 2019; UN Doc. S/RES/2482(2019).

organised crime benefits terrorists. Organised crime, in that context, was interpreted to mean domestic or transnational trafficking in “arms, drugs, artefacts, cultural property and trafficking in persons, as well as the illicit trade in natural resources, including gold and other precious metals and stones, minerals, charcoal.”²⁸ The UNSC acknowledged that terrorism and trans-national organised crime are a threat and a challenge to international peace and security. The admission by the UNSC that trans-national organised crime constitutes a threat to international peace is problematic. The UNSC did not correspondingly acknowledge that the prescriptive measures under Article 39 of the UN Charter would benefit retaliation against organised criminal gangs. Neither did it discuss questions of whether Member States would be justified in undertaking collective or individual self-defence to counter inter-state organised crime. The UNSC, likewise, ignored questions of whether classifying inter-state organised crime as a threat to international peace implied that criminal gangs offended Article 2(4) of the Charter, which prohibits member states from using force against other member states. It is the use of force that brings into application Articles 39, 40, 41, and 42 of the Charter.

The multiplication of threats to global peace have complicated what can be rightfully deemed a threat to international peace falling under Article 39 of the Charter of the United Nations. Even though the UNSC has attempted to address some non-conventional threats to world peace, its mandate has been carried out hesitantly and has not been exercised over all non-conventional threats. Also, the question as to whether and, if so, to what extent, the

²⁸ UN Security Council, Security Council Resolution 2482 (2019), Adopted at Its 8582nd Meeting, Held on 19th July, 2019; UN Doc. S/RES/2482(2019).

UNSC can deal with climate change and other contemporary threats within its mandate is not settled.²⁹

4.1.3 Enforcement Action

Contemporary threats to international peace strain the means or remedies available to the Council in its work of maintaining and/or restoring world peace.³⁰ Under Article 39 of the UN Charter, the UNSC has the mandate of determining whether a threat to peace or breach of peace has been committed. After determining that a threat to peace exists, the UNSC then decides whether to sanction provisional measures under Article 40 of the Charter, coercive measures not involving the use of force under Article 41, or measures involving the use of force under Article 42 of the Charter. The enforcement measures prescribed by the Charter are not entirely appropriate, or sufficient to address non-military threats to world peace and security. This is because of several reasons. For instance, under Article 40 of the Charter, the UNSC may require parties to comply with provisional measures. This inherently assumes two facts. First, that any threat falling under Article 39 involves two or more disagreeing state parties. Second, it does assume that the two or more parties' dispute involves the use or threat to unleash armed action. This provision assumes that all threats to global peace are innately violent, and ignores the fact that contemporary threats to international peace and security do not always involve two or more disputing states, with an imminent threat to use force.

²⁹ Pierre Thielbörger, 'Climate Change and International Peace and Security: Time for a "Green" Security Council', *From Cold War to Cyber War: The Evolution of the International Law of Peace and Armed Conflict over the Last 25 Years* (Springer, Berlin, 2015), p. 69.

³⁰ Karel Wellens, 'The UN Security Council and the New Threats to the Peace: Back to the Future' (2003) 8 *Journal of Conflict and Security Law* 15.

Under Article 42 of the UN Charter, the UNSC may employ measures such as “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” These measures may not be relevant in addressing contemporary threats to international peace and security. For instance, severing diplomatic relations and interrupting communication and transportation does not stop a pandemic, human trafficking, or climate change.

Article 42 gives the UNSC a blank cheque to employ or engage force when measures under Article 41 have not arrested or subdued a threat to international peace. Without much emphasis, it is apparent that since most non-conventional threats do not involve the use of force, or may not result in an armed conflict, Article 42 is a non-starter in addressing contemporary threats. Military operations by air, sea, or land cannot address climate change, infectious diseases, economic inequalities, and other contemporary threats.

4.1.4 Inconsistency

The UNSC has not been consistent in the treatment of non-traditional threats to international peace. What it considers a threat to international peace in one instance, may not be determined as such in another instance. In some instances, the UNSC has not first determined whether a situation threatens international peace first, before it intervenes.

The indeterminate nature by which the UNSC determines that a particular non-traditional threat risks international peace is apparent in the way it treats health crises. The UNSC’s practice of addressing international health crises as threats to international peace has not been consistent and has not acquired such widespread support, as armed conflict, and terrorism.

Even though the UNSC recognized that “the spread of HIV can have a uniquely devastating impact on all sectors and levels of society and that in conflict and post-conflict situations, these impacts may be felt more profoundly”, it did not hold that HIV/AIDS is a threat to international peace and security.³¹ Yet it recognized Ebola as a threat to international peace and security.³² Even then, the UNSC did not make any recommendations or commitments on how it would deal with Ebola as a threat to international peace and security.

It is not clear which criteria the UNSC follows in determining which non-military issues amount to threats to global peace. This obfuscates the criteria by which the UNSC determines that a threat merits classification under Article 39 of the Charter of the United Nations.

Sometimes, the UNSC imposes sanctions against actors even prior to the determination of whether a threat to peace, breach of peace, or acts of aggression exists.³³ For instance, in March 1998, when the situation in Kosovo deteriorated, the UNSC imposed a compulsory arms embargo on the Federal Republic of Yugoslavia without first determining the situation.³⁴ Consequently, the UNSC adopted Resolution 1160, in which it banned the supply of arms, weapons, munitions, military weapons, equipment, and their spare parts to the Federal Republic of Yugoslavia, including Kosovo.³⁵ It also urged the Office of the Prosecutor of the International Tribunal to gather information necessary to prosecute

³¹ UN Security Council, Security Council Resolution 1983 (2011), Adopted at its 6547th Meeting, Held on 7th June, 2011; UN Doc. S/RES/1983 (2011).

³² UN Security Council, Security Council Resolution 2439 (2018), Adopted at its 8385th Meeting Held on 30th October 2018; UN Doc. S/RES/2439 (2018).

³³ Rene Vark, 'Terrorism as a Threat to Peace' (2009) 16 *Juridica International* 216.

³⁴ *Ibid.*

³⁵ UN Security Council, Security Council Resolution 1160 (1998), Adopted at its 3868th Meeting, Held on 31st March 1998; UN Doc. S/RES/ 1160 (1998).

suspects who had committed human rights violations and violated international criminal law. The UNSC established a committee to monitor the implementation of the arms embargo. Even then, Resolution 1160 was not complied with to the letter. This led to several sanctions being imposed against Yugoslavia. For instance, on 9th June 1998, President William J. Clinton, under Executive Order (EO) 13088, froze all property belonging to the Governments of Serbia and Montenegro.³⁶ The uncertainties surrounding the manner in which the UNSC applies Article 39 of the UN Charter to non-traditional threats challenges the exercise of its mandate to maintain international peace and security.

4.1.5 Double Incidence of Mandates between the Security Council and Specialised Agencies

Is it necessary for the UNSC to deal with non-conventional threats as global security threats, yet these threats may fall squarely within the mandate of other specialised agencies of the United Nations? Portugal questioned the role of the UNSC in maintaining peace and security in light of the contemporary threats, such as climate change, infectious diseases and trafficking of drugs, persons, and arms.³⁷ In response, the UNSC emphasised that agencies, such as the World Health Organization, are not major players in maintaining world peace because they cannot deal with issues affecting peace and security directly, but can, nevertheless, support the Council in case of any threat.³⁸

³⁶ Executive Order 13088, 63 Federal Registration 113, 12th June 1998: available at < <https://www.govinfo.gov/content/pkg/FR-1998-06-12/pdf/98-15888.pdf> > (accessed on 9th August 2021).

³⁷ Letter Dated 8 November 2011 from the Permanent Representative of Portugal to the United Nations Addressed to the Secretary-General; UN Doc S/2011/698 (2011).

³⁸ UN Security Council, Security Council Resolution 6668 (2011), Adopted at Its 6668th Meeting Held on 23 November, 2011; UN Doc. S/RES/26668(2011).

In 2018, the UNGA re-affirmed that the United Nations Framework Convention on Climate Change³⁹ and the Paris Agreement⁴⁰ “are the primary international and intergovernmental forums for negotiating the global response to climate change, expressing determination to address decisively the threat posed by climate change and environmental degradation.”⁴¹ Even while acknowledging that climate change was a threat, the UNGA did not discuss or make any recommendations on how the role of the UNSC comes into play when climate change endangers global peace and security. Instead, the UNGA invited the Secretariat of the Convention to report on the work done by the Conference of the Parties to the Convention.

During the debate on whether to recognise climate change as a threat to international peace, delegates had opposing views on whether climate change merited the definition of a “threat to peace.”⁴² Some members suggested that the UNSC would be an encroacher on the functions of the UNFCCC, the UNGA, and the Economic and Social Council if it dealt with climate change as a matter of security. Other representatives commended the UNSC’s emerging role in non-traditional threats.

³⁹ United Nations Framework Convention On Climate Change, (Adopted on 9 May 1992 and came into force on 21 March 1994); 1771 UNTS 107 ; available at < https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf > (accessed on 6th October 2020).

⁴⁰ Paris Agreement, (Adopted on 12 December 2015 and came into force on 4 November 2016); TIAS 16 ; available at < <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/54113/Part/I-54113-0800000280458f37.pdf> > (accessed on 26th August 2021).

⁴¹ United Nations General Assembly Resolution 72/219(2018), Adopted at its Meeting, Held on 20th December 2017; UN Doc. A/RES/72/219; available at < https://www.un.org/pga/73/wp-content/uploads/sites/53/2019/03/A_RES_72_219_E.pdf > (accessed on 10th August 2021).

⁴² United Nations Security Council Press Release SC/10332 ‘Contextual Information on Possible Security Implications Of Climate Change Important When Climate Impacts Drive Conflict’ (20th July 2011); available at, <https://www.un.org/press/en/2011/sc10332.doc.html> , (accessed on 9th April, 2020)’.

Delegates actively contributed to the debate. Gérard Araud, on behalf of France stated that, in dealing with climate change, ‘the Council did not intend to replace the UNFCCC; it was simply facing up to new, complex, varied threats’.⁴³ Wang Min, China’s representative, stated that, even though climate change affected security, it was primarily a sustainable development issue, and the UNSC did not have the resources or the means to address it. He was of the opinion that the Council’s deliberations could not substitute the UNFCCC negotiations. Hardeep Singh Puri, on behalf of India, stated that climate change could not be addressed by the UNSC through Article 39 of the Charter. His justification for this statement was that the nature of remedies under Article 39 would not remedy food insecurity, or the existential threat to island states. According to him, such issues needed an approach based on adaptive capacity, risk assessment, institutional build-up, and development. Nawaf Salam, on behalf of Lebanon, echoed China’s stand, stating that climate change as a sustainable development issue was better addressed by the UNGA and the Economic and Social Council. He, however, acknowledged that even while the UNFCCC remained the core instrument for addressing climate change, the spirit of complementarity amongst UN bodies meant that the UNSC could deliberate on climate change matters.

After the deliberations, the UNSC recognized its role in preventing armed conflict occasioned by climate change. It re-affirmed its primary mandate to maintain international peace. While the UNFCCC remained the primary forum for developing the blueprint for addressing climate change and mobilising resources, the Council stamped its clear mandate

⁴³ United Nations Security Council Press Release SC/10332 ‘Contextual Information on Possible Security Implications Of Climate Change Important When Climate Impacts Drive Conflict’ (20th July 2011); available at, <https://www.un.org/press/en/2011/sc10332.doc.html> , (accessed on 9th April, 2020)’.

of coordinating response to the security implications of climate change by declaring climate change as a threat to international peace. The UNSC did not make any specific recommendations on how to deal with climate change as a threat to international peace and security. Noting that the UNSC has not made significant progress in putting in place mechanisms to deal with climate change as a security threat, the United Kingdom hosted an open debate on 23rd February 2021, wherein the Secretary-General, addressing the Security Council noted that 2021 would be “a make-or-break year for collective action against the climate emergency.”⁴⁴

The debate about why the UNSC should deal with contemporary threats, while there are established agencies dealing with these threats in various capacities not only applies to climate change, but other threats, such as disaster. Under Article 1(3) Chapter I of the UN Charter,⁴⁵ one may argue that international financial institutions can mitigate impacts of a disaster, which is a contemporary threat to international peace and security, by using standard approaches, such as “the emergency response programs of regional development banks, the World Bank’s Emergency Recovery Loan program, the Hazard Management Unit, and Global Facility for Disaster Reduction and Recovery (GFDRR)”, and the International Monetary Fund. These economic mechanisms, however elaborate, do not match up to the scale of non-military threats to international peace and security.

⁴⁴ Antonio Guterres, ‘Addressing climate-related security risks to international peace and security through mitigation and resilience building’ (23rd February 2021); available at < <https://www.youtube.com/watch?v=cTxQmBzfX3k> > (accessed on 27th August 2021).

⁴⁵ Article 1(3) Chapter I of the Charter of the United Nations provides that one of the purposes of the United Nations is achieving “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms.”

Arguing that specialised agencies or subsidiary organs are legally well equipped with powers to deal with contemporary threats to global peace to the exclusion of the UNSC is not sustainable. This is because the UNSC is the organ mandated with maintaining global peace and security, and not the specialised agencies. However, the maintenance of world peace and security can be a co-operative international agenda handled by the UNSC and other UN agencies.

4.2 Conclusion

This chapter discussed the challenges to the maintenance of international peace and security by the United Nations. The discussion has demonstrated that the nature of contemporary threats render the powers of the UNSC under Articles 39, 40, 41, and 42 irrelevant, inhibiting the exercise of its primary mandate to maintain international peace and security. The following chapter highlights the findings of the study and makes recommendations.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study was informed by the challenges that contemporary threats pose to the United Nations' framework on the maintenance of international peace and security. The study has analysed the international security system of maintaining international peace and security, focusing on the role played by the United Nations. It has also analysed the impact of contemporary threats to international peace on the mandate of the United Nations to maintain world peace.

Chapter One analysed the background of the study, and the problem which formed the basis of this study. It reviewed literature and the theories forming the backbone of this study. It outlined the research methodology employed in conducting the research. It summarised the principal objective of the United Nations as the maintenance of international peace and security, which is carried out primarily by the UNSC.

Chapter Two emphasised that even though the UNSC has the primary mandate to maintain international peace and security, it does not have dominion over the subject, and as such, other primary and subsidiary organs of the United Nations may carry out some functions related to the maintenance of world peace and security. The chapter examined the United Nations' legal and institutional framework for maintaining international peace and security. It acknowledged the role played by the UNGA, the International Court of Justice, the Secretariat, and the Secretary-General. The chapter recognised the role played by

regional organisations in collaboration with the UNSC. It concluded that the functions carried out by other principal and subsidiary organs are secondary to those exercised by the UNSC. It also established that the UN's legal and institutional framework on the maintenance of international peace and security is inadequate in light of contemporary threats to international peace and security.

In Chapter Three, contemporary threats were detailed, with a particular focus on infectious diseases, cyber operations, human trafficking, and climate change. This chapter appreciated the need to revisit the provisions of the UN Charter, particularly, in Article 39 to accommodate contemporary threats to international peace and security. Since contemporary threats are not occasioned by the threat or use of force between states, this chapter concluded that Article 39 of the UN Charter does not expressly clothe the UNSC with the power to address these threats. This chapter concluded that the UNSC has not addressed contemporary threats with the enthusiasm it applies against traditional threats to international peace and security. This chapter also concluded that the UNSC always restricts itself to dealing with contemporary threats in the context of conflict, to justify its initiative to deal with such threats under Article 39 of the UN Charter.

Chapter Four focussed on the challenges posed by contemporary threats to the UNSC's mandate to maintain international peace and security. It concluded that even though the UNSC has somehow attempted to deal with contemporary threats, its powers under Article 39, 40, 41, 42, and 43, have been rendered irrelevant by the nature of contemporary threats to international peace and security, which do not involve the threat or use of force between states. This chapter also recognised the need for complementarity and collaboration

amongst the organs of the United Nations in addressing contemporary threats to world peace and security.

Chapter Five condenses down the findings of the study, deduces conclusions based on the findings, and makes recommendations on the functioning of the United Nations in the maintenance of international peace and security.

5.2 Conclusion

The UNSC has been in existence since 1945, when the United Nations was formed. Since then, it has fronted several efforts attempted at dealing with contemporary threats to international peace and security. Throughout this study, questions about whether the United Nations' legal and institutional framework is suited to address contemporary threats to international peace and security have been recurrent.

The study has established that contemporary threats to international peace and security are a major challenge to the United Nations' framework on global peace and security. Contemporary threats are not the nature of threats envisioned when the UN Charter was adopted in 1945. This is primarily because they are not occasioned by states, and do not necessarily involve the use or threat of force.

The study finds that the United Nations' legal and institutional framework for maintaining global peace is inadequate as against contemporary threats to world peace and security, such as climate change, human trafficking, infectious diseases, and cyber operations.

The study finds that even though the United Nations Security Council has attempted to deal with non-traditional threats, its mandate has been challenged by the fact that most of these

threats do not involve the use of force and are not inter-state. The UNSC, being the organ with the primary responsibility to maintain world peace and security, has always looked for justifications to address contemporary threats. These justifications have always involved the existence of traces of armed conflict or use of force. Yet by their nature, contemporary threats do not entail the use of force.

The study finds that the UNSC faces five major challenges in addressing contemporary threats to world peace and security. One, the UNSC is anachronistic. Two, the UN Charter does not define the terms “threats to peace” and “breach of peace.” The parameters of these terms are indeterminate. Three, the enforcement action provided for in the Charter of the United Nations does not befit contemporary threats to international peace. Four, the UNSC has been inconsistent in how it responds to different non-traditional threats. Its determination that one contemporary threat endangers international peace does not guarantee a similar determination with similar threats or with other contemporary threats. Five, there are specialized agencies with mandates to deal with some contemporary threats in certain capacities, which may create conflict over which organ has the authority to deal with a given contemporary threats. The study finds that these challenges have limited its capability to deal with contemporary threats.

The main hypothesis of the study was that the United Nations is not well adapted to address contemporary threats to global peace and security, that are not occasioned by states, and which do not involve use or threat of armed force. The study has proved this hypothesis. The United Nations does not have in place a comprehensive and systematic approach to deal with contemporary threats to international peace and security.

The study concludes that the legal and institutional framework of the United Nations is not sufficient to deal with contemporary threats to international peace and security.

5.3 Recommendations

Having established that contemporary threats challenge the United Nations' mandate to maintain international peace and security, the study makes the following recommendations.

- a) There is need for UN Member States to amend Article 39 of the UN Charter to include a definition of the terms “threat to the peace” and “breach of the peace.” The definitions should incorporate non-traditional threats. The amendment should expressly state that “threats to peace” are not limited to threats occasioned by states, or involving use or threat of force. This will empower the UNSC to legitimately and boldly address contemporary threats within its legal mandate.
- b) The Charter should also be amended in Articles 40, 41, and 42 to provide for appropriate remedial action befitting contemporary threats to international peace and security. For amendments to the Charter to materialise, Article 108 of the UN charter, which outlines the criteria for amending the Charter, will need to be complied with. It provides that any amendment to the Charter can only take effect when two thirds of the Members of the General Assembly vote in its favour, inclusive of all the permanent members of the Security Council.
- c) There is need for collaboration between the UNSC and other organs of the United Nations on the way to address contemporary threats to world peace and security as a joint collaborative agenda. This will place the United Nation's legal and institutional framework in an enhanced position to address contemporary threats

with unity of purpose and commitment amongst its organs. This calls for all organs of the United Nations to recognise that the UNSC bears the mandate to maintain international peace, regardless of whether the threat is traditional or contemporary. This cooperation will harness from the powers of the UNSC in maintaining international peace and security, while at the same time leveraging on the availability of resources and expertise from other organs of the United Nations.

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