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SABIN CENTER FOR CLIMATE CHANGE LAW

**CLIMATE CHANGE AND
INTERNATIONAL PEACE AND SECURITY:
Possible Roles for the U.N. Security
Council in Addressing Climate Change**

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I. INTRODUCTION

This paper considers what actions the United Nations Security Council has taken with regard to climate change thus far, and what actions the Security Council could legally take going forward. To this point, the U.N. Security Council (“UNSC” or “Council”) has played a very minimal role in addressing climate change. The UNSC has held two debates on the relationship between climate change and security, first in 2007 and then in 2011, the latter producing a formal Presidential Statement on the topic.

The U.N. Charter and the literature suggest that the UNSC could theoretically take two possible actions related to climate change: (1) handle discrete, traditional conflicts partially or wholly caused by climate change; (2) find that climate change represents a “threat to international peace and security”, placing the topic within the mandate of the Council, and employ its Chapter VI and VII powers to mitigate or adapt to climate change. This memorandum focuses primarily on the second, more controversial option, which could include the imposition of economic sanctions, the creation of a subsidiary climate change committee, and even the use of force.

II. ANALYSIS

A. What actions has the UN Security Council taken with regard to climate change?

To date, the U.N. Security Council has taken very limited action with regard to climate change. At the 2005 World Summit the Council passed Resolution 1625, stressing the importance of conflict prevention and proactively addressing the root causes of armed conflict, along with other social and political crises.¹ This seminal Resolution has served as the launching point for advocates supporting an increased role for the Council in the climate change arena.²

The Security Council has convened two formal debates on the relationship between climate change and security issues. In 2007, the UK initiated a debate “exploring the relationship between

¹ S.C. Res. 1625, UN Doc. [S/RES/1625](#) (2005) (Sept. 14, 2005). The Resolution states: “Reaffirming the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict and political and social crises in a comprehensive manner, including by sustainable development...”

² See Permanent Representative of the United Kingdom of Great Britain and Northern Ireland, Letter dated Apr. 5, 2007 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council, U.N. Doc. [S/2007/186](#) (Apr. 5, 2007).

energy, security and climate.”³ The debate revealed sharp divides on the role of the Security Council in addressing climate change and produced no formal outcome document.

The 2007 debate focused almost exclusively on whether the Security Council was the proper forum to consider the security implications of climate change. The European Union and many Pacific Small Island Developing States (SIDS) argued that an increased role for the Security Council was within the mandate of the UNSC, although supporters had slightly different takes on the extent of the Council’s potential role.⁴ The UK argued that the debate should serve primarily to raise awareness of the issue, while France and Germany maintained (based on Resolution 1625) that the Council should play a role in active prevention. Most aggressively, many Pacific island states claimed that climate change presented an active and present threat to peace and security that the Security Council had an obligation to address under its mandate. In order to assuage the fears of detractors, President Becket noted that the debate and any future Security Council action would not undermine the role of other U.N. bodies.⁵

Critics, including Russia, China, and the Group of 77 strongly opposed UNSC consideration of climate change at all. The Group of 77 argued that Security Council action encroached on the mandate of other U.N. bodies better suited to address climate change (namely the General Assembly, the Economic and Social Council, and the UNFCCC).⁶ China and many other states framed climate change as a development issue that shouldn’t become “securitized.”⁷ While most countries accepted some connection between climate change and security, Brazil openly questioned the link as tenuous and speculative.⁸ Many developing nations also called upon

³ *Id.* For a full transcript of the debate, see U.N. SCOR, 62nd Sess., 5663d mtg., U.N. Doc. [S/PV.5663](#) [S/PV.5663 \(Resumption 1\)](#) (Apr. 17, 2007).

⁴ For a full and thorough treatment of the debate, including a typology of the opinions and possible UNSC actions, see Francesco Sindico, [Climate Change: A Security \(Council\) Issue?](#), 1 Carbon & Climate L. Rev. 29 (2007). For a statistical analysis on the shifting discourse of climate policy, see Nicole Detraz and Michele M. Betsill, [Climate Change and Energy Security: For Whom the Discourse Shifts](#), 10 International Studies Perspective 311 (2009).

⁵ U.N. Doc. [S/PV.5663](#), *supra* note 3, at 2. Presidential Statement: “We are not, in this debate, seeking to pre-empt the authority of those institutions and processes where action is being decided — the General Assembly, the Economic and Social Council and its subsidiary bodies, the United Nations agencies, and, of course, the United Nations Framework Convention on Climate Change.”

⁶ Permanent Representative of Pakistan to the U.N., Letter dated Apr. 16, 2007 from the Permanent Representative of Pakistan to the President of the Security Council, U.N. Doc. [S/2007/211](#) (Apr. 16, 2007).

⁷ Statement of the Chinese Delegation, U.N. Doc. [S/PV.5663](#), *supra* note 3, at 12.

⁸ Statement of the Brazilian Delegation, U.N. Doc. [S/PV.5663 \(Resumption 1\)](#), *supra* note 3, at 20.

the principle of common but differentiated responsibilities.⁹ While this memorandum does not consider the controversy surrounding Security Council reform, some commenters have suggested that concerns about the anti-democratic nature of the UNSC likely animate the argument of the Group of 77 (whose position is bolstered by the support of China, a permanent member of the Council).¹⁰

In 2009, pressed by Pacific Small Island Developing States (SIDS), the General Assembly passed Resolution 63/281 expressing concern about climate change and security issues.¹¹ After reaffirming the role of the UNFCCC as the “key instrument for addressing climate change”, the Resolution called upon all bodies of the U.N., within their respective mandates, to consider the possible security implications of climate change.¹² Pursuant to the Resolution, the Secretary General submitted a report on the possible security implications of climate change, finding that climate change acts as a “threat multiplier”.¹³ Resolution 63/281 and the Secretary-General report seemed to urge the Security Council to reconsider its role in addressing climate change.

In 2011, Germany and Pacific island nations organized a second open debate focusing specifically on the danger of sea-level rise and food insecurity.¹⁴ Much of the debate covered the same ground as the first – whether the Security Council was the proper forum to discuss the issue.¹⁵ Despite General Assembly Resolution 63/681 and the Secretary-General’s report, Russia, China, and the Group of 77 remained opposed to Security Council consideration of climate change.

A few perceptible shifts occurred between 2007 and 2011. First, while the United States remained neutral in 2007, U.S. Ambassador to the United Nations Susan Rice¹⁶ strongly supported

⁹ [Sindico](#), *supra* note 4, at 33.

¹⁰ CHRIS SPENCE, *Who Decides? The Role of the United Nations in Addressing Climate and Energy Insecurity*, CLIMATE CHANGE AND ENERGY INSECURITY: THE CHALLENGE FOR PEACE 170-177 (Felix Dodds, Andrew Higham, Richard Sherman ed., 2009). *See also* Statement of the Qatar Delegation, U.N. Doc. [S/PV.5663](#), *supra* note 3, at 9.

¹¹ General Assembly Resolutions may only consider issues and recommend topics to the Security Council and other U.N. bodies. U.N. Charter art. 10.

¹² Climate Change and its Possible Security Implications, G.A. Res. 63/281, U.N. Doc. [A/RES/63/281](#) (June 11, 2009).

¹³ U.N. Secretary-General, *Climate Change and its Possible Security Implications*, U.N. Doc. [A/64/350](#) (Sept. 11, 2009).

¹⁴ Permanent Representative of Germany to the United Nations, Letter dated July 1, 2011 from the Permanent Representative of Germany to the Secretary-General, U.N. Doc. [S/2011/408](#) (July 1, 2011).

¹⁵ For the full transcript of the debate, see U.N. SCOR, 66th Sess., 6587d mgt., U.N. Doc. [S/PV.6587](#) [S/PV.6587 \(Resumption 1\)](#) (July 20, 2011).

¹⁶ Susan Rice was the U.S. Ambassador to the U.N. from January 22, 2009 to July 1, 2013.

UNSC actions in the June 2011 debate, stating: “It is past time for the Security Council to come into the 21st century and assume our core responsibilities.”¹⁷ Second, some members of the Group of 77 (Lebanon, Costa Rica, and Singapore in particular) broke from the group's overall view and recognized at least a limited role for the Security Council in addressing climate change. Also, Caribbean states, largely backing the Group of 77, diverged from their Pacific island counterparts.

At the close of the 2011 debate, the Security Council unanimously voted to release a Presidential Statement. The Statement first reaffirms the place of the UNFCCC as the key instrument for addressing climate change. Second, the Council stated the following:¹⁸

“The Security Council expresses its concern that possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security.

“The Security Council expresses its concern that possible security implications of loss of territory of some States caused by sea-level-rise may arise, in particular in small low-lying island States.

Additionally, the Presidential Statement asked the Secretary General to provide “contextual information” on the above issues in future reporting. While the language of the statement was less specific than many hoped, this represents the only formal outcome document from the Security Council on climate change to date.

In 2013, the UK and Pakistan co-sponsored an Arria-Formula Meeting¹⁹ to again discuss the security implications of climate change.²⁰ Pakistan’s involvement was somewhat surprising, as the government had previously opposed Security Council involvement in previous debates, even giving the Group of 77’s official statement in 2007. Because Arria-Formula Meetings are typically informal closed-door meetings, the U.N. provided no transcript of the meeting and no outcome document was produced. However, a Marshall Islands government minister stated in a press

¹⁷ U.N. Doc. [S/PV.6587](#), *supra* note 15, at 7.

¹⁸ For the full Presidential Statement, *see* S.C. Pres. Statement 2011/15, U.N. Doc. [S/PRST/2011/15*](#) (July 20, 2011).

¹⁹ For a description of Arria-Formula Meetings, *see* U.N. Secretariat, Working Methods Handbook: Background Note on the “Arria-Formula” Meetings of the Security Council Members (Oct. 25, 2002), <http://www.un.org/en/sc/about/methods/bgarriaformula.shtml>.

²⁰ Press Conference, Press Conference on Impact of Climate Change on Marshall Islands (Feb. 15, 2013), http://www.un.org/press/en/2013/130215_MI.doc.htm.

conference afterwards that Russia and China (along with the majority of the Group of 77) again dismissed any substantive Security Council action addressing climate change.²¹

Most recently, in June of 2015 the Security Council held another Arria-Formula Meeting,²² this time co-sponsored by Spain and Malaysia, discussing the role of climate change as a threat multiplier.²³ The debate reflected similar ideological divides as before, with the United States, the EU, and Pacific island nations supporting a role for the Security Council in addressing climate change. The U.S. and EU²⁴ focused primarily on the role of climate change as a threat multiplier, while Pacific SIDS²⁵ presented a more urgent and stark reality – climate change actively affects their citizens in the form of increased weather events, salinization of drinking water, and sea level rise. Interestingly, many African states broke from the G77, arguing that desertification and heat waves created economic and social disruption that creates a breeding ground for recruitment into radical organizations, such as Boko Haram. While Russia tentatively recognized that climate change might present some security threats, both Russia and China opposed Security Council consideration of the issue.

B. What actions can and should the Security Council take with regard to climate change?

This section will analyze the U.N. Charter and a growing body of literature discussing the possible role of the Security Council with respect to climate change. After providing basic

²¹ For additional news coverage of the Arria-Formula Meeting in 2013, see Flavia Krause-Jackson, *Climate Change's Links to Conflict Draws UN Attention*, Bloomberg Business (Feb. 15, 2013, 3:18 PM), <http://www.bloomberg.com/news/articles/2013-02-15/climate-change-s-links-to-conflict-draws-un-attention>; see also Edith M. Lederer, *Islands want UN to see Climate as Security Threat*, Associated Press (Feb. 15, 2013, 11:19 PM), <http://www.usatoday.com/story/news/world/2013/02/15/islands-un-climate-security/1924331/>.

²² For a complete write up of the event, including details beyond the released official statements, see Dane Warren and Nathan Utterback, *United Nations Security Council Holds Special Meeting on Climate Change*, Sabin Center for Climate Change Law, CLIMATE LAW BLOG (July 7, 2015), <http://blogs.law.columbia.edu/climatechange/2015/07/07/united-nations-security-council-holds-special-meeting-on-climate-change/#more-3336>.

²³ Permanent Mission of Spain to the United Nations, *Climate Change*, <http://www.spainun.org/climatechange/> (last visited July 14, 2015).

²⁴ H.E. Mr. Thomas Mayr Harting, Head of Delegation, Del. of the [European Union](#) to the U.N., Open Arria-Formula meeting on the role of Climate Change as a threat multiplier for Global Security (June 30, 2015).

²⁵ Robert Gabu Aisi, Permanent Rep. of [Papua N.G.](#) to the United Nations, Statement for Security Council Open Arria-Formula meeting on the role of Climate Change as a threat multiplier for Global Security (June 30, 2015).

information about the structure of the Council, this section will consider whether climate change falls under the mandate of the Security Council and what actions the Council could theoretically take. In response to perceived failures of the multilateral process, many commenters have argued that the Security Council could theoretically play a significant role in addressing climate change under the umbrella of a security threat.²⁶ Commenters often frame Security Council involvement as “securitization” of the issue.²⁷

To begin, the Security Council is primarily responsible for the maintenance of international peace and security.²⁸ The Council is made up of fifteen voting members, including the five permanent members (United States, United Kingdom, France, Russia, and China).²⁹ The General Assembly elects the remaining ten members on a rotating basis, considering the members’ contribution to the maintenance of international peace and security and equitable geographic distribution.

All decisions of the Security Council require nine affirmative votes, including the concurring votes of all permanent members (effectively giving veto power to permanent members).³⁰ The voting requirements have been interpreted to allow the passage of a decision or Resolution notwithstanding abstention from a permanent member (so long as the measure still gets nine affirmative votes). The Security Council has the power to pass Resolutions binding as a matter of international law on all members of the U.N.³¹

²⁶ For a thorough description of the failures of the existing regimes, see Alexandra Knight, Note, [Global Environmental Threats: Can the Security Council Protect Our Earth?](#), 80 N.Y.U. L. REV. 1549, 1553 (2005).

²⁷ For a full and thorough discussion of securitization theory and climate change, see Shirley Scott, [The Securitization of Climate Change in World Politics: How Close have we come and would Full Securitization Enhance the Efficacy of Global Climate Change Policy?](#), 21 RECIEL 220, (2012). For an in depth statistical model of securitization of climate change, see INGRID BOAS, CLIMATE MITIGATION AND SECURITY: SECURITISATION AS A STRATEGY IN CLIMATE CHANGE POLITICS, (Routledge 2015).

²⁸ U.N. Charter art. 24, para. 1.

²⁹ U.N. Charter art. 23, para. 1.

³⁰ U.N. Charter art. 27. para. 2-3.

³¹ U.N. Charter art. 25.

1. Does Climate Change Fall Under the Mandate of the Security Council?

Most of the literature begins by examining the factual link between climate change and security issues, discussing sea-level rise, food and water insecurity, etc. This memo assumes the factual link and proceeds to examine the legal connection between the two. As noted above, the Security Council is primarily responsible for the maintenance of international peace and security. Under Article 2.7 of the Charter, the Security Council may not intervene in the purely domestic affairs of states.³² Thus, the Council must first determine that climate change represents a threat to international peace and security in order to take any action; a task left entirely to the discretion of the Council.³³ This section will consider the legal and historical framework of such a determination. The following section will cover the actions available to the Security Council as provided by the U.N. Charter and various commenters.

The determination of what constitutes a threat to peace and security falls entirely to the Council itself under Article 39 of the Charter. The Council can determine either a “threat to peace”, “breach of peace”, or “act of aggression.” In practice, the UNSC has nearly always declared a “threat to peace” (the most malleable option).³⁴ Commenters have suggested that the language of the charter (“threat to peace”) was left intentionally vague by the drafters to give the Security Council flexibility.³⁵ Despite the lack of oversight, the Council often strains to frame topics within an international peace and security context.³⁶ The U.N. Charter provides only that the Security Council must act within the “Purpose and Principles of the United Nations”³⁷ and most commenters believe that the only true limitation on an Article 39 determination comes from the voting politics of the Council.³⁸

³² U.N. Charter art. 2, para. 7.

³³ U.N. Charter art. 39.

³⁴ See Christine Gray, *THE USE OF FORCE IN INTERNATIONAL LAW ORDER 606* (Cambridge University Press, 2nd ed. 2004).

³⁵ Darragh Conway provides a helpful and lengthy discussion of the limitations on the Security Council. See Darragh Conway, [The United Nations Security Council and Climate Change: Challenges and Opportunities](#), 1 *Climate Law* 375 (2010).

³⁶ See S.C. Res. 794, U.N. Doc. [S/RES/794](#) (1992) (Dec. 5, 1992), in which the Security Council intervened in a civil war in Somalia by framing the issue around the impact on international security (refugees, etc.).

³⁷ U.N. Charter art. 24, para. 2.

³⁸ Michael Wood, *The U.N. Security Council and International Law*, Lecture delivered at Hersch Lauterpacht Memorial Lectures, Cambridge, UK (Nov. 8, 2006).

The Security Council historically limited its activities to discrete military conflicts. Since the end of the Cold War, the Security Council has expanded its reach to consider a variety of new issues, including human security concerns, humanitarian conflicts, and health crises.³⁹ The Security Council recently passed a resolution expressing concern over HIV/AIDS, a distinctly non-military topic (something supporters of UNSC action on climate change pointed out in the 2007 and 2011 debates).⁴⁰ The Security Council has also taken quasi-legislative actions in two particular instances.⁴¹

Many commenters have pointed out the distinction between state security and human security. As noted previously, the Security Council has expanded its reach since the end of the Cold War. In 1992, the President of the Security Council stated, “The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.”⁴²

While inter-state conflict as a result of climate change is surely relevant, commenters have argued that the threats from sea-level rise and food insecurity most naturally fall under the umbrella of human security.⁴³ The concept of human security seems to elude definition but many commenters have discussed the links between human security, climate change, and the UNSC.⁴⁴ One commenter noted that human security played only a minor role in the 2007 UNSC debate and increased in importance in 2011.⁴⁵ Finally, one author has noted a somewhat disturbing trend

³⁹ For a thorough treatment of the historical developments that have led to the expansion of the role of the Security Council, see [Sindico](#), *supra* note 4, at 29.

⁴⁰ S.C. Res. 1308, UN Doc. [S/RES/1308](#) (2000) (July 17, 2000); S.C. Res. 1983, UN Doc. [S/RES/1983](#) (2011) (June 7, 2011).

⁴¹ S.C. Res. 1373, UN Doc. [S/RES/1373](#) (2001) (Sept. 28, 2001) on anti-terrorism; S.C. Res. 1540, UN Doc. [S/RES/1540](#) (2004) (Apr. 28, 2004) on non-proliferation of nuclear weapons.

⁴² S.C. Pres. Statement 1992/23500, U.N. Doc. [S/23500](#) at 3 (Jan. 31, 1992).

⁴³ See ROSEMARY RAYFUSE, SHIRLEY V. SCOTT, *INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE* 234 (Edward Elgar 2012). For a helpful diagram of state vs. human security, see MIZAR KAHN, *TOWARD A BINDING CLIMATE CHANGE ADAPTATION REGIME: A PROPOSED FRAMEWORK* 121 Fig.6.1 (Routledge 2014).

⁴⁴ See Rayfuse and Scott, *supra* note 43, at 234. See also Trina Ng, [Safeguarding Peace and Security in our Warming World: A Role for the Security Council](#), 15 J Conflict Security Law 275 (2010); see also Cinnamon P. Carlarne, *Risky Business: The Ups and Downs of Mixing Economics, Security and Climate Change*, 10 Mel. J. Int'l L. 439 (2009).

⁴⁵ Hitoshi Nasu, [The Place of Human Security in Collective Security](#), 18 J Conflict Security Law 1, 15 (2013).

shifting the focus away from human security (namely on citizens of less developed countries) and onto a potential refugee crisis for developed nations.⁴⁶

In order to exercise any authority, the Security Council must determine that the mandate of the Council covers climate change. Christina Voigt explores three ways to do so:⁴⁷ (1) A dynamic interpretation of Article 39 arguing that climate change impacts peace and security within the context of social and economic stability; (2) Focusing on the impact of climate change on human rights, including sea level rise, food security, etc.; (3) Breach of an essential international law obligation, either under the UNFCCC or customary international law. Seemingly all commenters agree that Chapter VII of the U.N. Charter would not need revision to accomplish this task – the only question is whether the Council will chose to expand its interpretation of Article 39 to include climate change.⁴⁸ After placing climate change within the mandate of the Council, the UNSC could then consider possible enforcement measures.

2. Enforcement Mechanisms of the Security Council

The academic literature on this subject generally divides the possible role of the Security Council into two categories.⁴⁹ First, the Council could limit its action to direct, actual, or threatened conflicts caused in part or in full by climate change. This approach is typically considered briefly in the literature because no one doubts the mandate of the Council to address these conflicts, just as they would any other conflict regardless of the root cause.⁵⁰ Second and more controversially, the Security Council could find a threat to international peace and security and utilize its enforcement

⁴⁶ JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 5 (Oxford University Press, 2012).

⁴⁷ The following book chapter provides an excellent overview of the legal framework tying climate change to the Security Council. See Chirstina Voigt, [Security in a “Warming World”: Competences of the U.N. Security Council for Preventing Dangerous Climate Change](#), in SECURITY: A MULTIDISCIPLINARY NORMATIVE APPROACH 297-303 (Cecilia M. Bailliet ed., 2009).

⁴⁸ See Rayfuse and Scott, *supra* note 43, at 230.

⁴⁹ *Id.* at 230. See also VESSELIN POPOVSKI AND TRUDY FRASER, THE SECURITY COUNCIL AS GLOBAL LEGISLATOR 224-240 (Routledge, 2014).

⁵⁰ Some commenters have argued that the Security Council has already done so in responding to a food crisis in Somalia that was perhaps exacerbated by climate change, S.C. Res. 794, U.N. Doc. [S/RES/794](#) (1992) (Dec. 5, 1992), and by responding to Iraq’s destruction of Kuwaiti environmental resources, S.C. Res. 687, U.N. Doc. [S/Res/687](#) (1991) (Apr. 3, 1991). Shirley Scott and Roberta Andrade, [The Global Response to Climate Change: Can the Security Council Assume a Lead Role?](#), 18 *Brown Journal of World Affairs* 215, 221 (2011).

powers under Chapter VII of the U.N. Charter to coerce states to mitigate or adapt to climate change.

“Soft” Compliance Measures:

Before finding a threat to peace and security under Article 39, the Council could take preliminary actions under Chapter VI of the Charter. Under Chapter VI, the Council may investigate issues that could pose a threat to international peace and security in the future (Article 34), call for a peaceful settlement of a dispute by arbitration (Article 33.2) and make recommendations to dispute parties (Article 38). The literature often spends very little time on these possibilities, focusing instead on the more coercive (and controversial) measures under Chapter VII.

If the Security Council finds a “threat to peace” under Article 39 of the Charter, they could take a number of actions to mitigate climate change under Chapter VII. First, the Council can call upon member states to comply with any provisional measures imposed under Article 40 in order to “prevent an aggravation of the situation.”⁵¹ Such provisional measures have traditionally included calling upon member states to withdraw armed forces, cease hostilities, and observe ceasefires.⁵² In the case of climate change, the Security Council could potentially use its Article 40 power to urge states to ratify certain treaties, or comply with their obligations under an existing treaty.⁵³ While technically non-binding, the Council often utilizes Article 40 as a normative compliance tool before resorting to sanctions (Article 41) or authorizing the use of force (Article 42).

Going further, some commenters have advocated for the Council to issue a Resolution condemning the actions of member states.⁵⁴ While condemnations also do not carry binding weight, Voigt suggests that they could pull member states towards compliance. Voigt goes on to posit that the Council could also ask the ICJ to issue non-binding advisory opinions to determine

⁵¹ U.N. Charter art. 40.

⁵² Repertoire of the Practice of the Security Council, Article 40 – Provisional Measures to Prevent the Aggravation of a Situation, <http://www.un.org/en/sc/repertoire/actions.shtml#rel2>.

⁵³ Christopher K. Penny, *Greening the Security Council: Climate Change as an Emerging “Threat to International Peace and Security”*, 7 Intl Environ Agreements 35, 53-54 (2007).

⁵⁴ See [Voigt](#), *supra* note 47, at 310.

whether a state has breached its international obligations (UNFCCC or otherwise) and thereby normatively induce compliance.⁵⁵

“Hard” Compliance Measures:

Perhaps most well-known among the Security Council’s powers is the authority to impose economic/diplomatic sanctions (Article 41) and authorize the use of force (Article 42). Additionally, the Council has recently utilized quasi-legislative actions (Resolutions 1373 and 1540 discussed below). This section will first consider economic and diplomatic sanctions under Article 41 of the Charter. Many commenters have advocated for the Council’s use of economic sanctions (or the other strategies listed) as a tool to induce compliance with UNFCCC commitments, improving upon the Kyoto Protocol’s perceived weak compliance scheme.⁵⁶

If the Security Council found a threat to peace, it could impose economic and diplomatic sanctions to force states to reduce emissions (either based on UNFCCC targets or some entirely new standard created by the Council). Economic sanctions could take a variety of forms, including: breaking off or restricting economic ties, blocking imports and exports, and freezing assets.⁵⁷ Functionally, the Council would pass a Resolution requiring member states to impose the given sanctions.⁵⁸ Some commenters have also noted that the Security Council has expanded the role of sanctions against private individuals in recent years.⁵⁹ Instead of using economic sanctions directly against a non-compliant government, the Council could directly sanction polluting industries or block the imports/exports of a particularly harmful product. Apart from the use of force, economic and diplomatic sanctions represent perhaps the strongest enforcement tool available to the UNSC. Notably, not all commenters support the use of economic sanctions to induce compliance. Early commenters rejected outright a role for the Security Council (including economic sanctions),⁶⁰ and

⁵⁵ *Id.* at 310-311

⁵⁶ The following authors have discussed or advocated for this strategy: See [Conway](#), *supra* note 35; see also [Voigt](#), *supra* note 47; see also [Trina Ng](#), *supra* note 44.

⁵⁷ See [Voigt](#), *supra* note 47, at 300.

⁵⁸ U.N. Charter art. 41.

⁵⁹ See [Knight](#), *supra* note 26, at 1576.

⁶⁰ Catherine Tinker, “*Environmental Security*” in *the United Nations: Not a Matter for the Security Council*, 59 *Tenn. L. Rev.* 787 (1991).

a few scholars have noted that economic sanctions tend to harm the most vulnerable members of a country and could perhaps worsen environmental outcomes.⁶¹

The Security Council also retains the power to authorize the use of force as a matter of international law.⁶² Some commenters have noted the complex use of force problems that could arise in the wake of climate change, including whether a small island nation could claim that sea-level rise constitutes an “armed attack” within the meaning of the U.N. Charter.⁶³ Many others have considered whether the Security Council should enforce potential climate change Resolutions by authorizing the use of force – all resoundingly reject it on practical and moral grounds. Scholars often note the fear of using environmental harm as a justification for armed conflict.⁶⁴ Knight, for instance, argues that the use of military force runs counter to the objectives of environmental law as laid out in the Rio Principles.⁶⁵ Various commenters have discussed the creation of an environmental peacekeeping squad⁶⁶ (termed “green helmets”); the Security Council briefly considered and rejected it in the 2011 debate.

In recent years, the Council has taken an increasingly legislative role in dealing with international problems. In response to the September 11th attacks, the Security Council passed Resolution 1373,⁶⁷ requiring states to “criminalize terrorist financing, freeze terrorist funds, and deny safe haven to terrorists and their supporters.”⁶⁸ It also required states to become a party to the relevant protocols and conventions combatting terrorism. The Council followed this up with Resolution 1540, which required states to take specific actions to prevent the proliferation of WMDs.⁶⁹ Both resolutions also created subsidiary bodies to monitor compliance and dealt with

⁶¹ *Id.* at 794. See also [Knight](#), *supra* note 26, at 1581.

⁶² U.N. Charter art. 42.

⁶³ See Rayfuse and Scott, *supra* note 43, at 236-240.

⁶⁴ See [Trina Ng](#), *supra* note 44, at 293-294; see also Shirley Scott, [Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate?](#), 9 Melbourne JIL 495, 503 (2008); see also Tinker, *supra* Note 60.

⁶⁵ See [Knight](#), *supra* note 26, at 1563.

⁶⁶ Linda Malone, [“Green Helmets”: A Conceptual Framework for Security Council Authority in Environmental Emergencies](#), 17 Mich. J. Int’l L. 515 (1996).

⁶⁷ S.C. Res. 1373, UN Doc. [S/RES/1373](#) (2001) (Sept. 28, 2001).

⁶⁸ See [Scott and Andrade](#), *supra* note 50, at 221.

⁶⁹ S.C. Res. 1540, UN Doc. [S/RES/1540](#) (2004) (Apr. 28, 2004).

global threats. While these quasi-legislative actions have been met with academic criticism⁷⁰ and have faced compliance issues,⁷¹ they arguably set precedent for expanded UNSC action on climate change. The Security Council could theoretically use its newly developed legislative power to investigate climate change, enforce compliance with UNFCCC emissions obligations, or create entirely new obligations. Under the Charter, any Security Council obligations would effectively trump existing treaty obligations,⁷² though it is important to note that the United States and other permanent members of the Council can veto any UNSC action.

Some scholars have noted the possibility of using the Security Council to directly fill the gaps left by existing UNFCCC obligations. One critique of the Kyoto Protocol system involves leakage of carbon producing industries into countries not covered by binding emissions targets. Conway and others argue that the Security Council could theoretically address the leakage problem by urging/requiring countries to ratify a new protocol or by simply imposing new obligations binding on all nations.⁷³ However, given concerns about institutional expertise and encroachment, most commenters have focused primarily on using the Council to improve compliance with the UNFCCC process.

Many scholars have also suggested that the Security Council should create a subsidiary body within the Council's auspices to provide information to the UNSC and monitor compliance with UNFCCC or other obligations.⁷⁴ Resolutions 1540 and 1373 discussed above provide precedent for this type of action. Penny argues that a subsidiary body could provide regular reports on climate change to the Council and conduct intrusive examinations of member states – a

⁷⁰ See Eric Rosand, [The Security Council As "Global Legislator": Ultra Vires or Ultra Innovative?](#), 28 Fordham Int'l L.J. 542, 544 (2005).

⁷¹ EDWARD C LUCK, U.N. SECURITY COUNCIL: PRACTICE AND PROMISE 106 (Routledge 2006).

⁷² U.N. Charter art. 103. The text specifically states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." This has been interpreted to mean that Security Council obligations under the Charter would prevail over existing obligations under any treaty. For a full discussion of the "Supremacy Clause", see Rain Liivoja, [The Scope of the Supremacy Clause of the United Nations Charter](#), 57 ICLQ 583, 585 (2008).

⁷³ See [Conway](#), *supra* note 35, at 387. Conway points out that forcing ratification presents "consent to be bound" problems. See also [Knight](#), *supra* note 26, at 1561.

⁷⁴ Creation of a subsidiary body is allowed under U.N. Charter art. 29. For support for an "Environmental Security Council", see Penny, *supra* note 53, at 61.

power only the Security Council can vest.⁷⁵ A potential “Environmental Security Council” could bridge the gap between the Security Council and the UNFCCC, perhaps improving the legitimacy of the program.

Going even further than Penny, Conway examines the ways to unite the enforcement power of the Security Council with the targets and reporting mechanisms of the UNFCCC. The article discusses multiple strategies, including delegating compliance to a subsidiary organ created by the Council, delegating to a non-U.N. body, and allowing the UNFCCC to refer problematic compliance cases to the Council. Conway first discusses the possibility of creating a subsidiary organ to “act as the Compliance Panel's enforcement arm, leaving reporting, verification, monitoring and provision of assistance in the competent hands of the UNFCCC.” As Conway notes, creating a compliance subsidiary would contain key flaws.

The power of the subsidiary to actually enforce compliance with UNFCCC targets is limited by the *delegatus non potest delegare* doctrine, which provides that the Security Council must retain full control over the subsidiary's decisions, as well as the power to make *ex-post facto* changes to a decision.⁷⁶ Conway argues that this limitation, along with a perceived lack of good faith on the part of permanent members of the Council could undermine the effectiveness of a compliance subsidiary. Conway ultimately posits that the most sensible policy would allow the UNFCCC to retain its own reporting and compliance system and refer the most problematic cases to the Security Council.⁷⁷

C. Evaluation of the Security Council's Role in Addressing Climate Change

This section will present some of the practical considerations facing potential Security Council participation, as discussed by various commenters.

⁷⁵ *Id.* at 61.

⁷⁶ DANESH SAROOSHI, *THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: THE DELEGATION BY THE U.N SECURITY COUNCIL OF ITS CHAPTER VII POWERS* 4 (Clarendon Press Oxford, 1999).

⁷⁷ Conway's article goes into great depth on the limitations on the power of the Security Council to delegate its authority and his own theoretical recommendation for combining the UNSC and the UNFCCC to induce compliance. See [Conway](#), *supra* note 35, at 398-407.

Many early commenters rejected Security Council involvement in addressing climate change, arguing that the General Assembly and/or the UNFCCC should take the lead.⁷⁸ As the multilateral process showed signs of failure, scholars have recently reexamined their position, as discussed in the previous section. However, many of them still note substantial problems with allowing the Security Council to take a leading role on climate change.

As Shirley Scott argues, any Security Council effort to improve compliance with environmental targets could run into a legitimacy problem, especially given the controversy over the existing structure of the Council, leading many states to simply refuse to comply with onerous obligations or sanctions.⁷⁹ As Trina Ng points out, Security Council Resolutions are not self-executing and require implementation by member states, which could lead to compliance problems.⁸⁰ Many commenters have also noted the practical concerns. For instance, the permanent members of Security Council include the U.S., which is historically the largest emitter, and the only major state that never ratified the Kyoto Protocol; and China, which is now the largest emitter. Neither country is likely to allow the Security Council to police its emissions.⁸¹

Many of the articles and books cited herein take no firm position on Security Council involvement, but merely explore the legal options available. However, a small number of recent commenters explicitly reject Security Council involvement. Trudy Fraser suggests that because the Security Council has not had tremendous success inducing compliance on human security issues, it should act instead as a norm-setting body.⁸² Others have argued that the Security Council should raise awareness but allow the General Assembly to lead.⁸³ Finally, one commenter agrees with Russia and China that Security Council action would only distract from the UNFCCC's prerogative.⁸⁴

Finally, the Security Council has given no indication that it plans to take the kind of leading role in compliance that many have advocated for. In the 2011 Presidential Statement, the Council

⁷⁸ Catherine Tinker, *supra* note 53.

⁷⁹ [Scott](#), *supra* note 64, at 510-511.

⁸⁰ [Trina Ng](#), *supra* note 44, at 289.

⁸¹ *Id.* at 298-300.

⁸² See Popovski and Fraser, *supra* note 49, at 237.

⁸³ Benoit Mayer, The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework, 22 *Colo. J. Int'l Envtl. L. & Pol'y* 357, 411 (2011).

⁸⁴ Spence, *supra* note 10, at 177.

reaffirmed the principal role of the UNFCCC. Furthermore, as Scott discusses in greater detail, the political climate makes full Council involvement unlikely.⁸⁵ Finally, many of these articles discuss the possibility of using the Council to enforce binding UNFCCC commitments. However, if the Paris Conference later this year leads to a regime of political commitments instead of binding ones, it seems implausible that the Council would then make those commitments binding through its Chapter VII powers.

Most recently, at the 2015 Arria-Formula Meeting, Professor Michael Gerrard, Director of the Sabin Center for Climate Change Law at Columbia Law School, suggested that the Security Council could review the security implications of climate change after the upcoming UNFCCC Paris Conference in December.⁸⁶ The review could include an evaluation of different emissions scenarios depending on whether countries meet, exceed, or fail to meet their Paris commitments. The Council could then consider finding a “threat to peace” under Article 39 and address forced migration and other adaptation challenges caused by climate change.

III. CONCLUSION

The United Nations Security Council has thus far taken very little direct action on climate change. The Council has conducted two open debates (2007 and 2011), primarily considering whether the Security Council is the proper forum to consider the security implications of climate change. The 2011 debate produced a Presidential Statement expressing concern about the potential connection between climate change and security, the only formal outcome document on the topic to date. The Council also conducted a 2013 Arria-Formula meeting and reports indicate that Russia and China again strongly opposed securitization of the issue.

Under the U.N. Charter, the Security Council is primarily responsible for the maintenance of international peace and security. The Security Council itself determines what issues legally fall under its mandate (Article 39). Should the Council make an Article 39 determination, the full breadth of its Chapter VII powers would be available (including economic sanctions and even the

⁸⁵ See [Scott and Andrade](#), *supra* note 50, at 222-225.

⁸⁶ Michael Gerrard, Director, Sabin Center for Climate Change Law at Columbia Law School, [Statement to Security Council Open Arria-Formula Meeting: The Role of Climate Change as a Threat Multiplier for Global Security](#) (June 30, 2015).

use of force) to mitigate greenhouse gas emissions. The Council could use this power to enforce UNFCCC obligations or create entirely new ones. Finally, the Council also has the power to create subsidiary bodies to conduct investigations and perhaps take a leading role in compliance.

Many scholars have pointed out practical and political issues that could hinder Security Council involvement in this area. These include the current political climate of the Security Council, perceived legitimacy concerns, and difficulty enforcing obligations against permanent members of the Council itself.