A. Introduction

1. The United Nations Security Council is one of the six principal organs of the United Nations (UN). It is the organ upon which, “in order to ensure prompt and effective action” (Art. 24 (1) United Nations Charter ["UN Charter"], the members of the UN have conferred “primary responsibility for the maintenance of international peace and security” (ibid). In carrying out these duties the Security Council acts on behalf of the members of the UN and is to act in accordance with the purposes and principles of the UN Charter (United Nations, Purposes and Principles).

2. As described in paras 18–39 below, the Security Council has the power both to make recommendations and to adopt binding decisions (International Organizations or Institutions, Decision-Making Bodies; International Organizations or Institutions, Secondary Law). The members of the UN have agreed to accept and carry out the decisions of the Security Council (Arts 25, 48 UN Charter). Such decisions, being obligations under the UN Charter, prevail over conflicting obligations under any other agreement (Art. 100 UN Charter; see para. 16 below; Treaties, Conflict Clauses).

3. The Security Council is an organ of limited membership. There are 15 members. Five are ‘permanent members’ with a right of veto; 10 members are elected for a two-year term, and may not immediately be re-elected.

4. The law relating to the Security Council is to be found primarily in the UN Charter, in the practice of the Security Council—including its resolutions and presidential statements—and in general international law, including the law of international organizations. In addition, for procedural matters, there are the Provisional Rules of Procedure of the Security Council, supplemented by a series of presidential statements. There are a number of decisions of the International Court of Justice (ICJ) which shed important light on the relevant Charter law.

B. Historical Development

5. Those who drafted the UN Charter intended the Security Council to be a powerful organ, continuing the alliance of Great Powers which was successfully co-operating in World War II (History of International Law, since World War II; United Nations Charter, History of). As an essential condition for the participation of certain States in the new organization, they provided that each of the five permanent members would have a veto. This marked an advance over the position in the Council of the League of Nations, where unanimity was required.

6. The wartime alliance rapidly broke down, and the Security Council did not operate as envisaged. Indeed, throughout most of the Cold War (1947–91) it was largely ineffective, because of lack of agreement among the permanent members. The UN General Assembly assumed a role in relation to the maintenance of international peace and security—the Uniting for Peace Resolution (1950); the establishment of peacekeeping forces, such as UN Emergency Force I and UN Operation in the Congo (United Nations, General Assembly).

7. Only with the end of the Cold War did the Security Council begin to live up to its potential. The high point of co-operation came in the early 1990s, in reaction to Iraq’s seizure of Kuwait and in the euphoria of the ‘new world order’ pronounced by President of the United States of America ("US") Bush in his speech to Congress on 6 March 1991 (Iraq–Kuwait War [1990–91]). Since then co-operation has been less secure. Despite a commendably robust reaction to 9/11 (Terrorism), a low point was reached in 2003 over the invasion of Iraq (Iraq, Invasion of [2003]). The Security Council has nevertheless continued, throughout the period since 1990, with a high level of activity, much of it innovative.

8. Over the years, and especially with the increased activity of the Security Council since the early 1990s, there has been much discussion—both within the organization and outside—about the need to reform the Security Council, in particular its composition (United Nations, Reform).
C. Composition, Voting and Procedure (Including Subsidiary Organs)

9 The UN Security Council is an organ of limited composition, by contrast with the plenary organ of the UN, the General Assembly. Under the UN Charter as originally adopted at San Francisco, the Security Council had 11 members: the five permanent members (→ China, France, the United Kingdom, the US, and the Union of Soviet Socialist Republics), and six non-permanent members, who were elected for two years. The number of non-permanent members was increased by UN Charter amendment in 1996 to 10, making the total membership 15. Further enlargement has been under discussion, particularly since the early 1990s, including possible new permanent members, but so far without any result. In the 2005 World Summit Outcome (UNGA Res 60/1 [16 September 2005]), the → Heads of State and governments were only able to say that “We support early reform of the Security Council, in order to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions” (at para. 153).

10 Five non-permanent members are elected each year by the General Assembly for a two-year term, and may not immediately be re-elected. A two-thirds majority is required in the General Assembly, which can lead to prolonged balloting—as happened, for example, in 2006, when neither Guatemala nor Venezuela was able to secure the necessary majority.

11 Decisions of the Security Council on procedural matters require nine affirmative votes; decisions on all other matters—ie non-procedural matters—require nine affirmative votes, including ‘the concurring votes of the permanent members’ (Art. 27 (3) UN Charter). The established practice of the Security Council, since the earliest days, has been to regard an abstention by a permanent member as not preventing the adoption of a non-procedural decision, and was endorsed by the ICJ in the Namibia Opinion (→ South West Africa/Namibia [Advisory Opinions and Judgments]). In the event of a dispute as to whether a matter is non-procedural or not, the matter may be decided by a non-procedural vote—the ‘double veto’. In disputes under Chapter VII UN Charter—or Art. 52 UN Charter—a party to the dispute shall abstain from voting.

12 During the Cold War, procedural debates during meetings of the Security Council were frequent. Nowadays virtually all procedural—and indeed substantive—→ negotiation takes place informally before the Security Council meets, in so-called informal consultations of the whole—at which only the Security Council members and the UN Secretariat are present—and other informal groupings. This has led to accusations of lack of transparency, and a number of procedural developments have been instituted to alleviate the concerns.

13 The Security Council normally acts through the adoption of resolutions, though increasingly also through presidential statements—statements agreed in advance by all the members of the Security Council and read out by the Security Council President (Talmon). It may make recommendations, which are non-binding, or—acting under Chapter VII UN Charter—decide upon measures, whether involving the use of armed force or not (→ Use of Force, Prohibition of), which in accordance with Art. 25 UN Charter are binding (see also Art. 48 UN Charter). Art. 25 UN Charter provides 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’.

14 The Security Council has the power to establish subsidiary organs (Art. 29; Art. 29 United Nations Committees and Subsidiary Bodies, System of). It has done so on many occasions, and for a wide variety of purposes. Such organs may have the same composition as the Security Council, but often with different decision-making procedures—eg, the various sanctions committees, which are composed of the members of the Security Council but which adopt decisions by → consensus. Or they may be composed quite differently, and even of individuals—eg, the → International Criminal Tribunal for Rwanda (ICTR) and the → International Criminal Tribunal for the Former Yugoslavia (ICTY).

15 A key provision of the Art. 103 UN Charter is, which provides that ‘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’.

16 This applies equally to obligations imposed by the Security Council, which by virtue of Arts 25 and 48 UN Charter are obligations under the UN Charter, as the ICJ confirmed at the provisional measures phase of the → Lockerbie Cases (Lybian Arab Jamahiriya v United Kingdom and United States of America [‘Lockerbie Cases’]).

17 While the Security Council traditionally dealt largely with specific disputes and situations, in recent times it has increasingly been addressing generic issues. It has done this through thematic debates, often leading to a presidential statement, and in one or two cases through the adoption of what some have described as ‘legislation’—UNSC Resolution 1373 (2001) of 28 September 2001 on terrorism and UNSC Resolution 1540 (2004) of 28 April 2004 on → weapons of mass destruction (Rosand).

D. Powers and Functions

1. General

18 The Security Council’s powers were intended, by the drafters of the UN Charter, to be broad and flexible. The powers of the Security Council within its core field of activity—the maintenance of international peace and security—tend to be ‘open-textured and discretionary’ (Lamb 388). They cannot, as a matter of principle, be unlimited, even within that core field. It is widely accepted that, first, the Security Council is to act in accordance with the Purposes and Principles of the UN; and, second, that the Security Council cannot contravene peremptory norms of international law (→ jus cogens). While in recent years much has been written by observers of the Security Council on the potential limits on its powers, the effect of these limits in practice has been slight.

19 The starting point for considering the powers of the Security Council is Art. 24 (1) UN Charter, which reads:

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

20 Art. 24 (2) UN Charter provides in its second sentence that ‘[t]he specific powers granted to the Security Council for the discharge of its duties under its primary responsibility for the maintenance of international peace and security’ are laid down in Chapters VI, VII, VIII, and XII.
21 While the Security Council has ‘primary responsibility’ for the maintenance of international peace and security, other organs of the UN also have a role in this regard, notably the General Assembly, the IJC, and the UN Secretary-General (→ United Nations, Secretary-General), as do regional organizations (→ Regional Arrangements and the United Nations Charter).

2. Chapter VI (Pacific Settlement of Disputes)

22 Under Chapter VI UN Charter, the Security Council has very broad powers in respect of the → peaceful settlement of international disputes, although these are essentially recommendatory in character. Any member of the UN may bring a dispute to the attention of the Security Council (Art. 35 UN Charter), and any non-member may bring a dispute to which it is a party to the Security Council’s attention (Art. 37 UN Charter). The Security Council may carry out investigations (Art. 34 UN Charter), and make recommendations for the peaceful settlement of disputes, in particular those ‘the continuance of which is likely to endanger the maintenance of international peace and security’ (Art. 33 UN Charter). It may call upon the parties to settle their dispute by peaceful means (Art. 33 (2) UN Charter). It may recommend procedures or methods of settlement, taking into consideration that legal disputes should as a general rule be referred by the parties to the IJC (Art. 36 UN Charter). And where the parties to a dispute have failed to settle it by peaceful means the Security Council may recommend terms of settlement (Art. 37 UN Charter).

3. Chapter VII (Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression)

23 There are three common misunderstandings about Chapter VII UN Charter. First, it is not the case that every resolution adopted under Chapter VII UN Charter is thereby legally binding; though the converse may be true, a resolution not adopted under Chapter VII will—in any event, generally—not be legally binding. The Security Council’s powers under Chapter VII UN Charter are expressly stated to be to ‘make recommendations, or decide what measures shall be taken’ (Art. 39 UN Charter). Second, it is not the case that when the Security Council acts under Chapter VII UN Charter, this invariably, or even commonly, involves or implies the use of armed force. The taking or authorizing of force is only one of a range of possible measures under Chapter VII UN Charter. Third, the fact that a resolution adopted under Chapter VII UN Charter is mandatory, that is to say, imposes legal obligations, does not mean that States are entitled to use force to enforce the resolution, any more than the fact that a State is in breach of a treaty means that force can be used against it. Only if they are authorized by the Security Council to use force for that purpose may States do so.

24 Art. 39 UN Charter, the first provision in Chapter VII UN Charter, provides that:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

25 Two questions arise concerning the scope of the Security Council’s powers under this provision. First, how broad is the Security Council’s power to determine the existence of a threat to the peace, breach of the peace or act of aggression? And second, having made such a determination, what is the scope of the Security Council’s power to make recommendations, or decide what measures shall be taken, to maintain or restore international peace and security?

26 The meaning of the three terms used in Art. 39 UN Charter—threat to the peace, breach of the peace, act of → aggression (→ Peace, Breach of → Peace, Threat to) —and the Security Council’s discretion in determining what constitutes ‘a threat to the peace’ in particular, have given rise to much debate. The concept of ‘a threat to the peace’ has expanded over the years, and now includes ‘internal conflicts, widespread derivations of human rights, humanitarian disasters, and serious threats to democratic government’ (Matheson, 233). Often the Council has acted by substantially broadening the concept of ‘threats to the peace’ to include such internal crises where there was a plausible concern that their continuation might lead to regional and international escalation’ (Matheson 6–7).

27 A much debated question, particularly since the Lockerbie Cases, is whether the Security Council’s Art. 39 UN Charter determinations are justiciable. The ICJ itself has not expressed a view on the matter. In his dissenting opinion at the provisional measures stage of the → Application of the Convention on the Prevention and Punishment of the Crime of Genocide Case (Bosnia and Herzegovina v Serbia and Montenegro) (Genocide Convention Case) Judge ad hoc Lauterpacht said that it is not for ‘the Court to substitute its discretion for that of the Security Council in determining the existence of a threat to the peace, a breach of the peace or an act of aggression, or the political steps to be taken following such a determination’ (at para. 99). In the → Tadić Case, the Appeals Chamber of the ICTY said that whereas ‘the act of aggression’ is more amenable to a legal determination, the “threat to the peace” is more a political concept” (at para. 25).

28 As regards the second aspect of Art. 39 UN Charter, the scope of the Security Council’s power, having made the necessary Art. 39 UN Charter determination, to make recommendations and adopt measures, the Appeals Chamber of the ICTY in the Tadić Case said: ‘Article 39 leaves the choice of means and their evaluation to the Security Council, which enjoys wide discretionary powers in this regard; and it could not have been otherwise, as such a choice involves political evaluation of highly complex and dynamic situations’ (at para. 39). Judge Lauterpacht also covered the point in the Genocide Convention Case (above).

29 Having made a determination under Art. 39 UN Charter, the Security Council may make recommendations or decide on measures not involving the use of force (under Art. 41 UN Charter). These typically consist of → sanctions, such as an arms embargo, comprehensive economic sanctions and, recently, ‘targeted’ sanctions, aimed at particular individuals. It is particularly in connection with the listing—and delisting—of individuals subject to sanctions that concerns have been expressed about the fairness of the Security Council’s procedures and the need for it to conform to → human rights standards (→ Individual sanctions in International Law).

30 Should the Security Council consider that measures not involving the use of force would be inadequate or have proved to be inadequate, it may take measures involving the use of force (Art. 42 UN Charter) or authorize States to do so. Such authorizations have become the standard practice when measures involving the use of force are required. The → Korea operation in 1950 was of this nature (→ Korean War (1950–53)), and formed a precedent for the authorization in UNSC Resolution 678 (1990) of 29 November 1990 of Member States co-operating with the government of Kuwait ‘to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area’ (at para. 2, see also Berman). Such authorizations to use force have now become quite common.
4. Peacekeeping Operations

Given the inability of the Security Council to act as foreseen in Chapter VII UN Charter, the practice developed early of sending peacekeeping operations on to the territory of States with their consent. This has become a major part of the Security Council’s activity, with large numbers of missions around the globe. The legal basis for ‘peacekeeping’ has been much debated—Chapter VI, Chapter VII, even ‘Chapter VI ½’; but the power of the Security Council to establish such forces has not been seriously questioned in practice. The nature of peacekeeping has developed over the years, and in recent times the Security Council has been much involved in post-conflict peacebuilding, and has even gone as far as the temporary but comprehensive international administration of territories (→ Kosovo; East Timor). One of the institutional reforms on which agreement could be reached at the 2005 World Summit was the establishment, jointly by the General Assembly and the Security Council, of the UN Peacebuilding Commission.

5. Other Powers and Functions

In addition to its core functions in the field of international peace and security, the Security Council has a number of other important functions under the UN Charter.

Under Chapter VII UN Charter—Arts 4 to 6 UN Charter—the Security Council has certain functions connected with membership in the UN (→ International Organizations or Institutions, Membership). Under Art. 4 (2) UN Charter the General Assembly decides admission ‘upon the recommendation of the Security Council’. In two early advisory opinions the ICJ decided that the admission requires a positive recommendation by the Security Council, and that the conditions for membership are exhaustively set forth in Art. 4 (1) UN Charter (→ Admission of a State to Membership in the United Nations (Advisory Opinions)). The Security Council has a standing subsidiary organ, the Committee on the Admission of New Members to assist it with this function. Under Art. 5 UN Charter the General Assembly may suspend a member against which preventive or enforcement action has been taken from the exercise of the rights and privileges of membership, again ‘upon the recommendation of the Security Council’. In this case the exercise of the rights and privileges may be restored by the Security Council acting alone. No such suspension has taken place. Under Art. 6 UN Charter, the General Assembly may expel a member which has persistently violated the principles of the UN Charter but only ‘upon the recommendation of the Security Council’. Again, this has never been done. In 1995–96, acting by analogy with the powers and procedures in Arts 4 to 6, the Security Council recommended and the General Assembly decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) ‘cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations’ (UNSC [1996] [19 September 1996] para. 1) and therefore ‘should apply for membership and shall not participate in the work of the General Assembly’ (ibid) (or the United Nations, → Economic and Social Council).

Under Art. 26 UN Charter, the Security Council is responsible for formulating plans to be submitted to the members of the UN for the establishment of a system for the regulation of armaments. Efforts to do so were abandoned by about 1960, and work in the field of disarmament has been carried out in other forums or bilaterally. In recent years, however, the Security Council has become involved in non-proliferation, both in general—UNSC Resolution 1540 (2004) of 28 April 2004—and in specific cases—Iraq, Democratic People’s Republic of Korea, Iran (→ Non-Proliferation Treaty (1968)).

Under Art. 83 UN Charter, the Security Council carried out all the functions of the UN relating to strategic trust territories: this function came to an end with the entry of the last area under forming part of such a territory, Palau, into the UN in December 1994 (→ United Nations Trusteeship System).

Under Art. 94 (2) UN Charter, in the event of non-compliance with a judgment of the ICJ, a party to the case may have recourse to the Security Council, ‘which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment’. Practice under this provision is sparse.

Art. 97 UN Charter provides that the UN Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. The Security Council has developed elaborate procedures for choosing the candidate that It recommends for appointment.

The Statute of the ICJ (→ International Court of Justice, Rules and Practice Directions), the Security Council elects the judges of the ICJ together with the General Assembly. To be elected the candidate must receive eight votes in favour in the Security Council; the veto does not apply. Under the Statutes of the ICTY and the ICTR, the Security Council summons a list of candidates to the General Assembly for election.

Other specific functions may be referred to in instruments drawn up outside the Security Council—and indeed outside the UN—but these may only be carried out by the Security Council if they fall within its powers under the UN Charter—for example, under its primary responsibility for the maintenance of international peace and security—and only then if and to the extent that, acting in accordance with its own discretion, it decides to do so. There are, for example, a number of functions for the Security Council set out in the Rome Statute of the International Criminal Court (ICC) (ICC Statute), including the reference of situations to the ICC (see UNSC Res 1593 [2005] [31 March 2005] on Darfur; → Sudan), and the power under Art. 16 ICC Statute to request the ICC to defer for a period of 12 months an investigation or prosecution (see the controversial use of this power in UNSC Res 1422 [2002] [12 July 2002], 1487[2003][12 June 2003] and 1472[2003][1 August 2003]).

E. Evaluation

For the first 45 years, because of the Cold War the Security Council did not live up to the high expectations placed in it by the drafters of the UN Charter. The period since 1990 has seen a great resurgence in activity by the Security Council, which is now seen by some as becoming over-mighty. The Security Council, as the only international body that can impose legal obligations on all States notwithstanding their other obligations, remains of the highest importance for multilateral action and central to the collective security system established by the UN Charter.

Voices are frequently heard questioning the legitimacy of the Security Council—particularly in light of its composition—and its actions—eg, its selectivity (→ International Organizations or Institutions, Democratic Legitimacy; → Legitimacy). Such questions, which is often quite strident, raises issues of policy, rather than calling into question the lawfulness of the Security Council’s action. Such issues are, however, important. If pressure for unilateral action is to be resisted, the world needs a Security Council that is capable of acting promptly and effectively and that is seen so to act whenever necessary. In the long-term, a Security Council that is not perceived to be legitimate will
Select Bibliography


Select Documents

Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter) (1948) ICJ Rep 57.
Prosecutor v Tadić (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) IT-94-1-AR72 (2 October 1995).
Repercussion of the Practice of the Security Council.
UN Provisional Rules of Procedure of the Security Council (21 December 1952) UN Doc 5/96/Rev.7
UN Security Council.