

The competence of the Security Council over situations or disputes arising from human rights violations by a state under Chapter VI of the United Nations Charter

MOHAMMAD ALIPOUR* 

University of Szeged, Hungary

ORIGINAL RESEARCH PAPER

Received: February 14, 2023 • Accepted: June 29, 2023

Published online: November 28, 2023

© 2023 The Author(s)



ABSTRACT

The peaceful settlement of disputes is one of the principles enumerated in the Charter of the United Nations, and the Security Council is entrusted with significant powers to achieve this goal. In today's world, accusations of human rights violations have become one of the primary challenges among nations in terms of upholding sovereignty. In accordance with the United Nations Charter, the Security Council may be called upon by the parties to a dispute, the General Assembly, or the Secretary-General, or it can act *ex officio* to seek a peaceful resolution or adjust a situation through peaceful means. If the Security Council determines that the situation or dispute in question may constitute a threat to international peace and security, it may invoke its powers under Chapter VI of the United Nations Charter. The purpose of this study is to examine the extent of the Security Council's competence and the powers it possesses when carrying out its conciliatory role in cases involving human rights violations by a Member State and conflicts that may arise regarding the interpretation and application of the United Nations Charter.

KEYWORDS

UN Charter, Security Council, violation of human rights, interpretation of the UN Charter

* Corresponding author. E-mail: md_alipoor@yahoo.com

1. INTRODUCTION¹

The United Nations (UN) Security Council (SC) holds the responsibility of upholding international peace and security.² According to the Charter of United Nations (UN Charter), the SC can play a significant role in resolving international disputes, aligning with Article 1 of the UN Charter. This Article emphasizes the UN's primary objectives, including fostering amicable relations among nations, based on the principles of equal rights and self-determination of peoples. This includes establishing effective mechanisms for resolving conflicts and addressing any disputes that may arise between nations. One of the key contributions of the SC to maintaining international peace is through its practice of settling disputes. In Chapter VI of the Charter, the SC is tasked with responsibility for addressing international disputes and situations brought before this body and establishing a framework for their peaceful settlement. While establishing this framework, the UN Charter stipulates that any state can request the SC's assistance in resolving a dispute or a situation that affects their national interests. Additionally, the SC may address any dispute or situation that poses a threat to international peace and security on its own initiative (*ex officio*). The General Assembly (GA) and the Secretary-General (SG) also have the authority to refer a question to the SC for consideration. Following the ongoing process of humanizing international law, states accuse one another of violating human rights and hold the offending state responsible for such violations. Such a dispute now constitutes a significant proportion of international disputes. This paper seeks to explore the powers enjoyed by the SC over a state perpetrating mass atrocities within the context of the international settlement of disputes under Chapter VI. It aims to analyse the magnitude of the SC's exertion of authority and the legal effects thereof. Additionally, it aims to scrutinize the level of discretion granted to the perpetrator state in relation to the actions taken by the SC. This study commences by examining different types of referrals to the SC, along with the powers the SC may exercise over them. Furthermore, it examines the legal consequences that may arise when a state fails to comply with SC resolutions under the UN Charter. Finally, it delves into the question of disagreements between the offending state and the SC regarding the SC's competence and the matter of authentic interpretation of the UN Charter.

2. WHAT POWERS DOES THE SC POSSESS OVER THE OFFENDING STATE UNDER CHAPTER VI OF THE UN CHARTER?

Violations of human rights may give rise to international disputes or situations. According to Chapter VI of the UN Charter, the SC has the power to undertake appropriate peaceful measures to address disputes or situations that endanger international peace and security. However, this power does not grant the SC an unrestrained right to intervene, and any intervention must be justified. The SC may exercise its jurisdiction in four situations: a) referral by a Member State,

¹This paper is taken from my PhD thesis titled 'The Security Council Response to Mass Atrocities: A Crossroads of Law and Reality.'

²The Charter of United Nations (1945) Article 39.



b) referral by the SC *ex officio*, c) referral by the Secretary-General, and d) referral by the General Assembly. The powers of the SC may vary depending on the type of referral.

2.1. Procedures initiated by a Member State

As part of their commitment to maintaining international peace and security, the UN Member States have pledged to settle their disputes peacefully among themselves, as outlined in Article 2(3) of the UN Charter. To facilitate and support this process, the UN system has established the option of resorting to the SC. In this type of referral, either party to the dispute or a third party may initiate the process.

2.1.1. Potential conflict between interceding states and offending states over human rights violations. Before delving into the procedures instituted by a Member State, it is crucial to assess whether a dispute might potentially give rise to a conflict between states regarding human rights violations. While there may be multiple issues that can lead to disagreements between states, the specific focus of this section is whether a dispute can arise between a state committing human rights violations and an interceding state whose material interests or the well-being of its people have not been directly affected. Throughout the history of international relations, there has been considerable controversy surrounding violations of human rights between offending states and interceding states, particularly during the eighteenth, nineteenth, and early twentieth centuries.³ The case of Morocco serves as a prominent and relevant example in this regard. On August 10, 1909, the Sultan of Morocco imposed a severe punishment on rebels who had been captured. In response to the Sultan's actions, the joint consular offices of France, Great Britain, and Spain expressed their humanitarian concerns by sending a letter of protest on August 30, 1909, although none of these countries had religious or ethnic ties to the victims, nor could they invoke any treaty obligations.⁴ The United States Department of State, in its 2022 Country Reports on Human Rights Practices of China, asserts that the Chinese Communist Party is responsible for engaging in acts of genocide and crimes against humanity targeting primarily Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang.⁵ Conversely, China maintains that the situation in the United States experienced a severe decline in 2022, representing a significant setback for human rights in the country. China accuses the United States of violating human rights on various fronts, including widespread racism, discrimination, slavery and inequality in labor, and rampant abuses against women and children.⁶ On June 8, 2023, Canada and the Kingdom of the Netherlands initiated proceedings against the Syrian Arab Republic, alleging the systematic violation of the Convention against Torture and Other Cruel,

³Kamminga (1992) 9.

⁴Kamminga (1992) 14–15.

⁵The United States Department of State, 2022 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet), much 2023. [Link1](#).

⁶China's State Council Information Office, The Report on Human Rights Violations in the United States in 2022, released March 2023. [Link2](#).



Inhuman, or Degrading Treatment or Punishment by Syrian officials before the International Court of Justice.⁷ The existence of inter-state disputes in this regard is neither unusual nor unfounded, as the legal basis for such claims can be found in international treaties and the principles of international responsibility for wrongful acts.

2.1.1.1. Treaty-based disputes. As a consequence of the global significance of human rights, numerous treaties have been formed, imposing legal obligations on nation-states concerning their own citizens and in relation to one another.⁸ Treaties pertaining to human rights entail a legal obligation for states to respect and enforce the rights stipulated within them. As a result, any party may initiate a dispute against a state that violates the human rights of its populace, based on the argument that the state has failed to fulfill its obligations to the other states party to the relevant treaty.⁹ The offending state cannot dismiss such complaints as interference in domestic affairs, as accepting a treaty entails relinquishing the plea of domestic jurisdiction regarding the matters covered by the treaty.¹⁰ Pursuant to these treaties, state parties have a legal stake in ensuring that the rights enshrined in the treaties are upheld within the territories of each participating state.¹¹ In such a case, the complaining state is not required to demonstrate personal injury or a direct connection to the victims beyond their shared humanity in relation to the alleged violation.¹² Many international human rights instruments include provisions for inter-state complaints, enabling any party to initiate action against the offending state. These instruments include the American Convention on Human Rights (ACHR),¹³ the African Charter Human and People's Rights (AFCHPR),¹⁴ the Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹⁵ the International Convention on Civil and Political Rights (ICCPR),¹⁶ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).¹⁷

⁷Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), ICJ Reports, writing proceeding, Request for the indication of provisional measures, 8 June 2023.

⁸Leckie (1988) 256.

⁹Leckie (1988) 256.

¹⁰Kooijmans (1987) 9–10.

¹¹Leckie (1988) 298.

¹²Leckie (1988) 298.

¹³American Convention on Human Rights, San José, Costa Rica (22 November 1969) No. 17955.

¹⁴African Charter on Human and Peoples' Rights, Nairobi, Kenya (27 June 1981) No. 26363.

¹⁵International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly resolution 2106 (XX) (21 December 1965).

¹⁶International Covenant on Civil and Political Rights, adopted by the General Assembly resolution 2200A (XXI) (16 December 1966) No. 14668.

¹⁷Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly resolution 39/46, New York, (10 December 1984).



2.1.1.2. Disputes stemming from international wrongful acts. Article 48 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts¹⁸ provides further evidence to support the argument that human rights violations can give rise to disputes between an offending state and a third state. It articulated that: ‘Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (...) (b) the obligation breached is owed to the international community as a whole.’ Article 48 aims, *inter alia*, to fulfil the demands of contemporary international law grounded in principles of humanity. The traditional rules of international law concerning state responsibility, which are rooted in the principle of reciprocity, cannot be directly applied to human rights regimes.¹⁹ Although the direct impact of an international wrongful act is borne by the injured state and not a third state, the latter still holds a legal interest in ensuring compliance due to ‘the importance of the rights involved’.²⁰ According to the International Law Commission (ILC), all states, as members of the international community, have the right to hold another state accountable for violating collective obligations that safeguard the interests of the international community as a whole.²¹ As a consequence of this legal interest, a third state acquires *locus standi* and can invoke the responsibility of the offending state, which has violated an obligation owed to the international community as a whole. An act of a third state does not occur in its individual capacity as a victim, but in its capacity as a member of the international community as a whole.²² In its landmark judgment of *Barcelona Traction*, the International Court of Justice (ICJ) supported the perspective of the ILC by affirming that every state has a legal interest in upholding obligations to the international community as a whole, considering the significance of the rights at stake.²³ In this context, a third state would have a legal basis to lodge a complaint against another state if it can demonstrate that the rights in question are linked to *erga omnes* obligations. The intervening state, therefore, may bring a valid international claim against the offending state under the *erga omnes* obligations, which incorporates human rights obligations.²⁴ As the ICJ in the *Genocide Convention* case ruled that:

In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the

¹⁸Responsibility of States for Internationally Wrongful Acts (2001), Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 2001, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

¹⁹Shelton (2015) 59.

²⁰Bird (2010) 883.

²¹Report of the International Law Commission on the work of its fifty-third session, (2001) 127.

²²Bird (2010) 890.

²³*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Reports, Judgment of 5 February 1970, paras 33–34.

²⁴Meron (1989) 381.



raison d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties.²⁵

Quite possibly, the offending state will dispute this allegation as being legally unfounded. Without dwelling on this objection, it is worth mentioning that there exists at least a political dispute concerning this matter, because political disputes arise due to disagreements regarding the presence or absence of laws. The arguments presented in this section substantiate the assertion that a dispute can indeed arise between the offending state and the interceding state, both from a legal and political standpoint. Consequently, the SC has the authority to intervene and utilize its powers under Chapter VI.

2.1.2. Referral by a Member State. Article 37 of the UN Charter stipulates that if the parties involved in a dispute, as described in Article 33, are unable to resolve it by the means specified in that Article, they shall refer the dispute to the SC.²⁶ It is therefore acknowledged in the UN Charter that resorting to the SC is an alternative method for resolving disputes that becomes obligatory for parties unable to resolve their disputes through their own means.²⁷ The application of Article 37 is contingent on compliance with the provisions of Article 33. Hence, it is necessary to consider these two Articles in conjunction. Indeed, Article 33 of the UN Charter reaffirms the overall duty of Member States to resolve disputes through peaceful means. However, it specifically applies to disputes that have the potential to jeopardize international peace and security. Thus, if the parties involved in a dispute have been unable to reach a peaceful resolution through methods of their own choosing, they can turn to Article 37 of the UN Charter as a means to address the dispute. In accordance with Article 37, the SC may advance its proceedings solely when the dispute is deemed genuinely capable of jeopardizing international peace and security. For the SC to intervene, two conditions must be met: firstly, the continuation of the dispute due to the failure of the parties to settle it peacefully, and secondly, the SC's determination of the likelihood that the dispute would pose a threat to international peace and security.²⁸ On this matter, there may arise an inquiry into the criteria employed to designate a dispute as a peril to international peace. Evidently, the SC is vested with the authority to ascertain the parameters of a peril to international peace within the purview of the introductory provision of Article 24. However, the viewpoint or perspective of the involved parties should not be disregarded. If the parties involved in a dispute do not perceive it as a threat to peace, they are not eligible to invoke the provisions of Article 37. If both the parties involved in the dispute and the SC agree that it poses a threat to peace, there would be no obstacle in applying Article 37. It would constitute a predicament if the parties do not apprehend the dispute as a menace to international peace, while the SC diverges in its perspective.

²⁵Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Reports, Advisory Opinion of 28 May 1951, 23.

²⁶Accordingly, the Manila Declaration correctly states (without expressly mentioning Art. 37 (1)) that member States should be fully aware of 'their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter'. Manila Declaration on the Peaceful Settlement of International Disputes, Annex to UNGA Res 37/10 (15 November 1982) UN Doc A/37/10, Part II.4(a).

²⁷Giegerich (2012a) 1150.

²⁸Giegerich (2012a) 1150.



If such a scenario arises, it would fall within the exclusive jurisdiction of the SC, as stipulated in Article 24, to determine the state of peace, and any external matters would be treated as factual evidence presented before the SC. However, it would be perplexing if the SC wholly disregarded the perspectives of the parties involved.

An additional predicament in this context pertains to whether Article 37(1) confers the authority upon a single party to unilaterally initiate the reference, provided that the opposing party declines to acknowledge the unequivocal futility of the endeavors to reach a settlement. The commentators argued that considering the drafting history of the Article, as well as the objective and purpose of Chapter VI, it should be permissible for one party to refer the dispute in the event of the other party's objection, if the latter fails to fulfill its obligation to initiate the reference.²⁹ Nevertheless, unilateral references to the SC will not impose an obligation on this body to exercise its powers under Article 37(2). The discretion to determine whether their settlement attempts have indeed failed remains with the SC. Hence, in the event that the SC discerns the lack of effectiveness in the parties' attempts to reach a settlement, it has the option to initiate action as per Article 37(2) and propose terms of resolution if it deems such actions to be suitable.³⁰

According to Article 35 of the UN Charter, every Member State of the UN enjoys the authority to bring a dispute or situation to the attention of the SC. In accordance with this provision, states are constrained from invoking the SC for all encompassing disputes or situations, but rather, they are exclusively permitted to invoke the SC's jurisdiction for those explicitly delineated in Article 34, which consist of circumstances that have the potential to engender international discord or instigate the emergence of a dispute. This justification, however, is so broad that it can substantiate any assertion. As mentioned earlier, it is the responsibility of the SC to ascertain the presence of the requirements. In the case of referring a dispute under Article 37, Article 37(2) stipulates that the SC can exercise its power only if the dispute indeed poses a threat to international peace and security. The same criterion seems to be applicable throughout Chapter VI, including Article 35. Consequently, the case at hand must indeed possess the potential to cause international discord or give rise to a dispute. The commentators perceived Article 35(1) as the embodiment of *actio popularis* within the framework of the UN Charter.³¹ Undoubtedly, this Article aligns seamlessly with the concept of the universality of peace. Given that peace under the UN Charter is a matter of concern for all states, it follows logically that all states, regardless of their direct involvement in a situation or a dispute, can act as beneficiaries and advocate for the preservation of peace. The Article establishes a solid legal foundation for states to bring to the attention of the SC a claim of mass atrocity perpetrated by a state. Furthermore, in the event of uncertainty regarding whether one party involved in a dispute can refer the matter to the SC without the consent of the other party, in accordance with Article 37, that party retains the option to bring the dispute before the SC as outlined in Article 35.

²⁹Giegerich (2012a) 1151; Goodrich and Hambro (1949) 258; Conforti (2004) 168.

³⁰Giegerich (2012) 1152.

³¹Schweisfurth (2012a) 1113.



In terms of the power vested in the SC, Article 37 is designed to establish a genuine obligation on the parties involved in a dispute to refer the matter to the SC, rather than merely providing a dispute resolution option for the parties.³² Having delineated the conditions for establishing the competence of the SC, Article 37 grants the SC the authority to either proceed in accordance with Article 36 or to make substantive recommendations regarding the suitable terms of settlement. With respect to Article 36, the SC may ‘recommend appropriate procedures or methods of adjustment’. According to the definition put forth by Conforti and Focarelli, substantive recommendations are defined as ‘all those recommendations that pertain to the substance of the dispute, namely, the specific issues under contention between the parties’.³³

The power to intervene in the substance of a dispute is the most extensive authority granted to the SC under Chapter VI. Due to the SC’s capacity to enter into the substance of disputes, it is exclusively empowered to engage with the parties involved.³⁴ As part of its authority to issue substantive recommendations, the SC may advise the parties to adhere to provisional measures if they are deemed necessary to prevent the escalation of the dispute.³⁵ The power of the SC to address the substance of a dispute has been justified based on two arguments. Firstly, it is argued that when the parties involved in a dispute have already exhausted peaceful means of resolution, merely recommending adjustment methods again would be rendered meaningless, and secondly, considering that the dispute has been submitted to the SC with the consent of all parties, the SC enjoys a wider scope of powers and is thus capable of delving into the substance of the dispute.³⁶ A dispute being addressed in any other UN organ or outside the UN would not hinder the SC’s ability to exercise the powers provided in Article 37. The GA shall suspend its proceedings on a dispute or situation if the SC exercises its jurisdiction on the same matter under Article 12(1). Similarly, the proceedings of the ICJ would not prevent the SC from issuing recommendations in the same case. As established by the ICJ, every legal dispute comprises two dimensions: the legal and the political. As a judicial body, the ICJ has jurisdiction to address the legal aspects of a dispute.³⁷ Consequently, the SC has also the ability to tackle the political aspects of a dispute and, recommends a political settlement instead of a legal one, as long as the substance of the dispute remains in the purview of the parties involved.³⁸ Additionally, if the ICJ or any other international judicial entity has already issued a judgment on the dispute, but the SC perceives that the threat persists, the principle of *res judicata* does not constrain the SC from taking action. This is because Article 94(2) does not subject the SC to the jurisdiction of the ICJ, and regarding other international courts or tribunals, neither the UN Charter nor international law mandates the SC to abide by their judgments. However, the author believes that such non-compliance is justified if the judgment is incapable of effectively resolving the dispute. In this context, the recommendations put forth by the SC serve as a complementary measure

³²Conforti and Focarelli (2016) 152.

³³Conforti and Focarelli (2016) 197.

³⁴Giegerich (2012a) 1161.

³⁵Giegerich (2012b) 1135–36.

³⁶Goodrich and Hambro (1949) 259–60.

³⁷Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports, Judgment of 26 November 1984, para 93.

³⁸Giegerich (2012a) 1160.



to those judgments, with the ultimate aim of achieving a peaceful settlement of the dispute. To categorize the SC as occupying an exceptional position in all scenarios would contravene both the principles enshrined in the UN Charter and the tenets of international law. Regarding the substance of the dispute, the SC possesses a significant level of discretion in formulating substantive recommendations. However, the SC is limited by the boundaries set by general international law as well as the objectives and principles outlined in the UN Charter, specifically Article 2(7). Lastly, it is important to emphasize that categorizing substantive recommendations does not grant them a higher level of binding force compared to procedural recommendations made in accordance with Article 36(1). The SC owns the discretion to determine whether to examine the situation or dispute that has been presented to its attention in accordance with Article 35.³⁹

It should be noted that if the SC chooses to include a dispute on its agenda, it does not automatically signify that it will take action in favor of the initiating state or endorse its assessment but rather, it implies that the SC has now taken up the matter for consideration.⁴⁰ Furthermore, unlike Article 37(2), which necessitates the SC to determine whether to take action under Article 36 or recommend settlement terms, Article 35 does not impose any obligation on the SC to undertake any specific course of action, even if the circumstances are similar. When the SC resolves to move forward, it has the discretion to invite the initiating state if it is not a party to the dispute, but it is obligated to invite the initiating state if it is directly involved in the matter.⁴¹ The UN Charter does not explicitly outline the powers the SC may wield in a scenario where it opts to proceed under Article 35. Essentially, under Chapter VI, the SC's power is confined to recommending appropriate methods of adjustment or recommending a substantive settlement of the dispute. It appears that the SC cannot delve into the merits of the matter because the initiating state is neither directly engaged in the dispute nor has brought it forth with the consent of all parties involved. Therefore, its role is limited to recommending adjustment methods. The Iraqi government, led by President Saddam Hussein, engaged in brutal suppression of dissent, particularly during the March 1991 uprising. Government forces responded to the uprising with widespread atrocities, including indiscriminate shootings in residential areas, executions of young people on the streets and in hospitals, mass arrests and killings during house-to-house searches, and helicopter attacks on unarmed civilians fleeing cities. The fate of thousands of Kurds and Shi'a who were captured during the uprising remains unknown. Many displaced Kurds and Shi'a remain in refugee camps or as internally displaced persons, unable to return home due to fear or destruction of their homes. In the southern marshes, Shi'a populations lack basic necessities and are at risk from military operations.⁴² In a letter dated October 19, 1992, addressed to the president of the SC, Turkey heavily criticized Saddam Hussein for human rights violations and claimed that the Iraqi government forces deliberately drove the population toward Turkish borders, while also asserting that the

³⁹Schweisfurth (2012a) 1118.

⁴⁰Schweisfurth (2012a) 1118.

⁴¹Rule 37 of the Provisional Rules of Procedure of the SC articulates the same implication.

⁴²Goldstein (1992) 1–65.



behaviour of the Iraqi regime infringed all norms of international law with regards to the civilian population.⁴³ Similarly, on April 4, 1991, France called for an urgent meeting of the SC in response to the grave abuses being perpetrated against the Iraqi population.⁴⁴ During the SC's 2,982nd meeting on April 5, 1991, the repression of Iraqi civilians in various regions of Iraq was condemned, and Iraq was demanded to promptly cease this repression.⁴⁵ During the early 1990s, as the unity of the Soviet Union weakened, Tajikistan experienced a rise in political competition and conflict. After declaring independence in September 1991, there was a relatively peaceful struggle for state power, although the capital witnessed frequent public demonstrations. In the subsequent election, a former leader of the communist party emerged victorious, but there was a lack of widespread agreement on the legitimacy of his presidency. This led to increased tension between government supporters and opposition parties, eventually escalating to the point where various factions resorted to armed conflict. Less than a year after gaining independence, Tajikistan found itself embroiled in a civil war.⁴⁶ On October 21, 1992, Kyrgyzstan characterized the situation in Tajikistan as a significant deterioration in social, political, and economic conditions, urging the Security Council to promptly address this matter.⁴⁷ On October 30, 1992, by adding the matter to the agenda, the President of the SC, on behalf of the SC, appealed to all parties involved in the conflict to cease hostilities, and urged the Government of Tajikistan, local authorities, party leaders, and other relevant groups to engage in a political dialogue aimed at achieving a comprehensive resolution of the conflict through peaceful means.⁴⁸

On October 23, 1956, students in Budapest marched in support of Polish demonstrators, advocating for political changes within Hungary, which was under Soviet influence at the time. As they reached the local radio station to express their demands, their peaceful demonstration was met with gunfire.⁴⁹ By the evening, protests and armed violence had escalated across the city.⁵⁰ In the early hours of October 24, Soviet forces entered the city, asserting that they were invited to restore order.⁵¹ By letter dated 27 October 1956, France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America jointly called for the inclusion of an agenda item in the SC, concerning the situation in Hungary. This request came in response to the actions of foreign military forces that had resulted in the violent suppression of the rights of the Hungarian people.⁵² Due to a lack of consensus among the permanent members of the SC, this body faced obstacles in fulfilling its primary duty of upholding international peace and security. Consequently, the United States formulated a resolution calling for an emergency

⁴³(S/22435) 3 April 1991.

⁴⁴(S/22442) 4 April 1991.

⁴⁵(S/RES/688) or 5 April 1991.

⁴⁶Akiner and Catherine Barnes (2001) 16.

⁴⁷(S/24692) 21 October 1992.

⁴⁸(S/24742) 30 October 1992.

⁴⁹Békés (2002) XXXVI–VII.

⁵⁰Gati (2006) 147.

⁵¹Békés (2002) XXXVII.

⁵²(S/3690) 27 October 1956.



session of the GA to implement appropriate measures. The underlying essence of each blocked resolution was to affirm the Hungarian people's entitlement to a government that was responsive to their national aspirations and committed to their independence and welfare.⁵³

2.2. Procedures instituted by the SC *ex officio*

Articles 33(2), 34, and 36 of Chapter VI delineate several legal grounds that enable the SC to proactively consider the occurrence of mass atrocities perpetrated by a state. In accordance with one of the fundamental principles of the UN Charter, namely the peaceful resolution of disputes, Article 33(1) stipulates that parties involved in a dispute that could cause a threat to international peace and security should seek peaceful means of resolving their disagreements. If the dispute has the capacity to pose a threat to peace, the SC has the authority to consider the dispute under Article 33(2), and it is obligated to emphasize to the parties their duty to resolve the dispute peacefully as per Article 33(1), if deemed necessary.⁵⁴ From the text of the article, it seems that the SC lacks the power to delve into the substantive aspects of the case and is restricted to making recommendations to the parties to fulfill their obligation as outlined in Article 33(1) of the UN Charter. Although such power is stipulated in Article 33(2), its application is not confined solely to the provisions of paragraph 1 of that Article.⁵⁵ As stipulated in the Article, the SC has the authority to place any dispute on its agenda that has the potential to jeopardize international peace. Consequently, the parties involved in a dispute may not necessarily be limited to states but can encompass entities of various kinds. Thus, there is a possibility that the SC may include a dispute on its agenda when one party represents the state and the other represents an opposition group within that state. However, it is essential that the dispute exhibits an international dimension in any given scenario. In this line of reasoning, Tomuschat argued that in the context of international peace and security, the SC may consider civil war as a relevant factor.⁵⁶

Article 34 establishes an additional legal basis for the SC to take action on its own initiative. According to its own discretion, the SC has the power to conduct a preliminary investigation into any disputes or situations to ascertain the potential for international friction or dispute.⁵⁷ The Article provides a glimpse into the future. In this regard, it has a preliminary nature and can serve as a foundation for the exercise of any of the SC's powers related to the maintenance of peace.⁵⁸ In order to avoid confusion, the power to investigate should not be equated with the regular considerations and discussions of agenda items by SC members during SC sessions.⁵⁹ In addition, a distinction should also be made between investigative power and observation. In the case concerning the dispatch of an observation group to Lebanon, the delegation of Panama

⁵³Repertoire of the Practice of the Security Council, 108–11. [Link3](#).

⁵⁴Goodrich and Hambro (1949) 243–44.

⁵⁵Kelsen (1951) 374; Rule 12 of the Provisional Rules of Procedure of the SC shows that proceedings before the SC need not necessarily be triggered by an external element.

⁵⁶Tomuschat (2012) 1083.

⁵⁷Goodrich and Hambro (1949) 245.

⁵⁸Goodrich and Hambro (1949) 247; Conforti (2004) 155.

⁵⁹Schweisfurth (2012b) 1096.



pointed out during the SC meeting that, ‘An observation committee is responsible for observing future events but does not have the authority to investigate causes and past incidents’.⁶⁰ Any definition of investigation must be based on the requirements of maintaining or restoring international peace and security, which falls within the remit of the SC. Therefore, both the timeframe and the scope of its application should be interpreted in a broad manner. ‘Investigation’ refers to the procedure initiated by a special decision of the SC and conducted thereafter to clarify specific issues. This includes determining the facts of past incidents as well as events currently unfolding that could impact the future.⁶¹ Another notable aspect of Article 34 pertains to the extent of its applicability (*ratione materiae*) in terms of investigating disputes and situations. The terms ‘disputes’ and ‘situations’ are also utilized in other Articles of Chapter VI; however, no explicit definitions are supplied. Therefore, it is imperative to elucidate the precise connotations and implications of these terms. The Permanent Court of International Justice defined a dispute as ‘a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons’.⁶² For Theodor Schweisfurth, ‘a dispute exists if one party makes a claim against another party and the other party rejects the claim’ and a situation means ‘the entirety or sum total of events, circumstances, and relations between actors concerned’.⁶³ According to his perspective, a situation refers to a circumstance that is not yet classified as a dispute but has the potential to serve as a preliminary stage for a dispute or international tension.⁶⁴ Giegerich considers that a situation ‘serves as a catch-all term for all kinds of tensions that have not given rise to a specific interstate dispute but are already serious enough to require the attention of the UN’.⁶⁵ For Conforti ‘(...) in a dispute a claim to the effect that others act in a certain way comes from one or from few States, whereas in a situation (especially in the case of a domestic situation in a country) there are more or many States or even the entire international Community involved’.⁶⁶ According to Goodrich and Simons,

it may be presumed that the term is used to describe a set of conditions slightly broader in implication than a dispute, which may be considered as a controversy in which the parties and the issues are capable of fairly definite determination. Every dispute arises from some situation, and any dispute may in turn give rise to new situations. A situation may or may not give rise to a dispute; it may, moreover, develop directly into a threat to the peace.⁶⁷

Kelsen believed that

whereas a dispute can exist only in the relationship between two or more definite states, a situation may have a more general character, not being restricted to definite States and not being confined to a

⁶⁰Schweisfurth (2012b) 1097; UNSC Resolution 128 (11 June 1958) UN Doc S/RES/128.

⁶¹Goodrich and Hambro (1949) 189; Schweisfurth (2012b) 1096–97.

⁶²Mavrommatis Palestine Concessions (Greece v. Great Britain) P.C.I.J, Judgment of 30 August 1924 (Objection to the Jurisdiction of the Court), p 11; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), ICJ Reports, Judgment of 5 October 2016, para 36.

⁶³Schweisfurth (2012b) 1097–98.

⁶⁴Schweisfurth (2012b) 1098.

⁶⁵Giegerich (2012b) 1130.

⁶⁶Conforti (2004) 157–59.

⁶⁷Goodrich and Hambro (1949) 230.



definite territory. But it is not impossible to interpret the term ‘situation’ as meaning a concrete situation in which definite states are involved.⁶⁸

The Report of the Interim Committee of the General Assembly (1950) defined dispute as ‘[a] disagreement; in other words, there must be a controversy between the parties. This takes the form of claims, which are met with refusals, counterclaims, denials or counter-charges, accusations, etc.’⁶⁹ Even the mere potential of causing friction and disputes in the future is adequate for the SC to commence an investigation⁷⁰ to ascertain whether international peace and security are jeopardized. The SC inherits the prerogative to employ the authority of investigation prior to undertaking action in accordance with Article 35(1) or any other relevant Articles of the UN Charter, autonomously and of its own volition, with the aim of acquiring a more thorough comprehension of the facts and circumstances at hand before ascertaining whether the specific dispute presents a menace to international peace. At this point, it should be noted that since the Article does not make reference to particular categories of disputes, the SC has the authority to exercise its jurisdiction over both political and legal disputes.⁷¹ As per classical distinction, legal disputes arise when parties disagree on the application and interpretation of existing legal rules, whereas political disputes occur when at least one party seeks to modify the existing legal framework (*lex lata*).⁷²

Regarding the international dimensions of a dispute or situation, commentators have suggested that a dispute would be considered international if it involves two or more states, while the concept of a situation cannot be limited by the same criteria.⁷³ When assessing the jurisdiction of the SC in relation to a given situation, it is imperative to evaluate the SC’s competence based on the criteria delineated in Article 2(7), rather than solely fixating on the attributes of the parties involved. The SC may invoke the authority granted by Article 34 solely in cases where the situation in question does not fall within the purview of domestic jurisdiction, and in the determination of whether an issue is internal or not, Article 2(7) becomes decisive. Considering all the definitions, there is no reason to exclude the commission of mass atrocities from the list of situations. Therefore, if a state perpetrates mass atrocities against its own population, the SC may initiate an investigation into the situation to ascertain whether it has the potential to escalate into international friction or a dispute. Subsequently, the SC can make an informed decision based on the findings of the investigation. In the event that an investigation is conducted based on Article 34, the states involved are legally obligated to accept and implement this decision, especially to allow an investigative subsidiary organ to enter their territory.

⁶⁸Kelsen (1951) 388.

⁶⁹Report Of the Interim Committee of The General Assembly (Third Session: 16 January – 18 September 1950), Fifth Session Supplement No. 14 (A/1388), para 10.

⁷⁰Schweisfurth (2012b) 1098.

⁷¹Goodrich and Hambro (1949) 256.

⁷²Lapidoth (n.d.) 7.

⁷³Schweisfurth (2012b) 1099; Blokker, Niels and Kleiboer (1996) 7–35.



This is because a decision made under Article 34 is binding as per the provisions of Article 25.⁷⁴ In light of this inquiry, another question emerges regarding the degree to which the implicated state is bound to facilitate investigation into the alleged human rights transgressions attributed to it. In other words, is the state obligated to fully comply, or does it have the option to resist a comprehensive investigation, or is it obligated to cooperate to a certain extent and exercise discretion beyond that? Conforti posited that in relation to cooperation, the UN Charter clearly highlights the imperative of making significant concessions when necessary, and as Article 34 does not specify the degree of cooperation required, it becomes necessary to find the answer in other provisions of the UN Charter.⁷⁵ Consequently, according to Article 2(5), the states involved are obligated to collaborate with the SC as a constituent part of the UN.⁷⁶ Nonetheless, if they can present a reasonable justification, they may seek exemptions from the investigation.⁷⁷ The author tends to disagree with this argument. This submission might be valid in most circumstances, but not in cases involving mass atrocities. A state's most acceptable justification for refusing an investigation unequivocally is to invoke a 'public emergency which threatens the life of the nation'. Under Article 4 of the ICCPR, the parties are not permitted to suspend the implementation of certain human rights even when the life of the nation is at risk.⁷⁸ Accordingly, when it comes to investigating infringements of those rights that are non-derogable, it is imperative that no justification be deemed valid *a priori* for declining collaboration with the investigative determination of the SC.

When the SC decides to initiate an investigation into a dispute or situation, it is not a procedural decision according to Article 27(2), but rather a substantive decision that necessitates compliance with Article 27(3) in terms of its legality. This entails obtaining an affirmative vote from nine members, including the concurring votes of all permanent members of the SC.⁷⁹ If the SC is unable to reach a consensus regarding whether the investigation order should be classified as a substantive decision under Article 34 or a procedural decision under Article 29, the decision is then subject to the unanimity rule as outlined in Article 27(3)⁸⁰ (double veto). In accordance with Articles 4 and 35 of the UN Charter, the Polish government formally appealed to the SC to include on its agenda the situation arising from the presence and operations of the Franco

⁷⁴Schweisfurth (2012b) 1098; Kerley (1961) 897; Jimenez De Arechaga (1978) 89; Sonnenfeld (1976) 140–41; Kelsen (1951) 388; for dissenting opinion, see De Wet (2004) 38–40. Conforti believes that considering an investigation as a normative act either as a decision (mandatory prescription) or as a recommendation (desired outcome) is incorrect. An investigation should rather be seen as an operational resolution which does not lay down rules for conduct. As a result, instead of Article 34, attention should be directed to Article 2, para. 5, under which 'all Members shall give to the United Nations every assistance in any action it takes in accordance with the present Charter'. Conforti (2004) 159. For opposite view look at: Kolb (2010) 58.

⁷⁵Conforti (2004) 159–60.

⁷⁶Conforti (2004) 159–60.

⁷⁷Conforti (2004) 159–60.

⁷⁸No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision. Article 4(2). International Covenant on Civil and Political Rights, 16 December 1966, adopted by General Assembly resolution 2200A (XXI).

⁷⁹Schweisfurth (2012b) 1101; Goodrich and Hambro (1949) 248; Conforti (2004) 157. The problem of the legal significance of the Four Power Statement of 7 June 1945, is discussed by Gross (1953).

⁸⁰Schweisfurth (2012b) 1102; Conforti (2004) 39.



regime in Spain. This request was motivated by various factors, including the Franco regime's sheltering of a significant concentration of Nazi assets and personnel, as well as providing refuge for numerous war criminals. The SC made a resolution to conduct additional investigations with the aim of ascertaining whether the situation in Spain resulted in international tensions and posed a threat to international peace and security. If such findings were established, the SC would then determine the appropriate practical measures that the UN could undertake. In pursuit of this objective, the SC appointed a subcommittee tasked with reviewing the statements presented before the SC regarding Spain, collecting additional statements and documents, and conducting any necessary inquiries deemed essential by the subcommittee.⁸¹

Within Chapter VI, Article 36 represents the final legal premise through which the SC can commence proceedings *ex officio*. This Article should be considered from the standpoint of the SC's foremost duty to maintain international peace and security as outlined in Article 24(1). In this context, Article 36 bestows the SC the authority to intervene in any dispute or situation on its own volition, without being bound by other stipulations within Chapter VI except for the criterion of posing a threat to international peace and security.⁸² This Article does not restrict the authority of the SC to address specific disputes or situations, as its language is adequately comprehensive to indicate that its application encompasses internal disputes or situations that escalate to a level where their persistence may endanger international peace and security.⁸³ Having such broad discretion seems to yield the following consequences. Firstly, it falls in the competence of the SC to intervene in situations where the right to self-determination is being violated or when there are substantial human rights abuses taking place. It is crucial to note that, in this regard, due to the preventive nature of the Article, the SC is not obligated to establish an immediate threat to peace before taking action. Secondly, the states involved in a dispute lack the authority to unilaterally or collectively withdraw the dispute from the jurisdiction of the SC, as the SC is fulfilling its primary duty to maintain peace according to Article 36.⁸⁴ Thirdly, the Article does not incorporate the principle of subsidiarity, which would impose a specific time constraint on the SC. Consequently, the SC may act whenever it deems it necessary or advantageous. Lastly, in situations where there is ambiguity regarding the nature of the matter, whether it is classified as a dispute or a situation, the responsibility of determining the appropriate categorization rests with the SC. This falls within the ambit of Article 27(3), requiring the involvement of all the SC's Members.⁸⁵

Once the SC has taken control of a case, it has the authority to propose either 'appropriate procedures' for resolving a dispute or 'appropriate methods of adjustment' for adjusting the situation. In making these recommendations, the SC can suggest to the parties involved a particular procedure that it considers fitting given the specific circumstances. Nonetheless, the SC is not empowered to evaluate the substance of the case and propose terms of settlement. On 20th December 2012, the President of the SC officially added the situation in Mali to the SC's agenda through a formal communication. During this meeting, the SC issued a presidential

⁸¹(S/RES/4) 29 April 1946.

⁸²Giegerich (2012b) 1124.

⁸³Giegerich (2012b) 1130.

⁸⁴Kelsen (1951) 405; Bowett (1972) 182.

⁸⁵Giegerich (2012b) 1131.



statement highlighting its deep apprehension regarding the escalating insecurity and rapidly worsening humanitarian conditions in the Sahel region.⁸⁶ The SC emphasized the significance of safeguarding the well-being of civilians and upholding human rights. It urged the rebels to promptly halt all acts of violence and encouraged all parties involved in Mali to pursue a peaceful resolution by engaging in relevant political dialogues.⁸⁷ In light of the alarming and extensive human rights violations occurring within the jurisdiction of the People's Republic of Korea, the members of the SC expressed their profound apprehension and requested the SC's President to officially include the situation in the Democratic People's Republic of Korea on the agenda.⁸⁸

2.3. Procedures instituted by the General Assembly

According to Article 10, the GA possesses the jurisdiction to deliberate upon any question or subjects falling within the ambit of the UN Charter, encompassing the crucial matter of universal peace and security. In this context, the UN Charter bestows upon the GA the authority to refer a situation that poses a potential threat to international peace or security to the SC, as stipulated in Article 11(3). Accordingly the GA has the ability to regard mass atrocities committed by a Member State as a menace to international peace and security and present the matter to the SC for necessary measures. Through the adoption of Resolution 3376, the General Assembly made a formal plea to the Security Council to scrutinize the matter pertaining to the full realization of the Palestinian people's inherent and non-negotiable rights.⁸⁹ Nevertheless, owing to the utilization of the veto power, the Security Council was unable to arrive at a definitive decision.⁹⁰ Similarly, the GA, having voiced its deep dismay over the persistent acts of aggression committed by Israel and denouncing the policies and actions that flagrantly infringe upon the human rights of the Palestinian people, called upon the SC to deliberate on appropriate measures aimed at safeguarding the protection of Palestinian civilians residing in the occupied territories.⁹¹

2.4. Procedures instituted by the Secretary-General

According to Article 99, the SG has the authority to alert the SC to any matter that, in his judgment, could jeopardize the preservation of international peace and security. The wording of the Article suggests that the SG also possesses significant discretion in referring a dispute or a situation concerning mass atrocities to the SC. In a letter sent to the President of the SC, the SG expressed profound apprehension regarding the security, humanitarian, and human rights conditions prevailing in Myanmar's Rakhine State.⁹² Subsequent to this correspondence, the SC issued a presidential statement that vehemently condemned the pervasive acts of violence

⁸⁶(S/PV.6741) 20 December 2012.

⁸⁷(S/PRST/2012/9) 4 April 2012.

⁸⁸(S/2014/872) 5 December 2014.

⁸⁹Resolution 3376, 1976.

⁹⁰Repertoire of the Practice of the Security Council, 217. [Link4](#).

⁹¹(A/RES/47/64[E]) 22 March 1993.

⁹²(S/2017/753) 2 September 2017.



and voiced serious distress over the accounts of human rights violations. The SC underscored the Government's paramount obligation to safeguard its population and urged it to prevent any further disproportionate employment of military force, and furthermore, urged the government to adhere to its human rights obligations.⁹³

3. DISOBEYING THE SECURITY COUNCIL'S RESOLUTIONS

Chapter VI deals with the peaceful settlement of disputes in international relations and, in doing so, empowers the SC to exercise a primarily conciliatory role. This study will now proceed to examine the legal repercussions that may arise from non-compliance with the recommendations under Chapter VI by the respective state. It is true that the SC's recommendations under Chapter VI are not mandatory in the same sense as those under Chapter VII, but it does not mean that they lack any legal consequences. In contrast to the former, recommendations of a Chapter VI nature should be regarded as carrying a relative obligation. Given the circumstances, a Member State should thoroughly assess the recommendations and ascertain the appropriate measures to ensure compliance with them. Members States, therefore, cannot disregard these resolutions without providing a reasonable justification. Such an obligation stems from Article 2(5) of the UN Charter, which mandates Member States to cooperate with the UN in any action it takes in accordance with the present Charter. Additionally, Article 25 stipulates that 'the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. Accordingly, if the state in question disregards the SC's recommendation, which carries the presumption of legal validity, it would constitute a breach of the UN Charter, and the SC can resort to the remedies outlined in Articles 6, 11(2), and 39 of the UN Charter. Article 6 specifically addresses the legal consequences of a breach of the UN Charter. Pursuant to Article 6, the SC may deem non-compliance by a Member State as a violation of Article 2(5), which is an integral part of the UN Principles. As a result, the SC may recommend to the GA the expulsion of the concerned state. By referring to Article 11(2), the SC can bring a breach of the UN Charter to the attention of the GA. In turn, based on Article 14, the GA may recommend measures for the peaceful resolution of any situation involving a violation of the provisions of the UN Charter that establish the Purposes and Principles of the UN. The caveat regarding a breach of the UN Charter is that the UN Charter itself does not specify the precise mechanism for initiating the examination of such a question. It is unclear whether the UN can address the issue *ex officio* or if it should be raised by Member States.

There is another plausible possibility in which the SC may utilize the authority granted by Article 39 to determine that the disobedience constitutes a threat to peace, thus invoking the powers outlined in Chapter VII. However, a significant concern with this theory is that it seems to assign mandatory characteristics to exhortatory recommendations that they do not possess. Moreover, if the situation is urgent and requires compliance with the SC's recommendations, the SC may initially invoke Chapter VII directly without attempting to treat disobedience of the recommendation as a threat to peace in order to seize control of the situation. Having said that the author argues that the SC's recommendation to address a human rights-oriented situation or dispute under Chapter VI is of a mandatory nature. This belief stems from the fact that

⁹³(S/PRST/2017/22) 6 November 2017.



Article 25 provided that Member States have agreed to comply with the decisions of the SC, without making a distinction between decisions under Chapter VII and decisions under other Chapters. Moreover, the UN Charter does not contain any provision indicating that the recommendations made by the Security Council are non-binding. As ICJ has ruled, under Article 25, the enforcement element is not solely ascribed to enforcement measures adopted under Chapter VII of the UN Charter, but applies to all decisions of the SC adopted in accordance with the UN Charter.⁹⁴ The consequence of non-compliance with the recommendations of Chapter VI is outlined in Article 39, whereby the SC may ascertain both the non-compliance and, specifically, the original dispute as a threat to peace. Therefore, the recommendation of the SC to parties involved in a human rights-based dispute to settle their conflict carries a *sui generis* character. While it is obligatory, states still retain a certain degree of flexibility in complying with it. In other words, the SC grants the state in question the option to either implement the recommendations of Chapter VI or await the invocation of Article 39 and the subsequent resolutions of Chapter VII. One can criticize the author's argumentation on this point. If the recommendations under Chapter VI are indeed compulsory, it raises the question of what distinguishes them from resolutions under Chapter VII, given that both are considered to carry the same legal enforcement. The author's response would be that this criticism does not appear to be correct since it assesses the recommendations under Chapter VI solely from the perspective of Member States, while the matter should be viewed from the perspective of the SC. Chapter VI establishes the duty of Member States to resolve disputes peacefully and outlines the powers of the SC in facilitating this process. Nowhere in Chapter VI does it suggest that the recipients of recommendations have the liberty to disregard them. The designations of resolutions as recommendations under Chapter VI do not stem from their non-binding nature, but rather from the fact that they do not constitute the ultimate determination of the SC in relation to the specific matter under consideration. This is due to the fact that the current state of the dispute or situation presents a potential endangerment to international peace and security, rather than a realized threat to peace. In contrast, resolutions under Chapter VII demonstrate the SC's conclusive determination to maintain or restore international peace in response to the presence of a threat to peace. Therefore, within the framework of the UN Charter, resolutions falling under Chapter VI have a binding effect on the involved parties. However, they are categorized as recommendatory resolutions when compared to the resolutions found in Chapter VII, which embody the quality of conclusiveness when addressing the specific matter at hand.

4. DO STATES HAVE THE RIGHT TO QUESTION THE SC'S COMPETENCE?

It is essential to analyze the possibility of an objection to the SC's competence by the offending state after the SC seizes an issue or exercises its powers in accordance with the UN Charter. Is the UN Charter conducive to Member States questioning the actions of the SC? According to the UN Charter, it remains mute and fails to offer any indication as to whether Member States have the right to dissent against the SC's actions in instances where it surpasses its prescribed competence. In international law, there is no general applicable rule that prohibits members

⁹⁴Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, para 113.



of an organization from raising objections to a decision made by the acting body on the basis of exceeding their designated jurisdiction, unless such restrictions are explicitly outlined in the constituent instrument. In the case of the *Legality of the Threat or Use of Nuclear Weapons in Armed Conflict*, the World Health Organization (WHO) sought an advisory opinion from the ICJ. However, the ICJ declined to provide an advisory opinion to the WHO on the ground that the requested question lies beyond the scope of the organization's mandate. The ICJ held that: 'the request for an advisory opinion submitted by the WHO does not relate to a question which arises 'within the scope of [the] activities' of that Organization'.⁹⁵

One cannot dispute the implication of the passage, which suggests that international organizations have the potential to exceed their given powers. Therefore, it would be incorrect to assume that the presumption of validity applies to all activities carried out by international organizations. In the *Namibia* case, the South African delegation contended that the SC had erred by categorizing Namibia as a 'situation' instead of a 'dispute', thereby contravening Article 32 of the Charter. The ICJ, however, dismissed this argument as not based on the SC's immunity from wrongful acts, but due to the expiration of the lapse of time. The Court stated:

Had the Government of South Africa considered that the question should have been treated in the SC as a dispute, it should have drawn the Council's attention to that aspect of the matter. Having failed to raise the question at the appropriate time in the proper forum, it is not open to it to raise it before the Court at this stage.⁹⁶

Furthermore, the SC does not possess the authority to determine its own jurisdiction (competence in competence), as it is not a judicial body, and furthermore, is not explicitly vested with such a power under the UN Charter. It is widely recognized in theory and practice that international relations are based on the allocation of jurisdictions; however, the challenge lies in preserving rather than establishing, international relations, especially in the context of interactions between international organizations and their Member States.⁹⁷ An objection to the jurisdiction of the UN's political organs is an attempt to uphold the already established allocation of jurisdiction between the UN's organs and the Member States.⁹⁸ Hence, Member States are not constrained from contesting the activities of the SC, and they enjoy the prerogative to scrutinize the actions of the SC in case it surpasses its prescribed competence.

5. WHO POSSESSES THE AUTHORITY TO AUTHENTICALLY INTERPRET THE UN CHARTER?

Let us now move on to analyze the solution presented in the UN Charter to address disputes arising between the offending state and the SC regarding the interpretation and application of

⁹⁵Legality of the Use by a State of Nuclear Weapons in Armed Conflict, ICJ Reports, Advisory Opinion of 8 July 1996, para 84.

⁹⁶Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports, Advisory Opinion of 21 June 1971, para. 25.

⁹⁷Ciobanu (1975) 48.

⁹⁸Ciobanu (1975) 48.



the UN Charter. The most frequently raised preliminary objection to the jurisdiction of the UN's political organs is *ultra vires*. In this context, the offending state asserts that the act of the SC is *ultra vires*, while the SC maintains that it is *intra vires*. For instance, in the Lockerbie situation, following the adoption of Resolution of S/RES/748 (1992) by the SC, which imposed specific embargoes on Libya, the League of Arab Nations, the Organization of Islamic Cooperation, the Non-Aligned Movement, and the Organization of African Unity declined to adhere to the sanctions, deeming them *ultra vires*. The latter organization considered the resolution to be in contravention of Articles 33 and 36(3) of the UN Charter. While it is widely understood that an *ultra vires* act refers to actions carried out by an international organization that exceed its designated sphere of competence,⁹⁹ there is disagreement among commentators regarding the entity holding the prerogative to deliver the authentic interpretation. To arrive at an appropriate resolution to this dilemma, a range of perspectives will be analyzed. Before delving into these theories, it is important to have a clear understanding of the nature of the SC. The SC is a political body that operates on the basis of expediency rather than adopting a strictly judicial approach to political issues. In essence, practicality and expediency are fundamental characteristics of the political organs of the UN.¹⁰⁰ As a result of expediency, powers should be utilized in the most effective manner within a given situation, enabling the attainment of political opportunism in accordance with the prevailing circumstances.¹⁰¹ In their collective dissenting opinion in the *Admission* case, Judges Basdevant, Winiarski, Sir Arnold McNair, and Read effectively exemplify the implementation of expediency by a political entity. They believe that

[t]he main function of a political organ is to examine questions in their political aspect, which means examining them from every point of view. It follows that the Members of such an organ who are responsible for forming its decisions must consider questions from every aspect, and, in consequence, are legally entitled to base their arguments and their vote upon political considerations.¹⁰²

In the same line of reasoning, Judge Zoričić expressed that

[n]either the Charter nor the Rules of procedure of the Council or the Assembly contain anything as to what a Member may or should do when it votes and— a point of great importance— there is no obligation on the part of Members to give a reason for their vote. (...) As a Member who votes is entitled to do so without giving any reasons for his vote, he may act in accordance with his own view of the case.¹⁰³

Consequently, the SC enjoys significant discretion to include or exclude the issue of mass atrocities from its agenda, and concerning the seized matter, the SC has the liberty to fix the most appropriate methods and procedures to tackle each specific case, including the authority to

⁹⁹Cannizzaro and Palchetti (2011) 365.

¹⁰⁰Ciobanu (1975) 13.

¹⁰¹P.C.I.J., Exchange of Greek and Turkish Populations (1925) 25.

¹⁰²Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ Reports, Advisory Opinion of 28 May 1948, Dissenting Opinion of Judges Basdevant, Winiarski, Sir Arnold McNair and Read (1948) 85.

¹⁰³Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ Reports, Advisory Opinion of 28 May 1948, Dissenting Opinion of Judges Basdevant, Winiarski, Sir Arnold McNair and Read (1948) 97.



dismiss or halt any ongoing proceedings if it is deemed the most expedient course of action.¹⁰⁴ When considering these premises collectively, one might infer that the actions undertaken by the SC carry an inherent sense of finality, and consequently, the notion of expediency might be perceived as being synonymous with arbitrariness. The UN Charter, however, does not make any explicit mention of the SC's decisions being characterized as arbitrary. To properly evaluate the expediency of the SC, one must consider the boundaries set by the constituent instrument from which this organ derives its competence. It is crucial to differentiate between the concepts of expediency and competence, ensuring that their application is not conflated or misunderstood.¹⁰⁵ The ICJ in the case of *Conditions of Admission* ruled that: 'The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment'.¹⁰⁶

In a similar vein, it was underscored in the *Namibia* case that the definitive boundaries of the powers of the GA and the SC are delineated by the UN Charter through which they are established, specifying their functions and powers.¹⁰⁷ These passages clearly indicate that the SC is obligated to adhere to the laws, and any deviation from the pertinent legal norms would render the decision *ultra vires*. Consequently, it is understandable for there to be disagreement between the SC and the offending state regarding the interpretation of the UN Charter.

5.1. Delimitation of the jurisdictional dispute: solutions

Historically, objections to jurisdiction have emerged within the jurisprudence of courts and tribunals, and over time they have gradually extended to accommodate political bodies like the UN, albeit with distinct legal nuances.¹⁰⁸ The following section will explore theories of last resort, as well as the SC's inherent power of interpretation.

5.1.1. Theory of last resort. The theory posits that the ultimate basis of the SC's jurisdiction stems from the sovereignty of UN Member States, and hence the consensual nature of the UN Charter preserves certain rights for the Member States. As constituent instruments are international treaties, each party owns an inherent right to oversee their implementation, thereby ensuring that organizations refrain from making decisions that are incompatible with their objectives and purposes or that would harm the interests of Member States beyond what they have agreed upon as the foundation for membership.¹⁰⁹ Essentially, Members of the political institutions have the right, in the absence of a compulsory mechanism of judicial review, to question the legal validity of decisions made by the acting organs and, as a last resort, to refrain

¹⁰⁴Ciobanu (1975) 14–15.

¹⁰⁵Thomas (1922) 225.

¹⁰⁶Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ Reports, Advisory Opinion of 28 May 1948, p 64; Competence of the ILO to Examine Proposal for the Organization and Development of the Methods of Agricultural Production, P.C.I.J., Advisory Opinion of 12 August 1922, 55.

¹⁰⁷Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports, Vol. II, Oral Statements and Correspondence, Pleadings, Oral Arguments, Documents (1971) 485.

¹⁰⁸Ciobanu (1975) 61–63.

¹⁰⁹Osieke (1983) 240; Ciobanu (1975) 69.



from complying with acts they perceive as *ultra vires*.¹¹⁰ The application of this theory does not seem to be illuminating nor efficient. Delegating the authority of final interpretation to Member States would result in a lacuna and seriously hamper the efficiency of the UN, especially the SC. It would be easy for any Member State of the UN to impede or hinder the execution of the SC's duties by challenging the corresponding action on the ground that it falls outside the SC's jurisdiction. This could bring chaos to the UN system. Furthermore, other subjects of international law may be ambivalent about complying with the decisions of the SC due to the potential challenges to their legal validity in the future. Thus, the need for legal certainty necessitates a restrictive view regarding the Member States' right to provide authentic interpretations.¹¹¹ As Pollux wrote, the 'easiest, the most primitive, and the most unsatisfactory solution is to say that each individual Member has the right to decide for itself how to interpret the Charter'.¹¹² Lastly, in the exercise of a Member State's right to provide an authentic interpretation, it must be noted that such an act is unilateral and may have a significant legal effect on the state or states involved. There is no rule in international law that extends the legal validity of an interpretation issued by a party or group of parties to other parties. Nonetheless, a Member State may, under very rare circumstances, provide an authentic interpretation, but only if all members of the UN unanimously agree on the exact same interpretation.

5.1.2. The Inherent power of the SC to determine its competence. A second perspective examines the evolutionary nature of international organizations and interprets their functions and powers based on their efficient and effective functioning, rather than solely relying on the understanding derived from their constituent instruments.¹¹³ Theories in this category assert that it is the SC that retains the competence to provide authentic interpretation, and this authority flows from the inherent right of international organizations to interpret their constituent instruments, thereby determining how their functions and powers should be exercised.¹¹⁴ There is no explicit mention of this approach in the UN Charter; however, it could be supported by the preparatory work conducted during the San Francisco negotiations. According to the report of Committee IV/2 of the San Francisco Conference:

In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the SC, or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle.¹¹⁵

¹¹⁰Ciobanu (1975) 174.

¹¹¹Ciobanu (1975) 376; Cannizzaro and Palchetti (2011) 383.

¹¹²Pollux (1946) 56.

¹¹³Sato (1986) 14.

¹¹⁴Osieke (1983) 242.

¹¹⁵UNCIO, Vol.13, 710, Doc. 9. 33 (IV/2/42/(2)), June 12, 1945.



One could also cite the ICJ's ruling in the *Certain Expenses* case as further testament to corroborate the theory of the SC's inherent power to define its own jurisdiction. The Court stated:

Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted; the opinion which the Court is in course of rendering is an advisory opinion. As anticipated in 1945, therefore, each organ must, in the first place at least, determine its own jurisdiction.¹¹⁶

Nevertheless, all these arguments prove inadequate in attributing the power of ultimate authority exclusively in the interpretation offered by the SC. Any organ of the UN has the authority to interpret those sections of the UN Charter that are relevant to its specific function. However, it is important to note that such interpretations cannot be considered authentic or authoritative in nature, meaning they do not possess absolute binding force.¹¹⁷ The report of the Committee solely pertains to the routine operations of the UN's organs, and it should not be conflated with the authority to provide authentic interpretation. Let us assume that there is a positive conflict between the SC and the GA concerning a specific matter. Taking into account that both organs have the ability to delimit their scope of competence, and also considering the absence of a hierarchical structure within the UN, such a situation may lead to a lacuna. Therefore, it seems that the presumption of absolute validity regarding the interpretation put forth by the SC is susceptible to immediate and robust contention. In the same report, the Committee explicitly rejected the assumption of competence in competence (*Kompetenz-Kompetenz*) for the organs of the UN. The report stated: 'It is to be understood, of course, that if an interpretation made by any organ of the Organization (...) is not generally acceptable it will be without binding force'.¹¹⁸

Regarding the ICJ passage, the language used by the Court does not demonstrate enough strength to conclusively establish that the SC has the authority to provide an authentic interpretation. The advisory opinion suggests that each organ holds the authority to comment on its jurisdiction primarily, rather than definitively. It appears that the Court's statement aligns with the report and serves as an inevitable outcome of the UN's legal autonomy and the logical consequence of its legal personality's independence. Despite the opportunity to resolve all doubts, the Court did not deliver a definitive verdict. As Klabbers wrote:

That is not to say that the interpretation by such organ is necessarily authoritative: such might depend on the institutional balance created by the constitution. The Charter does not create any balance, or, depending on where you stand, creates the ultimate balance: there is no legal hierarchy between the various organs when it comes to interpreting the Charter.¹¹⁹

Such an interpretation of the UN Charter seems to be grounded in functional necessity, implying that an international organization has an inherent right to determine its own powers. When an organization is established, it inherently possesses powers that derive from organizationhood, allowing it to undertake any activities it deems necessary to fulfill the organization's

¹¹⁶Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), ICJ Reports, Advisory Opinion of 20 July 1962, 168.

¹¹⁷Gross (1984) 393.

¹¹⁸UNCIO, Vol.13, 710, Doc. 9. 33 (IV/2/42/(2) June), 12, 1945.

¹¹⁹Klabbers (2009) 101.



objectives, and as long as those activities are not explicitly prohibited by the constituent instrument, they would be considered legally valid.¹²⁰ Moreover, proponents contend that the doctrine of inherent powers is associated with two notable benefits. Firstly, the doctrine of inherent powers contributes to the functionalist agenda by enabling an organization to accomplish its objectives without being hindered by ambiguously drafted legal provisions. Secondly, it grants courts and commentators the capacity to review the actions of organizations swiftly and accurately.¹²¹

Having said that, if the SC is believed to wield such an inherent power, then its actions cannot be subjected to challenges by Member States because if this power could be questioned by every individual, then it ceases to be inherent in any meaningful sense of the word.¹²² Furthermore, regardless of the strength of the principle of necessity, it cannot supplant the UN Charter. In the context of collective security outlined in the UN Charter, relying solely on the principle of necessity does not constitute a purely legal argument that can be employed to justify the SC's power to establish definitive delimitations.

5.1.3. The obligation to cooperate in good faith: a final solution. As a result of the analysis, neither the Member States nor the SC may provide an authentic interpretation of the UN Charter. The author believes that in cases of serious conflict between the SC and a defiant state, the UN Charter necessitates cooperation between both parties to attain a hybrid interpretation of its provisions. This solution is founded upon Articles 1(3) and 2(2)(5) of the UN Charter. Article 2 sets forth the corrective principles through which the objectives outlined in Article 1 are to be attained. According to Article 2(2) of the UN Charter, both UN organs and Member States are obligated to act in good faith to fulfill their duties, and based on paragraph 5 of the same Article, Members are required to provide the UN with assistance in any actions undertaken in accordance with the UN Charter. The synthesis of these two obligations shall culminate in the aim of fostering 'achieving international cooperation in solving international problems,' as one of the core purposes of the UN. In such a scenario, the offending state may raise objections to the SC's *ultra vires* acts, but it must substantiate and clarify the legal grounds upon which the decision made exceeded the powers delegated by the UN Charter. Similarly, although the SC is not obligated to explicitly cite the legal basis for its actions under normal circumstances, it is generally expected to present a compelling argument justifying the *intra vires* nature of the given act. If reconciliation proves unattainable, the offending state may seek the interpretation of the GA under Article 10. In this regard, the crucial factor lies in whether the interpretation proposed by the offending state garners majority support from the international community. If the GA deems such an interpretation to be reasonable, it has the option to present the interpretation to the SC through a resolution under Article 10. While it is true that the SC is not obligated to adhere to this resolution, it cannot disregard it entirely. In the final stage, if both the SC and the GA maintain their respective interpretations, the dispute should be submitted before the ICJ for an advisory opinion in accordance with Article 96(1). Should the UN aim to maintain the adherence of its Members, it must resort to the ICJ as a final measure to safeguard the legitimacy

¹²⁰Seyersted (1964) 28.

¹²¹White (1996) 48.

¹²²Klabbers (2009) 77.



of the system.¹²³ The author views this solution as appropriate since it incorporates advantages, aligns with international jurisprudence, and mitigates potential drawbacks.

6. CONCLUSION

Considering the principle of peaceful dispute resolution, as a core tenet of the UN, the SC is vested with the power to advance recommendations regarding methods and procedures designed to facilitate the peaceful settlement of conflicts. This authority is derived from the provisions outlined in Articles 33–38 of Chapter VI, as well as Articles 11 and 99 of the UN Charter. The extent of power exercised by the SC would vary depending on the nature and specifics of the referral at hand. In the event that a referral is initiated by either party, after exhausting all attempts to peacefully resolve the dispute, the SC is vested with comprehensive authority under Chapter VI, namely, encouraging the parties to seek peaceful resolution, conducting investigations into disputes or situations that may lead to international tensions, recommending appropriate procedures or methods of adjustment, and ultimately recommending terms of settlement. When a referral is made without any prior attempts by the parties to resolve the dispute, the SC is limited in its ability to address the substance of the issue and it may, at most, provide recommendations for procedures or methods of adjustment. If the SC adopts the case or issues recommendations that it deems appropriate, the offending state may contest the SC's competence. This leads to a conflict regarding the authority to provide an authentic interpretation of the Charter. This paper suggests that although the SC may determine the scope of its competence at the initial stage, it lacks competence in competence (*Kompetenz-Kompetenz*). In order to achieve the authentic delimitation of the SC's jurisdiction, it is crucial for both the organs of the UN and the Member States to engage in sincere dialogue and cooperation.

BIBLIOGRAPHY

- Akiner, S. and Barnes, C., 'The Tajik civil war: causes and dynamics' in Abdullaev, K. and Barnes, C. (eds), *Politics of compromise: The Tajikistan peace process* (Conciliation Resources 2001) 16–21.
- Békés, D. M., Byrne, M. and Rainer, M. J., (eds), *The 1956 Hungarian Revolution: A History in Documents* (Central European University Press 2002).
- Bird, A., 'Third state responsibility for human rights violations' (2010) 21 *European Journal of International Law* 883–900.
- Blokker, N. M. and Kleiboer, M., 'The Internationalization of Domestic Conflict: The Role of the UN Security Council' (1996) 9 *Leiden Journal of International Law* 7–35.
- Bowett, D. W., 'The United Nations and peaceful settlement' in et al. (eds), *International Disputes: The Legal Aspects. (The Report of a Study Group of the David Davies Memorial Institute of International Studies* (Europa Publications 1972) 179–209.
- Cannizzaro, E. and Palchetti, O., 'Ultra Vires Acts of International Organizations' in Klabbers, J. and Wallendahl, Å. (eds), *Research Handbook on the Law of International Organizations* (Edward Elgar Publishing 2011) 365–97.

¹²³ Franck (1992) 523.



- Ciobanu, D., *Preliminary Objections: Related to the Jurisdiction of the United Nations Political Organs* (Martinus Nijhoff 1975).
- Conforti, B., *The Law and Practice of the United Nations* (3rd edn, Brill Academia 2004).
- Conforti, B. and Focarelli, C., *The Law and Practice of the United Nations* (5th edn, Martinus Nijhoff 2016).
- De Wet, E., *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004).
- Franck, Th. M., 'The "Powers of Appreciation": Who Is the Ultimate Guardian of UN Legality?' (1992) 86 *American Journal of International Law* 519–23.
- Gati, C., *Failed Illusions: Moscow, Washington, Budapest, and the 1956 Hungarian Revolt* (Stanford University Press 2006).
- Giegerich, Th., 'Ch.VI Pacific Settlement of Disputes, Article 36' in Simma, B., Khan, D.-E., Nolte, G., Paulus, A. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (3rd edn Oxford University Press 2012b) 1119–45.
- Giegerich, Th., 'Ch.VI Pacific Settlement of Disputes, Article 37' in Simma, B., Khan, D.-E., Nolte, G., Paulus, A. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012a) 1146–60.
- Goldstein, E., *Endless torment: The 1991 uprising in Iraq and its aftermath* (Human Rights Watch 1992).
- Goodrich, L. M. and Hambro, E., *Charter of the United Nations: Commentary and Documents* (Columbia University Press 1949).
- Gross, L., 'States as Organs of International Law and the Problem of Autointerpretation' in (n.d.) (ed), *Essays on International Law and Organization* (Springer Netherlands 1984) 367–97.
- Gross, L., 'The Double Veto and the Four-Power Statement on Voting in the Security Council' (1953) 67 *Harvard Law Review* 251–80.
- Jimenez De Arechaga, E., *Voting and the Handling of Disputes in the SC* (Praeger 1978).
- Kamminga, M. T., *Inter-State Accountability for Violations of Human Rights* (University of Pennsylvania Press 1992).
- Kelsen, H., *The law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Stevens & sons 1951).
- Kerley, E. L., 'The powers of investigation of the United Nations Security Council' (1961) 55 *American Journal of International Law* 892–918.
- Klabbers, J., *An Introduction to International Institutional Law* Cambridge University Press 2009).
- Kolb, R., *An introduction to the law of the United Nations* (Hart Publishing 2010).
- Kooijmans, P. H., 'Introduction to the International Systems of the protection of human rights' in *Collection of Lecture Strasbourg, the Netherlands: 17 national Institute of Human Rights* (Institut international des Droits de l'Homme 1987) 1–37.
- Lapidoth, R., 'Some reflections on peaceful means for the settlement of inter-state disputes. Georgetown University Law Center' (n.d.) <<https://ciwr.ucanr.edu/files/186748.pdf>> accessed 11 October 2022.
- Leckie, S., 'The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?' (1988) 10 *Human Rights Quarterly* 249–303.
- Meron, Th., 'State Responsibility for Violations of Human Rights' (1989) 83 *Proceedings of the Annual Meeting* (American Society of International Law) 372–85.
- Osieke, E., 'The Legal Validity of Ultra Vires Decisions of International Organizations' (1983) 77 *The American Journal of International Law* 239–56.
- Pollux, 'The Interpretation of the Charter' (1946) 23 *The British Year Book of International Law* 54–82.
- Sato, T., 'Constituent Instruments of International Organizations and Their Interpretative Framework- Introduction to the Principal Doctrines and Bibliography' (1986) 14 *Hitotsubashi journal of law and politics* 1–22.



- Schweisfurth, Th., 'Ch.VI Pacific Settlement of Disputes, Article 34' in Simma, B., Khan, D.-E., Nolte, G., Paulus, A. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012b) 1086–1107.
- Schweisfurth, Th., 'Ch.VI Pacific Settlement of Disputes, Article 35' in Simma, B., Khan, D.-E., Nolte, G., Paulus, A. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012a) 1108–18.
- Seyersted, F., 'Objective International Personality of Intergovernmental Organizations - Do Their Capacities Really Depend upon the Conventions Establishing Them' (1964) 34 *Nordisk Tidsskrift for International Ret* 3–112.
- Shelton, D., *Remedies in International Human Rights Law* (3rd edn, Oxford University Press 2015).
- Sonnenfeld, R., 'The Obligation of UN Member States' to Accept and Carry out the Decisions of the SC' (1976) 8 *Polish Yearbook of International Law* 129–54.
- Tomuschat, Ch., 'Ch.VI Pacific Settlement of Disputes, Article 33' in Simma, B., Khan, D.-E., Nolte, G., Paulus, A. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012) 1069–85.
- White, N. D., 'The UN charter and peacekeeping forces: constitutional issues' (1996) 3 *International Peacekeeping* 43–63.

LINKS

- Link1: '2022 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)' <<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/china/>> accessed 28 June 2023.
- Link2: 'The Report on Human Rights Violations in the United States in 2022' <http://ge.chinaembassy.gov.cn/eng/xwdt/202303/t20230328_11050361.htm> accessed 28 June 2023.
- Link3: 'Repertoire of the Practice of the Security Council' <https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/en/sc/repertoire/56-58/Chapter%208/56-58_08-4-The%20situation%20in%20Hungary.pdf> accessed 19 June 2023.
- Link4: 'Repertoire of the Practice of the Security Council' <https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/en/sc/repertoire/75-80/Chapter%208/75-80_08-3%20Items%20relating%20to%20the%20Middle%20East.pdf#page=65> accessed 19 June 2023.

LEGAL MATERIAL

Albert Thomas, Director of The International Labour Office, Series C01, Competence of the International Labour Organization / Designation of the workers' delegate for The Netherlands at the third session of the Internationale Labour Conference / First Ordinary Session, Part II, Speeches Made and Documents Read before the Court. At The Public Sitting On July 6th, Annex 26, 1922.

Dissenting Opinion of Judges Basdevant, Winiarski, Sir Arnold McNairy and Read in the case concerning Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ report, Advisory Opinion, 1948.



Dissenting Opinion of Judge Zoričič in the case concerning Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ report, Advisory Opinion, 1948.

Case concerning Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962), Judgment, Merits, Second Phase, ICJ GL No 50, 1970.

Case concerning Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), ICJ report, Advisory Opinion, 1962.

Case concerning Competence of the ILO to Examine Proposal for the Organization and Development of the Methods of Agricultural Production, Advisory Opinion, 1922, P.C.I.J. (ser. B) No. 3 (Jul. 18).

Case concerning Exchange of Greek and Turkish Populations, Advisory Opinion, 1925 P.C.I.J. (ser. B) No. 10 (Feb. 21).

Case concerning Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ report, advisory opinion, 1971.

Case concerning Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ report, Pleadings, Oral Arguments, Documents. 1971.

Case concerning Legality of the Threat or Use of Nuclear Weapons, ICJ report, Advisory Opinion, 1996.

Case concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ report, advisory opinion, 1951.

International Covenant on Civil and Political Rights, 16 December 1966, adopted by General Assembly resolution 2200A (XXI).

Manila Declaration on the Peaceful Settlement of International Disputes, Annex to UNGA Res 37/10 (15 November 1982) UN Doc A/37/10.

Report Of the Interim Committee of The General Assembly (Third Session: 16 January – 18 September 1950), Fifth Session Supplement No. 14 (A/1388).

Report of the International Law Commission on the work of its fifty-third session, 23 April - 1 June and 2 July – 10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10. UN Doc. A/56/10.

UNSC Resolution 128 (11 June 1958) UN Doc S/RES/128.

UNCIO, Vol.13, 710, Doc. 9. 33 (IV/2/42/(2)), June 12, 1945.

Open Access statement. This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited, a link to the CC License is provided, and changes – if any – are indicated. (SID_1)

