

Climate Change as a ‘Threat to the Peace’: The Potential for Action by the United Nations Security Council

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Abstract

It is now generally understood that impacts of climate change will irrevocably damage the environment and risk the future of human life. Despite this, it has not yet been the subject of robust, enforceable international law. Recently, discussion has turned to the link between climate change and its impact on international peace and security. It is within this link, this thesis argues, that there are options in international law to address the risk posed by climate change in more unified and binding way. This thesis is principally concerned with the role the United Nations Security Council could, and perhaps should, play in mitigating the effects of climate change, as the lead organ for international security matters.

In examining this question, the thesis first looks at the link between climate change and security before considering what international frameworks already exist. Next, it conducts an overview of treaty interpretation, focussing on how interpretation may differ when considering constitutive treaties like the United Nations Charter. The thesis concludes that for such treaties there is support for a broader approach to interpretation. The central part of the thesis concluded that the risk climate change poses to international peace and security can be read as reaching the threshold of ‘threat to the peace’ in Article 39 of the United Nations Charter. As such there are options open to the United Nations Security Council under Chapter VII of the Charter. The author argues that to really mitigate the risk climate change poses to security, the United Nations Security Council must declare it a ‘threat to the peace’ and utilise its authority to bind States to take action.

Declaration of Original Authorship

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Prema Vijya McIntosh

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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
CCMS	Committee on the Challenges to Modern Society
CO ₂	Carbon Dioxide
COP	Conference of the Parties
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EEC	European Economic Community
EU	European Union
HRDDP	United Nations Human Rights Due Diligence Policy
ICJ	International Court of Justice
ICTY	International Court for the Former Yugoslavia
IDPs	Internally Displaced Persons
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
MINUSTAH	United Nations Stabilisation Mission in Haiti
NATO	North Atlantic Treaty Organisation
NDCs	Nationally Determined Contributions
NIE	National Intelligence Estimate
OECD	Organisation for Economic Cooperation and Development
PCIJ	Permanent Court of International Justice
PIF	Pacific Island Forum
SIDS	Small Island Developing States
SIPRI	Stockholm International Peace Institute
SLR	Sea Level Rise
SPS	Science for Peace and Security Programme

UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNMISS	United Nations Mission in South Sudan
UNSC	United Nations Security Council
UNSC Res	United Nations Security Council Resolution
VCLT	Vienna Convention on the Law of Treaties
WG	Working Group
WHO	World Health Organisation
WMDs	Weapons of Mass Destruction
WMO	World Meteorological Organisation

Chapter One: Introduction

Today, the world is confronted with an unprecedented existential threat: climate change. The rising sea and atmospheric temperatures, the frequent and severe natural disasters, and the irreversible environmental degradation not only inflict both immediate and long-term human suffering but, as this thesis contends, harbour the potential to disrupt international peace and security. Climate change fuels conflicts, triggers mass displacement of populations, and erodes global stability. The United Nations Security Council (UNSC), as the custodian of international peace and security, holds the power to confront this issue. This thesis argues that the UNSC is legally empowered to address climate change as a ‘threat to peace’ under Article 39 of the United Nations (UN) Charter. If it were to do so, it could utilise its extensive powers to compel Member States to undertake more substantial and tangible measures to mitigate the catastrophic repercussions of climate change.

Scientific concerns about climate change are not new. On the contrary, scientists had suggested before the turn of the twentieth century that increased Carbon Dioxide (CO₂) concentrations could lead to climate change.¹ This phenomenon was initially termed the ‘Greenhouse Effect’ in 1901, and by the 1950s, concerns about its long-term effects were growing. In 1965, United States President Johnson’s Science Advisory Committee issued a stark warning about the hazards of fossil fuel emissions, concluding in its *Restoring the Quality of our Environment* report that rising CO₂ levels were a direct consequence of fossil fuel burning and that such activities were of sufficient magnitude to have global consequences.² Throughout the 1970s, evidence of warming continued to grow, and scientists issued warnings of potential climate change due to human activities.³

¹ T.C. Chamberlin, ‘An Attempt to Frame a Working Hypothesis of the Cause of Glacial Periods on an Atmospheric Basis’ (1899) 7 *The Journal of Geology* 545.

² President’s Science Advisory Committee, *Restoring the Quality of Our Environment: Report of the Environmental Pollution Panel* (U.S. Government Printing Office 1965), Appendix Y4.

³ See Frank Press, *Release of Fossil CO₂ and the Possibility of a Catastrophic Climate Change* (Memorandum to President Carter, 7 July 1977); World Meteorological Organisation, *Proceedings of the World Climate Conference: A Conference of Experts on Climate and Mankind* (WMO, 1979); and National Research Council, *Carbon Dioxide and Climate: A Scientific Assessment* (The National Academies Press 1979).

Climate change and security were perhaps first explicitly linked in 1969, when the North Atlantic Treaty Organization (NATO), a military cooperation and defence alliance, created the Committee on the Challenges to Modern Society (CCMS).⁴ The CCMS marked the first attempt by a global organisation with a security focus to address the challenges posed by ‘environmental problems common in developed nations’.⁵ The Committee did not have universal support, and those inside and outside of NATO questioned the need for a security organisation to consider environmental and development issues.⁶ Other organisations were already looking at such matters, including the Organisation for Economic Cooperation and Development (OECD), the European Economic Community (EEC), and the UN, which was about to launch the UN Environment Programme (UNEP). Despite this, the CCMS thrived and developed over time into the NATO Science for Peace and Security Programme (SPS), which still exists today. The SPS is a policy tool for enhancing cooperation between NATO allies. Its recommendations have no binding effect; it primarily fosters dialogue and cooperation on scientific issues related to security and peace.⁷ The creation of the CCMS showed an early international willingness to link environmental concerns with security, while the continued existence of the SPS cements the view that cooperation in science has an impact on peace and security.

It was not until the 1980s that international law solutions to the threat of climate change were explored. Treaties such as the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer looked to mitigate ozone depletion (known to be a key contributor to climate change).⁸ Both treaties had universal ratification. This signalled a global desire to consider environmental issues on an international (if not yet security-focused) level. Over the past 30 years, both treaties have been successful in

⁴ See NATO Committee on the Challenges of Modern Society, which managed studies, research and fellowships on various environmental issues, it has since become part of the Science for Peace and Security Programme <https://nato.int/science/studies_and_projects/index.htm>; and Alan Berlind, ‘NATO and the Environment’ (*American Diplomacy*, March 2009) <<https://americandiplomacy.web.unc.edu/2009/03/nato-and-the-environment>> last accessed 17 June 2024.

⁵ Berlind (n 4).

⁶ *ibid.*

⁷ NATO Science for Peace and Security, ‘Introduction’ <https://www.nato.int/science/about_sps/introduction.htm> last accessed 17 June 2024.

⁸ Vienna Convention for the Protection of the Ozone Layer (opened for signature 22 March 1985, entered into force 28 September 1988) 1513 UNTS 293; and Montreal Protocol on Substances that Deplete the Ozone Layer (opened for signature on 16 September 1987, entered into force on 1 January 1989) 1522 UNTS 3.

generally slowing ozone depletion and lessening the substances that caused it (albeit without a focus on security or peace).⁹

The 1988 Toronto Conference on the Changing Atmosphere: Implications for Global Security saw the start of international cooperation in response to climate change as an issue of its own, rather than one that focused on the greenhouse effect. This Conference also began to overtly link the climate change risk to security. Its statement observed that ‘the best predictions available indicate potentially severe economic and social dislocation for present and future generations, which will worsen international tensions and increase risk of conflicts among and within nations.’¹⁰ Around the same time, the UN General Assembly (UNGA) declared climate change a ‘common concern of all mankind’.¹¹

Although national security and intelligence agencies are now beginning to identify concerns about the impact of climate change on security, a climate-security connection has yet to be fully addressed in international law. The distinct but increasingly overlapping fields of environmental and national security law are still some way from being aligned.¹² This being so, Chapter Two of this thesis discusses the climate-security link in detail. It will explain generally what climate change is and then conduct an overview of security in the broadest sense. This will lead to an analysis of how the two concepts intersect, concluding that climate change undeniably impacts security.

Yet, despite the intersection between climate change and security, decisive action by the UNSC regarding climate change remains theoretical.¹³ Currently, international governance of the climate change problem resides in the 1992 United Nations Framework Convention on Climate Change (UNFCCC). Chapter Two concludes by canvassing this existing framework, as it is crucial to understand what exists before turning to other, more coercive options the UN may have.

Following this overview of the existing framework on climate change, Chapter Three briefly describes the background to the collective security framework. This is a general discussion, looking at the form and function of the United Nations, and in particular explaining the role of

⁹ UN Environment Programme, ‘Timeline’ <<https://ozone.unep.org/ozone-timeline>> last accessed on 15 March 2024.

¹⁰ World Meteorological Organisation Secretariat and others, *Proceedings, World Conference, Toronto, Canada June 27-30, 1988: The Changing Atmosphere: Implications for Global Security, Conference Statement* (WMO 1989).

¹¹ UNGA Res 43/53 (6 December 1988) UN Doc A/RES/43/53.

¹² Mark Nevitt, ‘On Environmental Law, Climate Change, & National Security Law’ (2020) 44 Harv Env’t L Rev 321, 323.

¹³ Shirley Scott and Charlotte Ku, *Climate Change and the UN Security Council* (Edward Elgar Publishing 2018) 1.

the UNSC in international peace and security. An overview of the UNSC's relationship with climate change thus far follows. As will become apparent, although the UNSC has taken little substantive and specific action, the UN has not been silent on climate change.

Chapter Four takes a step back from climate change and the UNSC to examine the rules of treaty interpretation. In particular, it considers the different schools of interpretation and asks whether there are rules unique to constitutive treaties like the UN Charter. Discussion focuses on whether treaties, especially those that create institutions, should be read in light of the context in which they are to be applied at the time of interpretation (a broad approach), or whether they must be interpreted as understood at the time they were drafted (a narrow approach). This analysis provides a framework by which the UN Charter can be interpreted. The broad approach would admit climate change into the purview of the UNSC; the narrow would not.

Using this framework, Chapter Five examines whether the UN Charter can be interpreted to permit the UNSC to deal directly with mitigating the impact of climate change on security. It is primarily an analysis of the relevant provisions of the UN Charter to determine whether 1) the risks posed by climate change lie within the scope of the UNSC's responsibility and authority with regard to maintaining international peace and security); and 2) (and more controversially), whether they are a 'threat to the peace' in accordance with Article 39. Should climate change be capable of qualifying as a 'threat to the peace', the options widen considerably regarding action the UNSC can take. The final part of the chapter offers examples of measures the UNSC could take to respond to the risk posed by climate change should it so qualify.

This thesis's central argument is that the significant threat posed by the effects of climate change has a concrete and negative impact on the maintenance of international peace and security. As such, it is the responsibility of the UNSC to confront the threat head-on. Taking into account the generally understood rules of treaty interpretation, it will demonstrate that Article 39's reference to 'threat to the peace' can, and should, be interpreted to include climate change. This position will be supported by considering not only the rules for interpretation in the Vienna Convention on the Law of Treaties, but also by considering both State and UNSC practice. The thesis concludes that the UNSC is sufficiently empowered by the UN Charter to declare climate change a 'threat to the peace' and suggests ways in which it can direct action.

Chapter Two: Climate Change, Security, and the Road so Far

Section One: Climate Change and Security

Before a more detailed discussion on the link between climate change and security, there must first be an understanding of what is meant by ‘climate change’ and then what is meant by ‘security’. This chapter looks at ‘security’ as a term of art rather than law. Here, the intent is to define these concepts more broadly, and then provide examples of how and when climate change could manifest into a security threat. Chapter Five will look closely at whether such a connection is also available when considering ‘security’ through the lens of international law.

‘Climate change’ is a pressing global issue, with its effects felt in two key areas: the ocean and the atmosphere. The escalating temperatures in these environments are driving tangible consequences on an international scale, a phenomenon commonly referred to as ‘global warming’. For instance, the rising ocean temperatures are causing sea-level rise (SLR) through the melting of the polar ice caps. Similarly, the increasing atmospheric temperatures are amplifying the risk of drought and the intensity of tropical storms.¹⁴

Although States have committed to taking measures to slow global warming, that mitigation is incremental and has yet to make a significant difference. As the Chair of the Intergovernmental Panel on Climate Change (IPCC), Mr Hoesung Lee, emphasised in his statement at the opening of the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) 27, the urgency of the climate change issue cannot be overstated. He stressed the need for immediate and significant action, stating,

The voice of today’s science on climate change could not be sharper, stronger, and more sobering: we are not on track today to limit global warming to 1.5 degrees Celsius ... With increasing global warming, losses and damages will increase and additional human and natural systems will be pushed to adaptation limits. Therefore, the prerequisite to successful adaptation is ambitious mitigation to keep global warming within limits,

¹⁴ Intergovernmental Panel on Climate Change, ‘Summary for Policymakers’ in H.-O. Pörtner and others (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (CUP 2023).

particularly below 1.5°C – through immediate and deep cuts in the emissions of greenhouse gases.¹⁵

In a later speech, he noted, '[t]he scientific evidence is unequivocal: Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open ocean marine ecosystems.'¹⁶ Ultimately, the IPCC advises that if global warming is not limited to 1.5 degrees Celsius, with greenhouse gas emissions peaking before 2025 and reduced by 43% by 2030, some consequences will be irreversible.¹⁷ As UN Secretary-General Antonio Guterres noted in his closing comments at COP27, '[t]he red line we must not cross is the line that takes up over the 1.5-degree temperature limit ... COP27 concludes with much homework and little time.'¹⁸

Climate change is best described by reference to its consequences and the tangible impact rising temperatures have on the world. As referenced above, increasing temperatures are melting polar ice caps and causing rising sea levels. Consequently, some small island developing States (SIDS), such as Tuvalu, Kiribati, the Maldives, and the Republic of the Marshall Islands, are becoming increasingly uninhabitable due to the loss of physical territory and salination of fresh-water supplies. These nations are, for want of a less dramatic term, facing imminent nation extinction.¹⁹ At the other end of the spectrum, the same melting at the Poles exposes previously inaccessible land and resources, creating a potentially opposing problem where new land and resources become the source of competition.

While SIDS may most acutely feel the impact of SLR, the broader impact of climate change is, and will increasingly be, felt globally. As global surface temperatures increase, extreme weather events will increase in frequency. Such temperatures amplify the possibility of drought and increase the strength of storms. As water vapour evaporates, ocean temperatures rise, and the

¹⁵ Hoesung Lee, 'Statement by IPCC Chair during the Opening of UNFCCC COP27' (COP27, Sharm-El-Sheikh, 6 November 2022) <<https://www.ipcc.ch/2022/11/07/statement-ipcc-chair-hoesung-lee-cop27>> last accessed 17 June 2024.

¹⁶ Hoesung Lee, 'IPCC Chairs Remarks' (2nd World Ocean Summit Asia-Pacific, Singapore, 29 November 2022) <<https://www.ipcc.ch/2022/11/29/ipcc-chair-2nd-world-ocean-summit-asia-pacific>> last accessed 17 June 2024.

¹⁷ *The Evidence is Clear: The time for action is now. We can halve emissions by 2030* IPCC Press Release (2022/15/PR 4 April 2022).

¹⁸ Amina J. Mohammed, 'Statement by the Secretary-General at the conclusion of COP27' (COP27, Sharm el-Sheikh 19 November 22) <<https://www.un.org/sg/en/content/sg/statement/2022-11-19/statement-the-secretary-general-the-conclusion-of-cop27%C2%A0-sharm-el-sheikh%C2%A0%C2%A0>> last accessed 17 June 2024.

¹⁹ Mark Nevitt, 'Is Climate Change a Threat to International Peace and Security?' (2021) 42 Mich. J. Int'l L 527, 535.

heat in the atmosphere increases, tropical storms will become more intense with higher wind speeds. In addition, SLR will expose land areas that were not previously susceptible to ocean erosion.²⁰ These weather events have already manifested. Parts of Europe endured their hottest summer on record in 2022.²¹ Forest fires in California and Australia are also a symptom of climate change, as were the 2022 devastating floods in Pakistan.²²

For this thesis, climate change is therefore understood to mean the long-term effect of changes in the climate, distinct from the weather (short-term atmospheric conditions). The most significant of these are increasing global surface temperatures, rising sea levels, and the warming of the oceans – all of which pose the most overall risk to the planet and, as argued in this thesis, the most security risk.

Having now established what climate change is, next follows an analysis on what security could mean, before a link can be drawn between the two. Security as a concept though, is difficult to define. In his recent work on the concept of security in international law, Dr Hitoshi Nasu states it is a ‘protean concept’ and acknowledges its ability to adapt as social conditions and practices evolve.²³ ‘Security’ has meant different things to different people and cultures at different times. For the purposes of this thesis, it is helpful to consider security in two ways: narrowly and in a traditional sense (hard security), and more broadly and less traditionally (soft security).

When discussing security, the term’s more common or traditional usage conjures images of conflict reminiscent of the wars of the twentieth century. Unsurprisingly, one of the primary sources of international law on the maintenance of international security is the UN Charter, which was very much borne from the aftermath of World War Two. Though the word ‘security’ is not defined in the text of the Charter, the time at which it was drafted gives essential context as to what was in the mind of the drafters. The year was 1945, and the world was reeling from another world war, this one more devastating than the previous. In the shadow of that conflict, it was

²⁰ US Geological Survey, ‘How Can Climate Change affect Natural Disasters?’ <<https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters>> accessed 3 February 2023.

²¹ Copernicus Climate Change Service, ‘The 2022 Annual Climate Summary: Global Climate Highlights 2022’ <<https://climate.copernicus.eu/global-climate-highlights-2022>> accessed 2 February 2023.

²² The 2019–20 Australian bushfire season destroyed over 18m hectares of land and over 2000 homes. Over a billion wild animals perished – this season became known as the Black Summer. The Pakistan floods in 2022 caused over 1500 deaths and cost upwards of \$4b in damage and around \$15b in economic loss for the nation.

²³ Hitoshi Nasu, *The Concept of Security in International Law* (West Point Press 2022) 1.

clear that, at the time, the maintenance of peace and security was primarily about avoiding another war.

Article 1 of the Charter states that,

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.²⁴

Given the post-war context in which this was drafted, it would be easy to interpret such words (particularly those of Article 1(1)) as referring to the prevention of armed conflict. Indeed, according to Rüdiger Wolfrum, if ‘peace’ is the ‘absence of threat or use of force’, security includes the measures necessary to maintain the ‘conditions of peace’.²⁵ As Wolfrum notes, the preamble and Articles 1–3 of the Charter indicate that peace is more than the ‘absence of war’,

²⁴ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) (UN Charter) art 1.

²⁵ Rüdiger Wolfrum, ‘Ch. I Purposes and Principles, Article 1’ in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012) paras 8-9.

and that it suggests that the intention was to strengthen international relations and lead to the ‘diminution of those issues likely to cause war’.²⁶ Therefore, the Charter as a whole can be interpreted as applying to a broad, rather than narrow, definition of ‘security’.

This interpretation is supported by the actions of the UN General Assembly (UNGA), which, in proclaiming 1986 the International Year of Peace, stated that the promotion of international peace and security included not only the prevention of war and peaceful settlement of disputes, but also the enhancement of quality of life, the satisfaction of human needs, and the protection of the environment.²⁷ In his 2005 report, *In Larger Freedom*, the then Secretary-General of the UN, Kofi Annan, further confirmed this approach. The report that threats to international peace and security are not just war and civil violence, terrorism and organised crime, but that they must also include ‘poverty, deadly infectious disease and environmental degradation.’²⁸ He argued that those threats are as likely to cause death or lessen the chances of life as the more traditional security threats. The UN as an organisation and one of its principal organs, the UNGA, have been unequivocal in interpreting ‘security’ more broadly than just armed conflict. The UNGA, though, is not the organ of the UN most concerned with security.

The UN Security Council (UNSC) is charged with the ‘maintenance of international peace and security’ (Article 24) and can notably access more extraordinary powers under Chapter VII of the UN Charter in response to ‘threats to the peace, breaches of the peace and acts of aggression’.²⁹ Unlike the UNGA and the International Court of Justice, the UNSC’s mandate is neither thoroughly nor legally defined.³⁰ The UNSC must determine for itself what is and is not within its ambit and what may trigger action under Chapter VII. Although a fuller discussion of the UNSC and how it has interpreted ‘international peace and security’ appears in Chapter Five of this thesis, it is sufficient at this stage to note it has taken action in the past that interpreted ‘security’ beyond the idea of international armed conflict.³¹

Like the central UN bodies, States have been making statements indicating their individual views on security (noting that those States also comprise the membership of those bodies). Indeed,

²⁶ *ibid.* para 7.

²⁷ UNGA Res 40/3 (24 October 1985) UN Doc A/RES/40/3.

²⁸ UNGA ‘Report of the Secretary-General: In larger freedom: towards development, security, and human rights for all’ (2005) UN Doc A/59/2005 para 78.

²⁹ UN Charter art 24.

³⁰ Stefan Kadelbach, ‘Interpretation of the Charter’ in Bruno Simma and others (eds)(n 25) para 58.

³¹ *ibid.*

States frequently produce reports detailing the security threats they deem to be of the most concern. These, unsurprisingly, go beyond conflict. In this regard, it is instructive to consider various national and regional positions on non-traditional security threats.

The 2021 New Zealand Defence Assessment identified two main challenges to New Zealand's defence interests: strategic competition and the impacts of climate change.³² The Assessment further notes that these challenges, coupled with the ongoing impact of the COVID-19 pandemic, are enhanced by other sources of insecurity in the Pacific – including continuing challenges to governance and human security.³³ The Assessment makes little mention of traditional security threats and it is apparent that New Zealand now considers non-traditional risks a more likely threat to national security than traditional matters, such as inter-state conflict. It is notable that climate change was singled out as a particular challenge.

The October 2022 United States National Security Strategy likewise identifies two strategic challenges.³⁴ Firstly, and perhaps more in line with the traditional view of security, is the competition between major States to 'shape what comes next.'³⁵ This includes strengthening international institutions, respecting foundational principles such as sovereignty and freedom of information, upholding universal human rights, and creating a fairer global economy.³⁶ However, the second challenge identified by the strategy presents a broader view of what the United States of America considers important to 'national security'. Framed as 'shared challenges across borders,' the strategy identifies climate change, food insecurity, disease, terrorism, energy shortages, and inflation as 'at the very core of international and national security'.³⁷ This is a clear statement by a world power, and one of the permanent members of the UNSC, that non-traditional security threats are as significant as traditional threats and should be treated as such.

The European Union's (EU) most recent statement on security appears in its March 2022 Strategic Compass, which sets out a plan for strengthening the EU's security and defence policy. Although the Compass was released within a month of the Russian invasion of Ukraine and

³² New Zealand Ministry of Defence, *Defence Assessment 2021: he moana pukepuke a ekengia e te waka* (Ministry of Defence December 2021) 4.

³³ *ibid.* 6.

³⁴ President Biden, *National Security Strategy* (Washington, D.C: White House October 2022).

³⁵ *ibid.*

³⁶ *ibid.* 6.

³⁷ *ibid.*

focuses on ‘the return of war in Europe’, the EU still identifies non-traditional security threats in its planning.³⁸ In listing the emerging and trans-national threats and challenges expected, the report includes ‘[c]limate change, environmental degradation and natural disasters’ alongside terrorism, and the proliferation of weapons of mass destruction.³⁹ Competition for natural resources and global health crises (such as the COVID-19 pandemic) are also identified as emerging security threats. It states that climate change, environmental degradation and natural disasters will ‘impact [the] security landscape over the next decades and are proven drivers for instability and conflict around the globe.’⁴⁰ The EU also advises that the mitigation required to stem global warming (such as making economies more resource-efficient) will pose its own security challenges, including access to the required resources and the ‘economic and political shifts’ that will occur in the move away from reliance on fossil fuels.⁴¹ In this, the EU is clear in its position that security means more than just conflict, and it even goes so far as to acknowledge even the movement to mitigate the consequences of climate change, will, in and of itself, pose security issues.

It is not just Western democracies that have broadened their view of what may constitute a threat to security. Before 2021, Russia did not necessarily consider climate change a threat to security but rather characterised those second-order effects (like food shortages) as such. In 2021, Russia’s National Security Strategy shifted that characterisation from its impact to seeing it as a threat to security itself, requiring both prevention and adaptation.⁴²

The Association of Southeast Asian Nations (ASEAN)⁴³ has, within its ASEAN Political-Security Community Blueprint, the responsibility for addressing non-traditional security threats, acknowledging that those aspects can be vital to ‘regional and national resilience’, including ‘economic, socio-cultural and environmental dimensions’.⁴⁴ This encompasses threats like

³⁸ Council of the European Union, *Strategic Compass for Security and Defence – For a European Union that protects its citizens, values and interests and contributes to international peace and security* (EU, 21 March 2022).

³⁹ *ibid* 12.

⁴⁰ *ibid*.

⁴¹ *ibid*.

⁴² Elizabeth Buchanan, ‘Russia’s 2021 National Security Strategy: Cool Change Forecasted for the Polar Regions’ (Royal United Services Institute, 14 July 2021) <<https://www.rusi.org/explore-our-research/publications/commentary/russias-2021-national-security-strategy-cool-change-forecasted-polar-regions>> last accessed 17 June 2024.

⁴³ ASEAN is a political and economic union of ten member states: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Viet Nam, Lao People’s Democratic Republic, Myanmar and Cambodia.

⁴⁴ Association of Southeast Asian Nations, *ASEAN Political-Security Community Blueprint* (ASEAN June 2009) 8.

terrorism, transnational crime, and other transboundary challenges such as natural disasters.

Again, this position accepts that international and national security relies on more than managing traditional security threats.

Lastly, the Pacific Islands Forum (PIF)⁴⁵ notes that one of its primary objectives is ‘security that ensures stable and safe human, environmental and political conditions for all’, clearly indicating a non-traditional view of ‘security’.⁴⁶ The PIF’s 2050 Strategy for the Blue Pacific Continent is divided into themes, including ‘Peace and Security.’ It states, ‘[the region] recognises the expanded concept of security that includes human security, economic security, humanitarian assistance, environmental security, cyber security and transnational crime, and regional cooperation to build resilience to disasters and climate change.’⁴⁷ The PIF, then, is unequivocal in its view of ‘security’ as more than avoidance of conflict.

As this brief overview demonstrates, and while each nation takes its own nuanced view of ‘security’, it is clear that many are at least cognizant of threats to security beyond international conflict. As Nasu concludes, ‘the concept of security will inevitably continue to evolve and intrude into various issue areas and geographical domains as the public perception of fear changes and as the technology advances.’⁴⁸ It is evolving to include non-traditional threats.

Having defined both climate change and security, it is apparent that under this broader understanding of security, climate change is a ‘threat to security’. This prompts the question of how such a threat may have already manifested, or how it may occur in the future.

Many reports discussed above included reference to climate change, specifically in regard to their expanding view of security. Some also drilled deeper into the link between security and climate change and discussed the causal link between climate change and security. As early as 2008, the European Council identified seven security threats likely to come from climate change:

1. Conflict over resources;

⁴⁵ The PIF is the Pacific Region political and economic policy organization. It was founded in 1971, and has 18 member states: Australia, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

⁴⁶ Pacific Islands Forum, ‘Peace and Security’ <<https://forumsec.org/peace-and-security>> last accessed 15 March 2024.

⁴⁷ Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (Pacific Islands Forum Secretariat, 2022).

⁴⁸ Nasu (n 23) 3.

2. Economic Damage and risk to coastal cities and critical infrastructure;
3. Loss of territory and border disputes;
4. Environmentally-induced migration;
5. Situations of fragility and radicalisation;
6. Tension over energy supply; and
7. Pressure on international governance.⁴⁹

These seven themes recur throughout the other assessments discussed below and continue to be the primary areas of concern from a security perspective even in 2024.

The Stockholm International Peace Institute (SIPRI) has theorised the risk in another, yet similar, way. It identifies three pathways by which climate change may impact security and notes that that impact will change depending on different ‘social, political and economic structures and dynamics’.⁵⁰ These interrelated pathways impact livelihoods, migration and mobility, the reaction of armed groups, and exploitation by the elite. The Institute notes that while climate change may increase the likelihood of new conflicts, it will also change the dynamics of existing ones. The SIPRI theory illustrates both the link to broader security and a direct link to present and future conflict.

The Intergovernmental Panel on Climate Change (IPCC) has not identified a conventional relationship between climate change and security, but does acknowledge that it has an impact.⁵¹ Its 2022 report notes that climate change contributes to humanitarian crises but is not the primary driver of existing conflicts.⁵² The report concludes that extreme weather and climate events in some regions may have had a small impact on conflicts’ length, severity and frequency, but the link is statistically weak.⁵³ Climate change exacerbates that vulnerability in nations with

⁴⁹ Council of the European Union, *Climate Change and International Security – Paper from the High Representative and the European Commission to the European Council* (EU Publications Office, 2008) 3–5.

⁵⁰ Malin Mobjörk, Florian Krampe and Kheria Tarif, ‘Pathways of Climate Insecurity: Guidance for Policymakers’ (Stockholm International Peace Research Institute (SIPRI) Policy Brief November 2020).

⁵¹ The IPCC are an organization created in the late 1980s by the World Meteorological Organisation (WMO) and the UN Environmental Programme (UNEP) with the objective of providing governments at all levels with scientific information to aid in the development of national climate policies. It is made up of governments who are members of the WMO or the UN and has 195 Members. Further discussion of the IPCC is later in this chapter. See also IPCC, ‘About’ <<https://www.ipcc.ch/about>> last accessed 18 June 2024.

⁵² Intergovernmental Panel on Climate Change (2023), ‘Summary for Policymakers’ in H.-O. Pörtner and others (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (CUP 2023) para B.1.7.

⁵³ *ibid.*

development constraints, high poverty, governance challenges, limited access to resources, and reliance on climate-sensitive livelihoods.⁵⁴ The IPCC, though, does discuss climate change through a broad security lens rather than limiting its report to linking climate change to conflict. It confidently assesses the threat climate change poses to food and water security as a risk in all parts of the world, particularly in Africa, Asia, Central and South America, and SIDS.⁵⁵

In 2021, the United States National Intelligence Estimate (NIE) offered three key conclusions on climate change's impact on security.⁵⁶ The NIE found that geopolitical tensions will continue to grow as international discord intensifies over the best way to meet emissions targets. It further concluded that the increasing physical effects of climate change will

[e]xacerbate cross-border geopolitical flashpoints ... [and] as temperatures rise and more extreme effects manifest, there is a growing risk of conflict over water and migration, particularly after 2030, and an increasing chance that countries will unilaterally test and deploy large-scale solar geoengineering—creating a new area of disputes.⁵⁷

The NIE concluded that such impacts would be more strongly felt in developing countries, which are least able to adapt to the changes and are more vulnerable to political instability and internal conflict.⁵⁸ The IPCC also identified energy security as becoming increasingly at risk from the impacts of climate change.

The States most at risk from climate change's impacts have been more definitive in using the rhetoric of conflict when discussing its broader security impacts. For instance, in 2007, Tuvalu described climate change as 'conflict ... not being fought with guns and missiles but with weapons from everyday life—chimney stacks and exhaust pipes.'⁵⁹ In the same year, Namibia compared it to 'low-intensity biological or chemical warfare.'⁶⁰ Many larger developing nations opposed these views. Those nations have questioned the link between climate change and conflict, and show greater concern for how regulation of contributors to climate change may

⁵⁴ *ibid.*

⁵⁵ *ibid.* para B.4.3.

⁵⁶ National Intelligence Council, *Climate Change and International Responses Increasing Challenges to US National Security Through 2040* (NIC-NIE-2021-10030-A October 2021).

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ Ken Conca, 'Is There a Role for the UN Security Council on Climate Change?' (2019) 61(1) *Environment: Science and Policy for Sustainable Development* 4, 9. *See also* UNSC, '5663rd Meeting (resumption 1)' UN Doc S/PV.5663 (New York, NY, 2007).

⁶⁰ *ibid.* 10.

impact sovereign rights over resources and development. Regardless, those larger nations generally accept a security threat posed by climate change but that it is not primarily a driver of conflict.

Defining the security risk of climate change also depends on the author's perspective or the State for which the report is produced. Those for whom the threat is immediate and tangible have been more likely to see climate change as a threat to security, as evidenced by the PIF's position on non-traditional threats. SIDS are arguably the nations facing the most severe and imminent threat from climate change and the majority can be found in the South Pacific. It is reasonable to conclude that this is the reason for PIF's more straightforward stance on the issue.

Similarly, New Zealand's Ministry of Defence focuses on the South Pacific, noting that given the pace and impact of climate change on SIDS, leaders in that region consider it a threat. New Zealand's 2021 Defence Assessment reports,

[t]he direct environmental and human security impacts of climate change will be increasingly likely to present national security challenges for many countries and regions, ... In some cases, including in the Pacific, the direct impacts of climate change will be sufficiently serious – in scope and/or scale – to threaten the overall security or viability of countries.⁶¹

The Assessment acknowledges that climate change's impacts will likely contribute to social and political instability, increasing resource competition, and uncontrolled migration.⁶² As a regional leader in the South Pacific, it is unsurprising that New Zealand also clearly acknowledges climate change as a threat to security.

In contrast, the United Kingdom, where the effects of climate change are yet to be significantly felt, looks at the threat climate change presents more broadly and considers that while it may not be a threat in and of itself, it will exacerbate security challenges.⁶³ A 2018 United Kingdom report notes that the loss of homes and livelihoods due to natural disasters will drive migration and tension.⁶⁴ The demand for water and food will only grow, and shortages will become more

⁶¹ New Zealand Ministry of Defence, *Defence Assessment 2021: he moana pukepuke a ekengia e te waka* (n 320) 18.

⁶² *ibid.*

⁶³ Ministry of Defence United Kingdom, *Global Strategic Trends* (6th edn Ministry of Defence UK 2018) 32.

⁶⁴ *ibid.*

frequent. If water supplies and agricultural demands cannot be met, disputes and conflicts will likely follow.⁶⁵ It is fair to note, though, that since the COVID-19 pandemic, an understanding that threats to security can ‘take many forms’ has dominated United Kingdom Defence policy.⁶⁶ A 2021 report commissioned by Her Majesty’s Government clearly shows that climate change directly impacts peace and security. It goes so far as to list climate change in the same group as ‘non-state threats from terrorism’ when considering the increasing competition in the Indo-Pacific region.⁶⁷

Most previous conflicts that are (even tangentially) linked to climate change have been generally centred in less developed nations, such as in parts of Africa, where drought has increased tension and competition for resources. Low rainfall has been cited as a reason for a rise in conflict, and lack of resources can drive individuals to join armed groups or lead to increased migration and conflict.⁶⁸ As the crisis worsens, it is also likely that such tension will spread to other nations with similar socioeconomic and political vulnerabilities. Although the conflicts that dominated the Pacific in the latter half of the twentieth century were driven by a desire for self-determination, small island nations will likely find climate events just as destabilising. Additionally, land is spiritually and culturally significant to many Pacific peoples and has traditionally been the root of many conflicts.⁶⁹

It is the consensus among governments and international agencies that conflict risks from climate change are likely only to manifest in developing countries, particularly those with vulnerable governance structures and no natural capacity to mitigate the risks. Although this may be true for more traditional conflicts, including civil war and regional conflict, internal stability is also beginning to be threatened in wealthier, more stable countries, and there is evidence to suggest that the risk to security posed by climate change is not entirely limited to these more vulnerable nations. Wealthier nations have begun to see the stirrings of strife that may be driven by climate change. The United States of America, for example, faces unprecedented migration from Central and South America, where many nations have been identified as facing, as a consequence of

⁶⁵ *ibid* 13.

⁶⁶ HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy* (APS Group 2021) 3.

⁶⁷ *ibid* 66.

⁶⁸ Ministry of Defence United Kingdom (n 61) 34.

⁶⁹ Kelisiana Thynne, ‘The Universality of IHL – Surmounting the Law Bastion of the Pacific’ (2010) 41(2) *VUWLR* 135, 142.

climate change, either a high risk of armed conflict (Colombia and Bolivia), or an increased risk of political instability (Brazil, Venezuela, Guatemala, Honduras, and El Salvador).⁷⁰ Developed countries are also not invulnerable to the internal security consequences of climate change and resource competition.

Climate change poses a risk to security, however it is conceptualised, whether in a more traditional sense, as a driver of conflict or a cause of geopolitical instability or, in a broader sense, as a cause of food and water insecurity, mass migration, and energy insecurity. It has been categorised as a risk by most nations. Mark Nevitt recently called on the UNSC to take more robust action regarding climate change, writing, '[s]tudies predict an increasingly dangerous, Hobbesian world where climate-driven food insecurity, resource wars, and physical destabilisation lead to armed conflict, violence, and chaos.'⁷¹ But is it likely to manifest quite so dramatically, or are we already seeing ways in which climate change is impacting international and national security? The best way to answer this question is to look at examples of current security threats linked to climate change, posing hypotheticals as to how these may manifest in the future.

In his book *Climate Change and Armed Conflict: Hot and Cold Wars*, James Lee examined the link between climate change and the more traditional risk to security – armed conflict.⁷² Although published in 2009, it provides a valuable overview and examples of conflicts that can, to some extent, be linked to climate change. By separating the conflicts into two categories – 'hot' and 'cold' wars, Lee demonstrates how the two extremes of climate change consequences could have differing impacts on conflict. He suggests that increasing temperatures around the Equator are likely to influence intra-state conflict as dry areas intensify and resources become scarce ('hot wars'), whereas, in the more northern or southern parts of the globe, inter-state strife is more likely as interest in exploiting new resources and territories increases ('cold wars').⁷³

'Hot Wars' have already occurred. Conflicts such as those in Darfur or Sudan can be, at least to some extent, attributed to rising temperatures and drought. For instance, during the Darfur conflict, rainfall patterns in the 1990s created competition between traditional herders and

⁷⁰ Dan Smith and Janani Vivekananda, *A Climate of Conflict: The Links between Climate Change, Peace and War* (International Alert 2007) 44.

⁷¹ Nevitt, 'Is Climate Change a Threat to International Peace and Security' (n 19) 534.

⁷² James R. Lee, *Climate Change and Armed Conflict: Hot and Cold Wars* (Taylor & Francis Group 2009).

⁷³ *ibid.*

farmers. The Sudanese Government sided with the nomadic herders and connected militias, who then used force to move farmers from their lands. This conflict, between the government-supported militias and the farmers, led to significant numbers of displaced persons.⁷⁴

One hypothetical posed by Lee is conflicts that may arise over the use of water sources that underlie Egypt. He notes that as populations increase, movement towards water sources intensifies and becomes more dependent on the Nile. This reliance on the Nile increases the potential for conflict over the damming and diverting of water.⁷⁵ This particular scenario played out between Israel and some of its Arab neighbours in the early 1960s. It was a contributing factor in the 1967 Arab-Israeli War (Six-Day War), where one of the drivers of the conflict was the diversion of the Jordan River. In that case, Israel and Jordan accepted a plan to unify water resources from the Jordan Valley; however, the result was considerably less water left to resource other Arab territories. The Arab League, in 1964, claimed the actions by Israel increased the danger to Arab existence and resolved to deprive Israel of water resources in return.⁷⁶ The result was several skirmishes in the lead-up to the Six-Day War, culminating in a strike by Israeli Forces on water diversion works in Syria. Given the on-going tensions between Israel and its Arab neighbours, it is not difficult to imagine increasing water insecurity resulting from rising temperatures, drawing this area into more overt inter-State conflict once again.

The 'cold war' scenarios may come about in new ways. Indeed, they are undoubtedly more likely to draw larger world powers into a fight. For 'cold wars' the issues arise in the Arctic and Antarctica, especially when the Antarctic Treaty expires in 2048.⁷⁷ That Treaty prohibits military activities on the continent, including establishing bases and fortifications, military manoeuvres, and testing weapons.⁷⁸ It explicitly provides that Antarctica will be used for peaceful purposes

⁷⁴ Melinda Kimble, 'Climate Risks and Insecurities' in Felix Dodds, Andrew Higham and Richard Sherman (eds), *Climate Change and Energy Insecurity: The Challenge for Peace, Security and Development* (Taylor & Francis 2009) 144.

⁷⁵ Lee (n 69) 102.

⁷⁶ Masahiro Murakami, *Managing Water for Peace in the Middle East; Alternative Strategies* (United Nations University Press 1995) 287–297.

⁷⁷ The Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71 (The Antarctic Treaty). The original 12 signatories of the Treaty are those who were active in Antarctica in the 1950s (Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the Soviet Union, the United Kingdom, and the United States). Since then the number of signatory nations has increased by 44, made up of consultative (those with an interest in the region demonstrated by substantive research activity) and non-consultative parties (those with no demonstrated interest in the region).

⁷⁸ *ibid* art 1. Note that art 1(2) permits the use of military personnel or equipment for scientific research and any other peaceful purpose.

only, and that scientific observations and results from Antarctic research will be exchanged and freely available.⁷⁹ Melting polar ice caps, resulting from climate change, lead to the exposure of previously uninhabitable land. When the Antarctica Treaty expires, there is potential then for conflict between nations with competing claims to Antarctica over this newly habitable territory and accessible resources.⁸⁰

The United States of America has acknowledged the potential for similar issues in the Arctic. In the 2022 National Security Strategy maintaining a peaceful Arctic was highlighted as a priority.⁸¹ The Strategy observed, '[a]s economic activity in the Arctic increases, we will invest in infrastructure, improve livelihoods, and encourage responsible private sector investment by the United States, our allies, and our partners, including in critical minerals, and improve investment screening for national security purposes.'⁸² Indeed, the idea of a 'navigable – and exploitable – Arctic' has led States, including Canada, Russia, Norway, Denmark, and the United States of America, to assert national claims to certain areas.⁸³

Conflict, then, while one of the more traditional manifestations of security risk, is a natural consequence of climate change in all areas of the world. Already struggling areas suffering from prolonged droughts and famine will likely see such conditions continue, further exacerbating existing intra-State and inter-State tensions. Additionally, the exposure of previously uninhabitable regions or access to previously inaccessible resources at either Pole will likely draw States into global territorial competition. Some of that competition will inevitably lead to armed conflict.

Another area identified as a clear security risk is the anticipated large-scale movement of people across borders as their homelands become uninhabitable.⁸⁴ Mass migration in this way is already occurring in Bougainville, Papua New Guinea, from the nearby Carteret Islands, where over 2000 'climate refugees' began to move in the late 2000s.⁸⁵ The Carteret Islands are suffering from

⁷⁹ *ibid* arts 1 and 3.

⁸⁰ Lee (n 69) 114.

⁸¹ President Biden (n 34).

⁸² *ibid* 45.

⁸³ Kimble (n 74) 117.

⁸⁴ See US National Intelligence Estimate, Key Judgement 2; IPCC AR6 Summary for Policy Makers; UK MOD global Strategic Trends 2018, 13, 32; NZ MOD Defence Assessment 2021 Section 2.3 and para 65; and US National Security Strategy 2022 9.

⁸⁵ See UNICEF, 'The Last Islanders: rising sea levels in Papua New Guinea' (20 March 2017) <<https://www.unicef.org/png/stories/last-islanders-rising-sea-levels-papua-new-guinea>> accessed 16 June 2024; Sarah M. Nunoz, 'Understanding the human side of climate relocation' (*The Conversation*, 5 June 2019)

coastal erosion, environmental degradation, and food and water insecurity partially because of climate change. Bougainville has yet to fully recover from over a decade of civil war (1988-1998). Tensions remain high as the people of Bougainville have voted overwhelmingly in favour of independence, with independence yet to be granted by Papua New Guinea. As Carteret Islanders' migration increases, so does the existing tension in Bougainville, particularly noting the government's lack of support for this migration.⁸⁶ Climate change may then directly impact the security of Bougainville, drive internal conflict, and destabilise the broader region.

There has already been litigation on the issue of climate refugees and migration. In 2016, the UN Human Rights Council (UNHRC) considered an application from Mr Ioane Teitota regarding the decision by New Zealand to reject his application for refugee status.⁸⁷ Mr Teitota's position was that New Zealand had violated his right to life by returning him to Kiribati in September 2015 as Tarawa (the main island in Kiribati) was becoming increasingly unstable and dangerous due to SLR as a result of climate change. Freshwater is scarce as a result of salination and overcrowding on the main island due to issues on the outer islands.⁸⁸ Consequently, Mr Teitota argued, the inhabitable land had eroded, there was a housing crisis, and land disputes were becoming increasingly violent.

New Zealand's position was that the environmental situation in Kiribati was not so dire as to warrant a finding that Mr Teitota was a refugee, and that he did not face an 'objectively real risk of being persecuted' if returned to Kiribati.⁸⁹ In reaching this decision, the New Zealand Immigration and Protection Tribunal noted in particular that the risk of violating Mr Teitota's right to life was not imminent. The UNHRC decided in favour of New Zealand based on the facts of Mr Teitota's case and the current environmental situation in Kiribati. Significantly, though, the UNHRC was clear in its position that although in Mr Teitota's case the threshold was not met (as the risk was unlikely to manifest for 10–15 years), this did not mean that it could not be met in the future, stating,

<<https://theconversation.com/understanding-the-human-side-of-climate-change-relocation-115887>> accessed 16 June 2024; and Julia B. Edwards, 'The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea' (2013) 32(3) *Refugee Survey Quarterly* 52.

⁸⁶ Nunoz (n 85).

⁸⁷ UNCHR Communication No 2727/2016, *Teitota v New Zealand*, UN Doc CCPR/C/127/D/2728/2016.

⁸⁸ *ibid* para 2.1.

⁸⁹ *ibid*.

The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.⁹⁰

The courts are increasingly recognising that in the future, the risk to life posed by climate change may create ‘climate refugees’, which States would be unable to deny.⁹¹

Although water insecurity is not a new driver of conflict, it is undoubtedly an area where climate change will exacerbate existing tensions. Water insecurity is a security risk in itself, even in the absence of a resulting armed conflict. One example is the Klamath Basin on the border of California and Oregon. The Basin, fed by the Klamath River, is the flashpoint of increasing tension between the area’s indigenous people (the Klamath Tribes) and the farming community settled in the area following the government’s takeover of the land. As Brian Chaffin at the University of Montana notes,

There’s a lot of reasons why the Klamath is the hotbed that it is There’s a background of conservative politics that places priority on private property rights-based solutions, on top of a simmering racism that has constrained tribal interests for over a hundred years, on top of a legitimate fear that there will not be enough water to sustain the level of agriculture that has more recently been there.⁹²

As climate change worsens, so will the fight for water, and Klamath may well be a ‘canary down the coalmine’ regarding growing domestic tensions over resources. It is not difficult to envision such a dispute becoming inter-state, where water sources flow freely between nations.

⁹⁰ *ibid* para 9.11.

⁹¹ For recent discussion on this issue see Felipe Navarro, ‘How the Inter-American Court Could Advance Protection for Climate-Displaced Individuals’ (2024) <<https://www.justsecurity.org/96690/inter-american-court-climate-displacement>> accessed 13 June 2024.

⁹² Jessica Fu, ‘Tensions rise in the Klamath Basin as feds further reduce water allotments to farmers’ (*The Counter*, 21 May 2021) <<https://thecounter.org/klamath-basin-feds-water-allotments-drought-releases-usbr-farmers-fisheries>> last accessed 16 June 2024

The link between energy insecurity and climate change is very real, noting that most greenhouse emissions can be attributed to fossil fuels as energy sources. Reliance on fossil fuels was brought into stark relief with the Russian invasion of Ukraine in 2022. The United States National Security Strategy goes so far as to state that ‘long-term energy security depends on clean energy’.⁹³ Arno Behren notes, in his assessment of the interaction between climate change and energy security in Europe, that there are a number of risks to energy supply, and some are relevant to climate change.⁹⁴ Energy insecurity is due less to increasing temperatures (though they will have an impact) and more to the mitigation required to stem the impact of climate change. In this need to mitigate, States will move away from traditional energy sources towards cleaner energy. Managing energy security then requires a balance between reducing emissions to combat climate change and ensuring an adequate energy supply. This is particularly true with respect to developing States that are not yet able to engage in more sustainable practices.⁹⁵ As States consider alternative, cleaner options for energy, it is not the consequences of climate change itself that risk energy security, but rather the mitigation of climate change that poses a threat.

This section has shown there is a link between climate change and security if security is defined as broad, soft, and non-traditional. The impact on conflict (both existing and new), migration, food, water, and energy security exemplify how that link may manifest. Chapter Five of this thesis will analyse this point further through the lens of ‘security’ as the UNSC may see it. Firstly, though, the following section discusses the existing international legal framework for managing climate change.

⁹³ President Biden (n 34) 28.

⁹⁴ Arno Behrens ‘The Role of Renewables in the Interaction between Climate Change Policy and Energy Security in Europe’ (2010) 1(1) *Renewable Energy Law and Policy Review* 5, 6–7.

⁹⁵ See also Daniel Cole, ‘Climate Change and Collective Action’ (2008) 61(1) *Current Legal Problems* 229 and Neil Gunningham, ‘Confronting the Challenge of Energy Governance’ (2012) 1(1) *Transnational Environmental Law* 119.

Section Two: The Existing International Legal Framework on Climate Change

Climate change has been considered a global problem for nearly five decades, and as such, there have been efforts to create a legal framework that would manage the problem on a collective scale. That is not to say that individual States have not taken internal action, but for this thesis, the focus is on actions taken internationally. This section will provide an overview of existing treaties and legal frameworks designed to spur international action on climate change.

The international community first sought to combat climate change in November 1988, when the Intergovernmental Panel on Climate Change (IPCC) was established by the World Meteorological Organisation (WMO) and the UN Environmental Programme (UNEP).⁹⁶ The IPCC was not formed by treaty but instead endorsed by the UNGA through Resolution 43/53 on 6 December 1988. That Resolution requested that the IPCC's initial task be to:

[...] immediately initiate action leading, as soon as possible, to a comprehensive review and recommendations with respect to:

- (a) The state of knowledge of the science of climate and climatic change;
- (b) Programmes and studies on the social and economic impact of climate change, including global warming;
- (c) Possible response strategies to delay, limit or mitigate the impact of climate change;
- (d) The identification and possible strengthening of relevant existing international instruments having a bearing on climate;
- (e) Elements for inclusion in a possible future international convention on climate.⁹⁷

The purpose of the IPCC is to provide regular scientific assessments on climate change, its implications and potential risks, and to suggest adaptation and mitigation options. Since its inception, the IPCC has prepared six assessment reports, most recently in 2023, which are created following meetings of expert working groups, government representatives, and attendance at

⁹⁶ There were previous treaties that dealt with the specific issue of Ozone depletion, as discussed in the introduction to this thesis – the 1985 Vienna Convention 1985 and the 1987 Montreal Protocol.

⁹⁷ UNGA Res 43/53 (27 January 1989) UN Doc A/RES/43/53.

various outreach programmes.⁹⁸ There are three Working Groups (WG), each with a specific area of expertise: WGI deals with the physical science basis of climate change, WGII looks at climate change impacts, adaptation and vulnerability, and WGIII deals with climate change mitigation.⁹⁹

The IPCC is an advisory group with no mandate to direct action by UN members. However, its assessment reports directly inform and impact international climate policy-making. The first report in 1990 established the importance of climate change and the need for international cooperation; it played a significant role in establishing the UN Framework Convention on Climate Change (UNFCCC). It is this Framework Convention that forms the most important international legal regime in respect of climate change.

With 197 States Parties the UNFCCC sets out a general framework for international cooperation in mitigating climate change, determines the fundamental principles, and creates an institutional framework for that cooperation.¹⁰⁰

The UNFCCC defines climate change in Article 1 as:

[...] a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.¹⁰¹

It also defines the ‘adverse effects of climate change’ for the purposes of the UNFCCC as:

[...] changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.¹⁰²

The fundamental principles contained in the UNFCCC and the framework for cooperation do not bind States. They do, though, provide a common understanding of climate change and how

⁹⁸ ‘The Intergovernmental Panel on Climate Change’ <www.ipcc.ch> accessed 19 June 2023.

⁹⁹ It is outside the scope of this thesis to look in depth at the inner workings of the IPCC, however www.ipcc.ch provides detail as to the history of the panel and how it works.

¹⁰⁰ Mathilde Hautereau-Boutonnet and Sandrine Maljean-Dubois, ‘The Paris Agreement on Climate Change: A Subtle Combination of Tools and Actors for Better Enforcement?’ (2022) 52 *Environmental Policy and Law* 389.

¹⁰¹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, (UNFCCC) art 1.

¹⁰² *ibid.*

the international community may be able to work to mitigate it. The principles (contained in Article 3) set forth several measures that the States Parties should undertake, including protecting the climate system, giving consideration to the special circumstances of developing States, and taking precautionary measures to anticipate, prevent, or minimise the causes of climate change, and mitigate its effects, promote sustainable development, and cooperate to promote supportive and open international economic system.¹⁰³

Although Article 3 contains no legally binding obligations on States Parties, Article 4 lists the general binding commitments, even if ill-defined.¹⁰⁴ States Parties commit to reducing the atmospheric concentrations of greenhouse gases (other than those already regulated by the Montreal Protocol), but the convention does not set a concrete target. They are also committed to climate change mitigation and adapting to the imminent impacts of climate change.

Five years later, in 1997, the Kyoto Protocol extended the UNFCCC and set more concrete obligations on industrialised States Parties to reduce greenhouse emissions. Such commitments were based upon an understanding that the parties had common but differentiated responsibilities depending on their economic development. Greater obligations were placed upon those historically more responsible for the current levels of greenhouse gases in the atmosphere. It was also acknowledged that States had differing capacities when it came to reducing emissions. Such obligations were initially only imposed until 2012 but were extended to the end of 2020.

The Paris Agreement established the regime applicable from 2021.¹⁰⁵ The Paris Agreement is an international treaty, legally binding on its 194 parties (193 States and the European Union). The Agreement is currently the primary international instrument that sets out obligations for Parties concerning climate change. While ground-breaking at the time, it was the first binding agreement to bring States together to combat the impacts of climate change, it has its challenges. Article 2 of the Agreement sets out its aims.¹⁰⁶ It most notably looks to hold ‘the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels’ and pursue efforts to ‘limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels’.¹⁰⁷ To achieve this

¹⁰³ UNFCCC art 3.

¹⁰⁴ *ibid* art 4.

¹⁰⁵ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79 (Paris Agreement).

¹⁰⁶ *ibid* art 2.

¹⁰⁷ *ibid*.

goal, Parties must submit their climate action plans (known as nationally determined contributions, or NDCs) to the UNFCCC Secretariat.¹⁰⁸ Those NDCs include the steps Parties intend to take to reduce greenhouse emissions and the actions they will take to build resilience and adapt to the impacts of climate change.

Consequently, although the Agreement is legally binding, it only sets goals to ‘guide’ States rather than concrete obligations or duties. The Agreement has ‘few substantive obligations and essentially procedural ones.’¹⁰⁹ Ultimately, it leaves it to the individual States Parties to determine their contribution or NDC. While the Agreement provides for enforcement mechanisms, it can only take action on failure to meet NDCs, not where it considers the NDCs to be inadequate. This allows States to set perfunctory or unambitious NDCs and remain in compliance with the Agreement.

Significantly, though not unsurprisingly, there is no legal requirement for States to remain a party to the Paris Agreement. In 2017, the United States of America withdrew from the Agreement. Although it has since re-joined (its actual period of non-membership being a matter of months), the withdrawal exposed an inherent weakness in relying on the Agreement to manage climate risk. Some States have argued that the obligations of the Paris Agreement are now irreversible, with the G20 Leaders making such a declaration in 2017 following the United States of America’s withdrawal.¹¹⁰ This declaration by the leaders clearly shows that some States now consider the obligations of the Paris Agreement permanent and thus unable to be withdrawn from.

The existence of the UNFCCC and its subsequent agreements leads some States to question whether there is a role for the other UN bodies (in particular, the UNSC) in combating climate change. Some States take the view that the UNFCCC is sufficiently able to manage international cooperation in response to climate change and that it would be inappropriate for the UNSC to get involved. However, this position does not deal directly with the issues related to security and

¹⁰⁸ Paris Agreement art 4. See also ‘The Paris Agreement’ <<https://unfccc.int/process-and-meetings/the-paris-agreement>> last accessed 16 June 2024.

¹⁰⁹ Hautereau-Boutonnet and Maljean-Dubois (n 100) 390.

¹¹⁰ G20, ‘G20 Leaders’ Declaration Shaping an Interconnected World’ (2017) <https://www.g20germany.de/Content/EN/Anlagen/G20/G20-leaders-declaration__blob=publicationFile&v=11.pdf> last accessed 16 June 2024.

climate change. The UNSC is uniquely positioned to deal with security and is singularly empowered to make decisions that bind States without explicit consent.

Outside of the UNFCCC, other international instruments may provide options for action in the climate space. The environmental provisions in Part XII of the United Nations Convention on the Law of the Sea (UNCLOS) is one such option.¹¹¹ Article 192 contains a general obligation for States to protect and preserve the marine environment.¹¹² At the same time, Article 194 requires States to take, collectively or individually, all such measures as ‘necessary to prevent, reduce and control pollution of the marine environment from any source’.¹¹³ Perhaps most significant for addressing climate change is the second part of Article 194, which provides,

States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.¹¹⁴

Article 195 may also provide some relief to individual states where transboundary emissions cause harm to another State’s environment.¹¹⁵

Although these provisions do not specify any specific action regarding climate change, they could apply to ‘climate change, greenhouse emissions, ocean acidification, and even the responsibility of States to not cause transboundary climate change’.¹¹⁶ The IPCC’s third assessment report specifically noted that climate change poses a ‘serious risk to many marine species, many ecosystems, and to the marine environment as a whole.’¹¹⁷ Some causes of climate change could

¹¹¹ The United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) Part XII.

¹¹² *ibid* art 192.

¹¹³ UNCLOS arts 192 and 194.

¹¹⁴ *ibid* art 194.

¹¹⁵ *ibid* art 195.

¹¹⁶ Seokwoo Lee and Lowell Bautista ‘Part XII of the United Nations Convention on the Law of the Sea and the Duty to Mitigate Against Climate Change: Making Out a Claim, Causation, and Related Issues’ (2018) 45(1) *Ecology Law Quarterly* 129, 145–146.

¹¹⁷ Meinhard Doelle, ‘Climate Change and the Use of the Dispute Settlement Regime of the Law of the Sea Convention’ (2006) 37 *Ocean Development & International Law* 319, 3210. See also Monica Fera-Tinta, ‘On the Request for an Advisory Opinion on Climate Change under UNCLOS before the International Tribunal for the Law of the Sea’ (2023) 14(1) *Journal of International Dispute Settlement* 391.

include the types of pollution that Part XII was designed to protect against. There is also no indication that the States Parties to UNCLOS intended to limit the provisions of Part XII to only the threats to the environment that were known at the time of drafting.¹¹⁸

There are, however, significant difficulties in relying upon Articles 194 and 195 of UNCLOS to hold States accountable for climate change, the most troublesome being the issue of attribution or causation. Although the IPCC's reporting has sufficiently linked greenhouse gas emissions to climate change, it would be difficult for any State to raise a claim against another. A claimant State would have to prove that another State's failure to mitigate its emissions ('pollution' for the purposes of Article 194) caused climate change that damaged the marine environment in the claimant State.¹¹⁹ The extent to which the consequences of climate change could be legally attributable to one State or another would be challenging to prove. Although UNCLOS may (with some evidential difficulty) provide remedies for States concerning climate change, it does not provide a binding mechanism or instrument for collective action.

In addition to UNCLOS, a range of other remedies may be available to individual States where harm has been caused by another State's failure to act to combat climate change. These are outside the scope of this thesis; however, they may include litigation in other forums (such as the ICJ or the UNHRC) or unilateral State action such as countermeasures or actions in self-defence, should the environmental damage amount to an armed attack. In addition, individuals are increasingly initiating litigation against States for a lack of action on climate change, both domestically and internationally.¹²⁰

Having completed a quick survey of the existing legal framework and considered some perhaps unorthodox remedies in international law, it is time to turn to the main focus of this thesis, the UN. The next chapter very briefly introduces the UN itself, its form and function, before turning to look at what it has done thus far (beyond the UNFCCC) to deal with climate change.

¹¹⁸ Doelle (n 117) 322.

¹¹⁹ *ibid* 324–5.

¹²⁰ See ECtHR 'Grand Chamber rulings in the climate change cases' (9 April 2024) <https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases?p1_back_url=%2Fsearch%3Fq%3D%2522climate%2Bchange%2522>.

Chapter Three: The United Nations and Climate Change So Far

Section One: Background to the Collective Security Framework

In facing the security threats posed by climate change, States could respond in two ways. Such a response could be unilateral, utilising existing general principles of international law, taking action in international courts or using other existing treaties. Alternatively, it could be collective, leveraging existing organisations and mechanisms. This thesis focuses on the collective response, and this next section will briefly introduce the primary collective security body – the United Nations (UN).

The UN is a product of its time and, in essence, was established to avoid repeating the conflicts of the early twentieth century. The primary concern at its inception was the need for collective action to avert future aggression and, therefore, a reframing of the structure of the world community. However, there was also consensus that any efforts moving forward could not be limited to stopping war (or the threat of it), but also must include dealing with the causes of war, such as economic, food, and health insecurity, as well as those things that challenged human dignity.¹²¹ From its beginnings, the UN was intended to deal with all manner of security threats. As Ove Bring notes, ‘the UN Charter has been interpreted in a flexible and dynamic way to accommodate the deeply felt political needs of the world community’.¹²² Such flexibility continues and has evolved to include environmental concerns, including climate change.

The UN is made up of two primary bodies, the UN General Assembly (UNGA) and the UN Security Council (UNSC). The UNGA comprises 193 Member States of the UN, each with a vote at the Assembly. It is a ‘conference of States’, not a world parliament with independent representatives, but it can be described as the ‘world’s most important political discussion forum’¹²³. When describing itself, the UNGA clarifies that ‘[r]acism, intolerance, inequality, climate change, poverty, hunger, armed conflict, and other ills remain global challenges.’ It goes on to say that these challenges ‘call for global action, and the General Assembly is a critical opportunity for

¹²¹ Prof. Dr. Daniel-Eramus Khan, ‘Drafting History’ in Bruno Simma and others (eds) (n 25) para 3.

¹²² Ove Bring, ‘Peacekeeping and Peacemaking: Prospective Issues for the United Nations’ (1995) 20 *Melb U L Rev* 55, 55.

¹²³ Siegfried Magiera ‘Ch.IV The General Assembly, Composition, Article 9’ in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012) para 1.

all to come together and chart a course for the future.¹²⁴ As a body, it is the main policymaking and representative forum of the UN. The UNGA may discuss ‘any matters within the scope of the present Charter ... and ... may make recommendations to the members of the United Nations or the Security Council or to both on any such matters.’¹²⁵ Therein lies the ultimate limitation to the UNGA’s power, the ability to only ‘recommend’. Although the UN’s largest and most representative body, it does not have the power to make decisions binding on Member States, a privilege reserved for the UNSC. This limitation may render any UNGA contribution ineffective in responding to climate change.

Some commentators have argued that the UNGA is a ‘conductor of a grand orchestra’ in international law-making.¹²⁶ The UNGA’s resolutions recognise and elevate issues of global significance. The Charter does not require Member States to accept the UNGA’s recommendations (in the same way Article 25 binds Members to the decisions of the UNSC). However, UNGA resolutions focus attention and, in some cases, engage public opinion, consequently spurring Member States to cooperate and take collective action despite the absence of a legal obligation.¹²⁷ Buoyed by such action, the UNGA can convene international conferences and create international institutions to maintain momentum in these collective efforts. In the absence of a mandate to bind States, the UNGA can, in other ways, impact their actions.

The UN Charter is silent on environmental issues. Indeed, the word ‘environment’ does not appear in the text. It could be argued that the UNGA (or, in fact, the UN at large) does not have a specific environmental mandate.¹²⁸ One, though, only has to turn to the UNGA’s actions regarding the environment and climate change to be assured that this is not the case, particularly when coupled with the maintenance of peace and security, which will be discussed below. Although the UNGA is not the main body for managing threats to peace and security, it can consider such issues and make recommendations to members and the UNSC itself.¹²⁹

¹²⁴ United Nations, ‘General Assembly of the United Nations’ <<https://www.un.org/en/ga>> accessed 13 March 2023.

¹²⁵ UN Charter art 10.

¹²⁶ Bharat H. Desai, ‘Regulating Global Climate Change: From Common Concern to Planetary Concern’ (2022) 52(5) *Environ Policy Law* 331, 333.

¹²⁷ *ibid.*

¹²⁸ Nele Matz-Lütz and Liv Christiansen, ‘UNGA as the Anchor: Global Environmental Conferencing’ (2020) 50(6) *Environ Policy Law* 519, 521.

¹²⁹ UN Charter art 11.

As early as 1988, the UNGA passed Resolution 43/53, which recognised climate change as ‘a common concern of all mankind’ and declared that ‘necessary and timely action should be taken to deal with climate change within a global framework.’¹³⁰ Similar resolutions have been adopted consistently since then, including recently in December 2022 in Resolution 77/165, entitled Protection of Global Climate for Present and Future Generations of Humankind.¹³¹ That Resolution was primarily focused on the continued cooperation of Member States in combating climate change and urged members to consider a climate and environmental approach to COVID-19 recovery efforts. The Resolution also encouraged the Parties to the Paris Agreement and UNFCCC to fully implement the Agreement’s obligations. It urged Member States to ‘enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change and severe weather events.’¹³² There is though no reference to ‘international peace and security’ in the Resolution beyond mentioning the increased threat to food security. Thus far, there is no UNGA resolution under Article 11(3) calling climate change to the attention of the UNSC as a situation likely to endanger international peace and security.

The UNSC is the UN organ explicitly charged with maintaining international peace and security.¹³³ It comprises five permanent members (China, France, Russia, the United Kingdom, and the United States of America) and ten other Member States (elected for two-year terms).¹³⁴ The UNSC is organised to function continuously, and the President of the UNSC can call meetings as he or she deems necessary with an interval of no more than 14 days.¹³⁵ Any UNSC decision requires nine votes, including the votes of the five permanent members (P5).¹³⁶ The permanent members then have a ‘right to veto’, and a negative vote from any of them will prevent a decision or resolution from being approved. Article 25 binds members of the UN to accept and act on the decisions of the UNSC; unlike other organs of the UN (including the UNGA), the UNSC goes beyond making recommendations and can oblige Member States to act.¹³⁷ The UNSC can also make recommendations and non-binding presidential statements,

¹³⁰ UNGA Res 43/53 (6 December 1988) UN Doc A/RES/43/53.

¹³¹ UNGA Res 77/165 (14 December 2022) UN Doc A/RES/77/165.

¹³² *ibid.*

¹³³ UN Charter art 24(1).

¹³⁴ *ibid* art 23.

¹³⁵ UNSC Provisional Rules of Procedure (1946) UN Doc S/96/Rev.7 Rule 1.

¹³⁶ UN Charter art 27.

¹³⁷ UN Charter art 25.

which do not bind Member States. Binding UNSC decisions are made under Chapters VI and VII, discussed below.¹³⁸

Article 2(3) of the UN Charter requires Member States to resolve disputes peacefully so that ‘international peace and security’ are not endangered.¹³⁹ How such an outcome may be reached is provided for in Chapter VI, Article 33(1), which requires,

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement resort to regional agencies or arrangements, or other peaceful means of their own choice.¹⁴⁰

Disputes, in the context of the Charter, do not extend to those that are purely internal or those during which Member States remain in peaceful relations with one another.¹⁴¹ Article 33(1) is a positive obligation rather than simply a commitment to not resort to force. The UNSC can also call upon the Parties to settle their dispute peacefully, affirmatively reminding Member States of their existing Charter obligations.¹⁴² The means of resolution, though, remain up to the parties to the dispute.

This obligation extends beyond just those matters that immediately threaten the peace or involve an act of aggression or breach of the peace and includes such disputes which do not yet pose a threat to the peace.¹⁴³ It includes situations that, if ‘left unaddressed, the symptoms currently present could worsen, and it could develop into something that might, in the future, endanger world peace.’¹⁴⁴ The UNSC is empowered by Article 34 to investigate any dispute or situation to determine whether, if continued, it is ‘likely to endanger the maintenance of international peace and security’.¹⁴⁵ Notably, Article 34 applies to both situations and disputes. This inclusion is critical as it allows the UNSC to investigate ‘situations’ that fall short of an apparent legal or

¹³⁸ Some recommendations exist outside of UN Charter Chapters VI–VII, including recommendations on state membership to the UN (Article 4(2)), and actions around armament (Chapter V).

¹³⁹ UN Charter art 2(3).

¹⁴⁰ UN Charter art 33(1).

¹⁴¹ Dame Rosalyn Higgins DBE QC and others, ‘Part 3 The United Nations: What it Does, 28 Peaceful Settlement of Disputes’ in Dame Rosalyn DBE QC and others (eds) *Oppenheim’s International Law: United Nations* (OUP, 2017), para 28.02.

¹⁴² UN Charter art 33(2).

¹⁴³ Higgins et al (n 128).

¹⁴⁴ Robert Kolb, *An Introduction to the Law of the United Nations* (Hart Publishing, 2010) 47.

¹⁴⁵ UN Charter art 34.

political dispute.¹⁴⁶ Climate change, or its impacts, could be one such ‘situation’ which, as it worsens, is likely to endanger the maintenance of international peace and security.

Where the UNSC, during an investigation under Article 34, finds a dispute or situation is likely to endanger peace and security, it can recommend resolution methods. The UNSC does not require the consent of the States to become involved.¹⁴⁷ Such recommendations may include setting the principles for States in a dispute to reach an agreement, undertaking investigation and mediation, dispatching a mission to the place of the dispute, and appointing special envoys to assist with resolving the dispute.

More recent examples of the UNSC taking action under Chapter VI occurred in 2021. They included calling for the protection and better treatment of women in Libya and Haiti, and encouraging Egypt, Ethiopia, and Sudan to resume negotiations on the filling and operation of the Grand Ethiopian Renaissance Dam.¹⁴⁸ The UNSC also called for the peaceful resolution of outstanding disputes, including the situation in Cyprus, and continuing tense relations between Sudan and South Sudan.¹⁴⁹ Additionally, in June 2021, the UNSC held high-level discussions focussed on cybersecurity in the context of international peace and security.¹⁵⁰ Some UNSC Members reflected on the need for disputes in cyberspace to be included when considering disputes for the purposes of Chapter VI, demonstrating a willingness to interpret the Charter in light of contemporary and non-traditional threats (as surely disputes in cyberspace were not contemplated by the original drafters in the 1940s).¹⁵¹ This went further in the meeting of November 2021, where some representatives called on the UNSC to take ‘better account of the global challenges that could undermine international peace and security and have a comprehensive overview of the risks to international security posed by climate change, pandemics, or disinformation.’¹⁵² There is certainly, then, support for the notion that disputes related to climate change may warrant investigation by the UNSC under Article 34.

¹⁴⁶ Kolb (n 131) 47.

¹⁴⁷ UN Charter art 36.

¹⁴⁸ Department of Political and Peacebuilding Affairs, ‘Repertoire of the Practice of the Security Council, Supplement 2021’ (2023) UN Doc ST/PSCA/1/Add.24 49-51.

¹⁴⁹ Ibid.

¹⁵⁰ UNSC “‘Explosive’ Growth of Digital Technologies Creating New Potential for Conflict, Disarmament Chief Tells Security Council in First-Ever Debate on Cyberthreats’ (29 June 2021) Press Release SC/14563.

¹⁵¹ Department of Political and Peacebuilding Affairs, ‘Repertoire of the Practice of the Security Council, Supplement 2021’ (n 148), 60–63.

¹⁵² *ibid* 71.

Chapter VII of the UN Charter sets forth the more robust powers of the UNSC and is invoked where peaceful resolution under Chapter VI is unachievable or has proven unsuccessful. Article 39 is of particular importance, for it grants the UNSC the authority to determine if a situation is a threat to the peace, a breach of the peace, or an act of aggression. Following such a determination, the UNSC can make recommendations or decide on measures to restore international peace and security. If climate change is to be considered through Article 39, then it will most likely be as a ‘threat’ to the peace.

The UNSC enjoys ‘considerable discretion’ in determining whether a situation warrants characterisation as falling under Article 39. However, it is debated whether that discretion is unlimited or subject to some bounds.¹⁵³ The International Criminal Tribunal for the Former Yugoslavia (ICTY), in *Prosecutor v. Tadić*, held that while an ‘act of aggression’ under Article 39 may be easier to define through a legal lens, a ‘threat’ or ‘breach’ of the peace is more a political construct.¹⁵⁴ The ICTY further noted that any determination that there exists a threat to the peace under Article 39 is not ‘totally unfettered’ and must remain, ‘at the very least, within the limits of the purposes and principles of the Charter.’¹⁵⁵

The UNSC has rarely labelled situations ‘breaches of the peace’ or ‘acts of aggression.’¹⁵⁶ It more often relies upon ‘threat to the peace.’¹⁵⁷ Significantly, though, there is no definition of any of the three circumstances in Article 39 in the Charter itself. Chapter Five of this thesis will provide an interpretation using the methodologies to be discussed in Chapter Four. Firstly, though, it is beneficial to consider how the UNSC has treated climate change thus far.

¹⁵³ Nico Krisch, ‘Ch.VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 39’ in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary: Volume II* (3rd edn, OUP 2012) para 6.

¹⁵⁴ *Prosecutor v. Tadić*, (Jurisdiction) IT-91-1-AR72, (20 October 1995) para 29.

¹⁵⁵ *ibid* para 32.

¹⁵⁶ Breaches of the peace have usually been linked to hostile acts between states, such as the Falklands conflict between the United Kingdom and Argentina in 1982 (UNSC Res 502), or the Iraqi invasion of Kuwait in 1990 (UNSC Res 660). The UNSC Resolution also found a breach when North Korean troops attacked South Korea in 1950 (UNSC Res 82) and a finding of an ‘act of aggression’ is very rare, however examples include condemnation of ‘Operation Wooden Leg’ – the Israeli attack on Palestine Liberation Organisation targets in Tunisia in 1985 (UNSC Res 57) and a demand that South Africa stop its ‘acts of aggression’ against Angola (UNSC Res 577).

¹⁵⁷ Krisch (n 153) para 40.

Section Two: The UNSC and Climate Change

Some States have attempted to have the UNSC engage formally with climate change as a threat to security. The UNSC has held debates on the climate change question several times. The first open UNSC debate on climate change happened in 2007 and immediately exposed differences in how Member States were likely to approach the crisis. Small Island Democracies and the European Union advocated for a more active role by the UNSC in addressing the security consequences of climate change.¹⁵⁸ This side considered the issue urgent due to the increased risk of climate-driven conflict, instability, and human cost.¹⁵⁹ Papua New Guinea, for example, declared the ‘impact of climate change on small islands [to be] no less threatening than the dangers of guns and bombs.’¹⁶⁰ Tuvalu added that ‘the world had moved from the cold war to the “warming war”, in which chimney stacks and exhaust pipes were the weapons, and it was a “chemical war of immense proportions.”’¹⁶¹ The United Kingdom took a more cautious approach, noting that the UNSC action on climate change was in line with UNSC Resolution 1625.¹⁶² In that Resolution the UNSC decided how it would deal with conflict prevention. In the 2007 debate, the United Kingdom argued that climate change was a root cause of conflict, not a security matter itself. As such, it should be managed through the lens of conflict prevention outlined in UNSC Resolution 1625.

In contrast, China, Russia, and the Group of 77 (G77, made up of States in the developing world) opposed UNSC action on climate.¹⁶³ This group believed climate change was not a matter for the UNSC, and that any action risked securitising an issue that was really one of law, development, and environment, not security. They argued that any response from the UN was more appropriately the job of the UNGA and other UN organs.¹⁶⁴ China stated that the UNSC ‘had neither the professional competence in handling climate change nor [was] it the right decision-making place for extensive participation leading up to widely acceptable proposals.’¹⁶⁵ Some other

¹⁵⁸ Nevitt, ‘Is Climate Change a Threat to International Peace and Security’ (n 19) 552.

¹⁵⁹ Conca (n 57).

¹⁶⁰ UNSC ‘Security Council Holds First-ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers’ (17 April 2007) Press Release SC/9000.

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ Nevitt, ‘Is Climate Change a Threat to International Peace and Security’ (n 19) 553.

¹⁶⁴ *ibid.*

¹⁶⁵ UNSC ‘Security Council Holds First-ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers’ (n 160).

Member States agreed, arguing that such moves would be a further ‘distortion’ of the principles and purposes of the Charter.¹⁶⁶ The result was no coherent or consistent position between Member States on whether climate change was a matter for the UNSC.

The UNSC next held an open debate on climate change in 2011, with the same divide over UNSC action existing between China, Russia, and the G77 on one side and SIDS, the European Union, and the United States of America on the other. The former group again argued for no UNSC engagement on the matter, and the latter groups supported the notion that action on climate change falls within the UNSC’s mandate.¹⁶⁷ Although no tangible action resulted from this debate, the UNSC President (at the time Peter Wittig from Germany) confirmed the Council’s concern that the ‘possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security.’¹⁶⁸ Though the statement still left the climate problem to the UNFCCC and UNGA, noting the UNSC would only be engaged when it impacted security, the President’s statement was a step forward in the UNSC’s attitude toward the issue.

The conversation around climate change and security continued with further open debates in 2013, 2018, 2019, 2020, and 2021. There was little significant forward movement.¹⁶⁹ The primary concern over governance remained, and the question of whether the UNSC was the suitable organ of the UN to manage this issue is left unresolved. It was still seen as a socio-economic or environmental issue better suited to the UNGA, UN Economic and Social Council (ECOSOC), and the UNFCCC, rather than a security one for the UNSC to lead.

Climate change does feature in UNSC resolutions on other issues, demonstrating that although the UNSC was divided on whether climate change itself fell within its mandate, it was willing to include climate change when linked to other less controversial security issues. Climate change began to appear in UNSC resolutions in the mid-2010s, initially related to peace and stability in Africa.¹⁷⁰ For example, UNSC Resolution 2349 (which was unanimously adopted) recognises ‘the

¹⁶⁶ *ibid.*

¹⁶⁷ UNSC, ‘66th Session 6587th Meeting’ (20 July 2011) UN Doc S/PV.6587.

¹⁶⁸ UNSC Presidential Statement (20 July 2011) UN Doc S/PRST/2011/15.

¹⁶⁹ For a full discussion on the UNSC debates and action on climate change, see Security Council Report, ‘Research Report: The UN Security Council and Climate Change’ (21 June 2021) <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/climate_security_2021.pdf> last accessed 16 June 2024.

¹⁷⁰ Cesare M Scartozzi, ‘Climate Change in the UN Security Council: An Analysis of Discourses and Organizational Trends’ (2022) 23 *International Studies Perspectives* 290, 299.

adverse effects of climate change and ecological changes among other factors on the stability of the Region [the Lake Chad Basin] including through water scarcity, drought, desertification, land degradation, and food insecurity...’ Resolutions using almost identical language were passed in 2018 for Somalia, Mali, and Sudan.¹⁷¹ This echoes the sentiment from the 2011 Presidential Statement that climate change may impact security issues, but it is not a security issue itself. Other than these comments concerning peace and security in Africa, references to climate change are limited.¹⁷²

In 2020, Germany drafted a resolution that would explicitly name climate change a threat to global security, an effort resisted by China, Russia, and the United States of America.¹⁷³ At the time, the German representative noted:

[i]t is really a pity that this project was not supported in the interventions of our American, Russian and Chinese friends, even regarding simple things like having a regular report by the Secretary-General on the consequences of climate change on security, or training U.N. peacekeepers to recognize when degradation happens and react to possible consequences for conflict, or having a Special Representative who concentrates on the issue. ¹⁷⁴

Ultimately, the draft resolution was not put to vote, as the United States of America indicated an intent to veto it.¹⁷⁵ There is little publicly available to explain this stance by the United States of America, as it was not brought to a formal debate. It has been stated, however, that it was simply a matter of climate change not being an important issue for the administration at the time.¹⁷⁶ The failure of the resolution was significant, noting that the resolution did not propose any significant

¹⁷¹ UNSC Rec 2349 (31 March 2017) UN Doc S/RES/2349.

¹⁷² Scartozzi (n 170) 300. See also UNSC Res 2242 (13 October 2015) UN Doc S/RES/2242 and UNSC Res 2423 (28 June 2018) UN Doc S/RES/2423.

¹⁷³ ‘US Blocks German Climate Push’ (NTV, 24 July 2020) <<https://www.n-tv.de/politik/USA-blockieren-deutschen-Klimavorstoss-article21930552.html>> last accessed 16 June 2024 and Stefan Talmon, ‘Germany Fails to Integrate Climate Security Concerns Into the Work of the Security Council’ (*German Practice in International Law*, 31 August 2021) <<https://gpil.jura.uni-bonn.de/2021/08/germany-fails-to-integrate-climate-security-concerns-into-the-work-of-the-security-council>> last accessed 16 June 2024.

¹⁷⁴ Written Statement from Germany’s Permanent Representative to the United Nations replicated in Talmon (n 173).

¹⁷⁵ Talmon (n 173).

¹⁷⁶ NTV (n 173).

action by the UNSC under Chapter VII.¹⁷⁷ This indicated that some States were so reluctant to pull climate change into the UNSC orbit that even a mention of the issue was untenable.

December 2021's open debate brought the UNSC the closest it had ever been to taking action on climate change. A draft resolution was tabled for discussion, making climate-related security issues a central part of the UN's conflict prevention strategy.¹⁷⁸ The draft included a request that the UN Secretary-General provide the UNSC with a report in two years on the security implications of climate change and recommendations on how to address such implications.¹⁷⁹ It also encouraged UN missions to include resources dedicated to climate security, whether collecting data on climate-related security risks, or considering the climate implications of such missions.¹⁸⁰

Though 12 of the UNSC members voted in favour of the resolution, which had been co-sponsored by 113 Member States, China, Russia, and India expressed reservations. The vote fell, with 12 in favour, two against (India, Russia), and one abstention (China).¹⁸¹ As Russia is a permanent member of the UNSC, its vote against vetoed the resolution.

The primary objection from India and Russia was that the UNSC was the incorrect UN organ to deal with climate change. The Russian representative noted that Russia opposed creating 'generic, automatic connections between climate change and international security' and 'turning a scientific and socioeconomic issue into a politicised question'.¹⁸² India's representative argued that pushing climate into a security agenda was an attempt to hide the lack of progress under the existing framework (namely the UNFCCC). India was of the view that the proposals in the draft resolution could be progressed under the UNFCCC and the resolution was just an attempt to get climate change under the UNSC's purview and allow action without consensus from all Member States.¹⁸³

The co-drafters of the resolution, Ireland and Niger, disagreed, with Ireland's representative making clear that such a resolution would simply enable the UNSC to address climate change

¹⁷⁷ Alex Dziadosz, 'US Halts German Security Council Push for UN Climate Conflict Monitoring' (*Clean Energy Wire*, 24 July 2022) <<https://www.cleanenergywire.org/news/us-halts-german-security-council-push-un-climate-conflict-monitoring>> last accessed 16 June 2024 and Talmon (n 158).

¹⁷⁸ UNSC Draft Res UN Doc S/2021/990.

¹⁷⁹ Security Council Report (n 154).

¹⁸⁰ UNSC Res Draft UN DOC S/2021/990 (n 163).

¹⁸¹ *ibid.*

¹⁸² UNSC, '76th Session 8926th Meeting' (13 December 2021) UN Doc S/PV.8926, 3.

¹⁸³ *ibid.* 7.

using the tools in its power. Niger also asked that if the UNSC could adopt a resolution on the COVID-19 pandemic, why climate change was considered outside their purview.¹⁸⁴ Other Member States that spoke following the failed vote echoed the sentiment of the drafters, expressing disappointment and regret that it would not progress.¹⁸⁵

At the time of writing, the UNSC has not declared climate change a threat to the peace, nor taken any direct action within its mandate to address the climate issue and its link to security risk.

Despite this, the draft December 2021 resolution indicates that many States are now considering climate change as a security matter within the UNSC's area of concern. The fact the UNSC has yet to declare climate change a 'threat to the peace' does not mean it cannot do so. Determining whether climate change is a 'threat to the peace' however, requires an understanding of how that phrase should be interpreted in the context of the UN Charter. As this will involve an exercise in treaty interpretation, the next chapter examines various methodologies for doing so. In particular it will focus on the rules of interpretation found in the Vienna Convention on the Law of Treaties and on whether there are any differences when it comes to interpreting constitutive treaties, such as the UN Charter.

¹⁸⁴ *ibid.*

¹⁸⁵ These States included the United Kingdom, Kenya, Viet Nam, United States of America, Mexico, Tunisia and Estonia. See also UNSC, '76th Session 8926th Meeting' (13 December 2021) UN Doc S/PV.8926.

Chapter Four: Room for Interpretation?

Section One: The Vienna Convention on the Law of Treaties

It is evident that various attempts have been made in the last half-century to take collective action on climate change. However, these attempts have had differing degrees of success. Accepting that climate change and international security are inextricably linked, the next question is whether there are more robust measures the international community could take in the form of a collective security response. As the UN Charter is the foremost source of the law in this regard, it is necessary to consider whether it can be interpreted to extend to the authorisation of action on climate change. The treaty interpretation methods must be examined before turning to the Charter's text.

The logical starting point is the Vienna Convention on the Law of Treaties (VCLT).¹⁸⁶ The drafting of the VCLT was opened for signature in 1969, and the instrument came into force in 1980. As of August 2024, there are 116 Parties, with some non-ratifying States accepting parts of it as customary international law.¹⁸⁷ In particular, the rules related to interpretation provided in Articles 31–33 are recognised as customary international law.¹⁸⁸ The International Court of Justice (ICJ) has accepted this characterisation numerous times, including in its 1999 Case, *Kasikili/Sedudu Island (Botswana/Namibia)*. In that decision, the Court stated that although the VCLT did not apply to treaties made before its existence (as per Article 4), Articles 31 and 32 could be relied upon when interpreting older treaties because those articles are an expression of customary international law.¹⁸⁹ Additionally, Botswana and Namibia, who were not parties to the VCLT, considered that the interpretation articles therein reflected customary international law. Although ICJ decisions are not binding on any State other than the parties before the court, they

¹⁸⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

¹⁸⁷ United Nations, 'Chapter XXIII: The Law of Treaties' in *United Nations Treaty Collection* <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en> last accessed 12 August 2024.

¹⁸⁸ Alexander Orakhelashvili, 'Treaty Interpretation: Rules and Methods' in Alexander Orakhelashvili (ed), *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008); United Nations, 'Award in the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Belgium v Netherlands) (Decision) (24 May 2005) XXVII RIAA 35; Duncan B Hollis (ed), *The Oxford Guide to Treaties* (2nd edn, OUP, 2020).

¹⁸⁹ *Kasikili/Sedudu Island (Botswana/Namibia)* (Judgement) ICJ Reports 1999, 1045. See also *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgement) ICJ Reports 1994, 21, para. 41; and *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Preliminary Objections, Judgment), ICJ Reports 1996 (II), 812, para. 23.

are highly persuasive. Non-party States, including the United States of America, have relied upon Articles 31 and 32 in various proceedings, further cementing the view that the provisions do reflect customary international law.¹⁹⁰

Before the VCLT, there was a generally accepted two-stage test for interpretation. This test relied on the common meaning of the words of a provision if they were uncontroversial. It then turned to the treaty's objectives if there was a conflict of interpretation. In that test, the interpretation that best serves the treaty's aim would be preferred. The ICJ used this test in its advisory opinion on the Interpretation of Peace Treaties case (Bulgaria, Hungary, and Romania) in 1950.¹⁹¹ In that case, the Court advised that although the 'literal text' of the treaties did not exclude the interpretation preferred by one party, it was 'nevertheless true that according to the natural and ordinary meaning of the terms', it was intended to be interpreted in line with the countering parties' interpretation.¹⁹² In the opinion, the Court also considered whether an additional principle of interpretation, that of the effectiveness of the treaty, would lead to a different outcome.¹⁹³ The Court further opined that they could not use this principle to attribute a meaning contrary to the letter and spirit of the provisions. This further consolidates the view that it is the text, and the object and purpose, of the treaty that inform its interpretation.

The VCLT keeps this basic premise. However, what was a two-step test is now merged as one in Article 31(1), which provides that 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'¹⁹⁴ In this phrasing the Treaty gave both parts of the test equal weight, rather than the second part only being required where the first part was unable to provide a definitive interpretation.

The first factor in Article 31(1) is the need to act in 'good faith'. However, there is little need to look at this in detail here. It is a basic tenant of international law and interpretation that all Parties act in good faith. In its widest sense, good faith could be used to justify diverging from the

¹⁹⁰ For example see WTO, *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear* (8 November 1996) WT/DS24/R para 5.185.

¹⁹¹ *Interpretation of Peace Treaties (second phase)* (Advisory Opinion) ICJ Reports 1950, 221.

¹⁹² *ibid* 227.

¹⁹³ *ibid* 229.

¹⁹⁴ VCLT art 31.

ordinary text to reach an interpretation more in line with the ‘spirit’ of the treaty.¹⁹⁵ Alternatively, a more narrow reading is that it was included to prevent a State from exploiting ambiguity or genuine misunderstanding, or perhaps from advancing a view that diverges from its worn practice, or the shared expectations of the Parties.¹⁹⁶ Including such wording does little more than require the Parties to comply with the remainder of Article 31, and perhaps ensure that more than one interpretation is available. The interpretation best able to give effect to the overall treaty is the one that prevails, and it prevents States from deliberately distorting the meaning for its own benefit.¹⁹⁷

The starting point for interpreting a provision is the words themselves and their ordinary meaning. In isolation, this presents a problem of interpretation itself, as there is debate over how ‘meaning’ can be defined. It could mean the everyday ‘use’ of a word or the general ‘sense’ of one.¹⁹⁸ Even if that can be settled, words themselves rarely have a standard or agreed meaning. For instance, a dictionary will often have more than one definition for a word. It is, then, unsurprising that although the use of ‘ordinary meaning’ is grounded in a purely textual approach, it is accompanied by consideration of the treaty’s context and ‘object and purpose’.

The limitations of relying solely on a word’s ‘ordinary meaning’ are somewhat resolved by the requirement that words should be read in their context. This is not a subordinate step to be used when the ‘ordinary meaning’ alone fails, but rather a step in determining the ordinary meaning in a specific treaty.¹⁹⁹ Context is also not limited to the treaty itself. According to Article 31(2):

The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

¹⁹⁵ Francis G Jacobs, ‘Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties before the Vienna Diplomatic Conference’ (1969) 18 ICLQ 318, 333. See also Brian G. Solum and Jarrod Wong, ‘The Vienna Convention and Ordinary Meaning in International Law’ (2021) 46(2) Yale J. Int’l L. 191.

¹⁹⁶ Solum and Wong (n 195) 199.

¹⁹⁷ *ibid.*

¹⁹⁸ Gidon Gottlieb, ‘The Interpretation of Treaties by Tribunals’ (1969) 63 Am. Soc’y Int’l L. Proc. 122, 126.

¹⁹⁹ Jacobs (n 195) 335.

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.²⁰⁰

As these categories appear in Article 31(2), they are more than a tiebreaker to be used when there may be ambiguity in a meaning; instead, they are a critical component in determining the meaning in context.²⁰¹ Indeed, the provision requires that these categories be considered alongside the remainder of the treaty being interpreted and its preamble, elevating subsequent agreements to the same relevance as the treaty itself. Context is then determined by reference to the provision, the treaty (including the preamble), and any other agreements or instruments between the parties. Context here is broader than just the context at the time the treaty was adopted, though it does not exclude relying upon that context.²⁰²

Article 31(3) adds further factors to be considered alongside, but separately from, context. This includes not only subsequent agreements between the parties regarding the interpretation of the treaty or the application of its provisions, but also any subsequent practice in the application of the treaty which ‘establishes the agreement’ of the parties regarding its interpretation. Both can provide objective evidence as to what it was the parties understood the provision to mean.²⁰³

The last aspect of Article 31(3) adds the consideration of other ‘relevant rules of international law applicable in the relations between the parties’.²⁰⁴ Such relevant rules include other treaties to which both parties are also parties (such as the UN Charter or the Geneva Conventions), or rules that form part of customary international law.²⁰⁵ The ICJ relied on this provision in its judgement in the Oil Platforms Case between Iran and the United States of America.²⁰⁶ The majority opinion agreed that a provision under consideration could not be interpreted without considering the general international law applicable to the use of force and self-defence.

²⁰⁰ VCLT art 31.

²⁰¹ Slocum and Wong (n 195) 199.

²⁰² Richard Gardiner, ‘The Vienna Convention Rules on Treaty Interpretation’ in Hollis (n 172), 479-80.

²⁰³ International Law Commission, ‘Draft Articles on the Law of Treaties with Commentaries’ (1966) 2 Yearbook of the International Law Commission 221, paras 14–15. Note also that this reflected practice from prior to the drafting of the VCLT, for example, the ICJ in the *Corfu Channel* case between Albania and the United Kingdom relied upon the parties’ subsequent actions to determine the extent of its jurisdiction (ICJ Reports, 1949, 25)

²⁰⁴ VCLT art 31(3).

²⁰⁵ Gardiner (n 202) 482–3.

²⁰⁶ *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Judgment) ICJ Reports 2003, 161.

[U]nder the general rules of treaty interpretation, as reflected in the 1969 Vienna Convention on the Law of Treaties, interpretation must take into account “any relevant rules of international law applicable in the relations between the parties” (Art. 31, para. 3 (c)). The Court cannot accept that Article XX, paragraph 1 (d), of the 1955 Treaty was intended to operate wholly independently of the relevant rules of international law on the use of force, so as to be capable of being successfully invoked, even in the limited context of a claim for breach of the Treaty, in relation to an unlawful use of force. The application of the relevant rules of international law relating to this question thus forms an integral part of the task of interpretation entrusted to the Court by Article XXI, paragraph 2, of the 1955 Treaty.²⁰⁷

This approach was not without criticism, with the minority considering that relying on loose references to international law was beyond the intent of Article 31(3)(c), and that more specific rules were required.²⁰⁸ Whether read narrowly or broadly, it is undeniable that international law outside of the specific treaty in question can impact interpretation, adding to the plethora of factors to be considered alongside context.

The inclusion of such context, however, aligns closely with the overall principle that the interpretation by States Parties matter more generally when it comes to treaties and international law. Although international courts and tribunals may be persuasive, States’ practices and actions create, and authoritatively interpret, international law.

In addition to ‘context’, the ordinary meaning must be considered in light of the treaty’s ‘object and purpose’. This qualifier further rebuts any suggestion that ‘ordinary meaning’ is a purely literal approach, as such qualifiers would not be needed if the ordinary meaning could stand alone. As with context, considering the object and purpose is an aspect of determining the meaning, not an additional or optional step in interpretation.²⁰⁹ This requirement, and that of ‘good faith’, share a commonality in that both seek to ensure the treaty can fulfil its purpose. Where an interpretation

²⁰⁷ *ibid* 182.

²⁰⁸ For a fuller discussion of the *Oil Platforms* opinion and its application of Article 31(3)(c) see Campbell McLachlan, ‘The Principle of Systemic Integration and Article 31 (3)(C) of the Vienna Convention’ (2005) 54 ICLQ 279.

²⁰⁹ Gardiner (n 202) 465.

using only the ordinary meaning may render a treaty ineffective, looking to its object and purpose can help provide a more effective outcome.

The object and purpose element is essential when interpreting treaties that serve as constitutional documents, such as the UN Charter. Object and purpose could be found by looking at subsequent developments in the subject organisation.²¹⁰ This supports the view that the objects and purposes likely to give the most accurate interpretation are those at the time of interpretation, rather than at the time of signing.²¹¹ There is, then, room to prefer an evolutionary approach to interpretation, rather than one set at the time of drafting. To suggest otherwise could discourage States from acknowledging that circumstances can change without the need for a new treaty (which may be untenable for various political reasons). Additionally, where States have opted for undefined or ambiguous phrasing, it could be said that this was a deliberate choice to allow for evolving or changing meanings.

International courts and tribunals have used the object and purpose to aid in interpretation since before its codification in the VCLT. In the 1950 Admission to the UN Case, in a dissenting opinion, Judge Azevedo noted that even the practice of States over time could not ‘frustrate a pressing teleological requirement.’²¹² In doing so, he acknowledged that other factors in interpretation should not stymie the overall purpose of a treaty.

More recently, in 2000, the European Court of Human Rights (ECtHR) considered competing interpretations of the word ‘alcoholics’ in Article 5(1)(e) of the European Convention on Human Rights (ECHR).²¹³ In *Witold Litwa v Poland*, Poland’s view was that the term ‘alcoholics’ could be read to include not only those with a clinical psychiatric diagnosis of alcohol addiction, but also those who were, on occasion, intoxicated. The claimant’s view was that the term should be construed more narrowly and in line with the ordinary meaning, being those who were addicted to alcohol.²¹⁴ The ECtHR noted that the general rule of interpretation, as stated in Article 31 of the VCLT, is ‘a single combined operation’.²¹⁵ This means that the context, object, and purpose

²¹⁰ Jacobs (n 195) 320.

²¹¹ *ibid.* The author here relies on the ‘emergent purpose’ doctrine, which considers the object and purpose which will give a true interpretation of a treaty come from those at the time of interpretation.

²¹² *Competence of the General Assembly for the Admission of a State to the United Nations* (Advisory Opinion) ICJ Reports 1950 4, 24.

²¹³ *Witold Litwa v Poland* App no 26629/95 (ECtHR, 4 April 2000).

²¹⁴ *ibid* 52-54.

²¹⁵ *ibid* 58. See also *Golder v United Kingdom* App no 4451/70 (ECtHR, 1 June 1973).

are to be read with the ‘ordinary meaning’, not subsequently or only where there is no clear meaning. In its analysis, the ECtHR started with the ordinary meaning of ‘alcoholics’, being one who is alcohol dependent. From there, it considered the context and the remainder of Article 5 of the ECHR, which included other groups of people, all of whom were included for medical and/or social reasons. This reading led the Court to conclude that ‘alcoholics’ should be read more widely than just those who were in a ‘clinical state of alcoholism’, but also those who, by their behaviour under the influence of alcohol, pose a threat to themselves or public order.²¹⁶ This judgment illustrates that although an ordinary meaning may be apparent (using a dictionary), context could reasonably allow for a broadening (or contrastingly, narrowing) of that ordinary meaning.

A final component of the general rule of interpretation found in Article 31(4) is that a special meaning shall be given to a term if it is established that the parties so intended. It is a straightforward provision that observes the overarching notion that the parties themselves are the best interpreters of a treaty. It allows for parties to use an unordinary meaning deliberately should they so agree.²¹⁷ European Courts, such as the ECtHR and the European Court of Justice (ECJ), have applied this standard more often than other international courts. Perhaps this is because the need for a ‘community’ of meaning is more present in a geographical area as interconnected as Europe.²¹⁸

Although the general rule of interpretation in Article 31 of the VCLT can be seen as a seemingly straightforward step-by-step process, interpretation is not mechanical or formulaic, and requires consideration of many divergent factors.²¹⁹ At the time of drafting, the International Law Commission (ILC) referred to the VCLT’s articles on interpretation as a ‘crucible’ intended to include many factors into the interpretation process.²²⁰ Even in determining the text’s plain meaning, other factors must be considered, which will change depending on the treaty and

²¹⁶ *Witvold* (n 213) 61.

²¹⁷ Gardiner (n 202) 465.

²¹⁸ Jean-Marc Sorel and Valérie Boré Eveno, ‘Volume I, Part III Observance, Application and Interpretation of Treaties, s.3 Interpretation of Treaties, Art.31 1969 Vienna Convention’ in Olivier Corten and Pierre Klein (eds) *Vienna Convention on the Law of Treaties* (OUP, 2011), para 50. See also ECtHR cases: *Engel & Others v Netherlands* App nos 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR, 8 June 1976) and *Ezeh & Connors v United Kingdom* App nos 39665/98 and 40086/98 (ECtHR 9 October 2003).

²¹⁹ Gardiner (n 202), 461. See also Ulf Linderfalk, ‘Is Treaty Interpretation an Art or a Science? International Law and Rational Decision Making’ 26(1) *Eur. J. Int’l L.* 169, 170-171 and JG Merrills, ‘Two Approaches to Treaty Interpretation’ (1968) 4 *Aust. YBIL* 55.

²²⁰ Slocum and Wong (n 195) 195.

associated facts. Where the general rule fails to give a satisfactory interpretation, there is recourse to supplementary means in the immediately following articles.

Article 32 details the occasions when ‘supplementary means of interpretation’ can be used. Such means include reference to the preparatory work of the treaty (*travaux préparatoires*), and the circumstances of its conclusion. Article 32 goes on to state that recourse to these means is available to an interpreter to confirm the meaning of the text following the application of Article 31, or to determine the meaning where, following such application, the meaning is ‘ambiguous or obscure’ or ‘manifestly absurd or unreasonable.’²²¹ Although there is no ‘clear-cut rule’ on the use of supplementary materials, a distinction is made between confirming meaning and determining meaning.²²²

Before the VCLT, States widely used *travaux préparatoires* to confirm an interpretation. However, where they were being used to decide meaning, *travaux préparatoires* were previously ‘evidence to [be] weighed against any other relevant evidence of the intentions of the parties ... their cogency depends on the extent to which they furnish proof of the common understanding of the parties’.²²³ Article 32 allows for largely unrestricted use of *travaux préparatoires* to confirm a meaning when it is already evident. Still, where it is unclear, the use of such material is limited to being part of the evidence to assist in determining the meaning.²²⁴

An example of Article 32 in practice can be found in *Witold*.²²⁵ The ECtHR used *travaux préparatoires* to assist in determining the object and purpose of Article 5(1)(e) of the ECHR when deciding the meaning of the word ‘alcoholics.’ As discussed above, the Court reached a conclusion using Article 31 that it was to be read as broader than a clinical diagnosis of addiction to alcohol. The Court used *travaux préparatoires* in accordance with Article 32 to confirm its interpretation.²²⁶ The commentary on an original draft of the ECHR noted that States had the right to combat drunkenness, which lent credence to the Poland’s interpretation that it meant more than clinical alcoholism.

²²¹ VCLT arts 32(a) and (b).

²²² Gardiner (n 202) 472.

²²³ H Walcock, ‘Third Report on the Law of Treaties’ (1964) II Yearbook of the International Law Commission 5, 58.

²²⁴ Gardiner (n 202) 474.

²²⁵ *Witold* (n 213).

²²⁶ Gardiner (n 202) 464.

Treaty interpretation methodology, as laid out in Articles 31 and 32 of the VCLT, is well-established. Despite this, there is a divergence of views on how that methodology is to be applied. The next part of this chapter considers some of these views, ultimately categorising them as a narrow approach and a broad approach.

Section Two: Divergent Schools of Interpretation

From this basis in the VCLT, several methods of interpretation have developed. After all, the VCLT is a treaty that is itself subject to interpretation. For this thesis and to assist with the later analysis of the UN Charter, the methods will be considered as comprising two general approaches – narrow and broad.²²⁷ The former refers to limiting interpretation to a textual, objective and contemporaneous approach. The latter method allows the reader to consider the provision in question more flexibly, looking at what it could and should mean at the time of interpretation.

The narrow approach is principally concerned with the words of the treaty from an objective viewpoint.²²⁸ From this perspective, the interpreter looks only at the provision's text in light of the time it was signed and asks what the parties say in the text of the treaty. Although not a deviation from Article 31, the approach does not consider context beyond a narrowly defined view of the factors in Article 31(2). For example, a narrow approach would not consider inaction or silence by parties as evidence of the subsequent practice noted in Article 31(2)(a) and (b).

A narrow approach is best understood as a method based on the assumption that the words the parties use in a treaty alone express their intentions without needing to look behind the words themselves.²²⁹ There are, however, criticisms of this approach. Firstly, even where words are not necessarily ambiguous, different readers can, and will, find different 'ordinary' meanings.²³⁰ Despite seeming more likely to provide a clear result, a narrow approach is just as likely to lead to ambiguous or arbitrary outcomes as a broad approach. Secondly, and perhaps more significantly, a narrow approach does not allow for the realities of international law and relations. To some extent, it undermines the States Parties' autonomy and holds the contemporary State to the will of its past self without considering developments in society or the law. This approach freezes the treaty at its creation, where it may be more appropriate to consider it as a standard to be guided by in the future.²³¹

²²⁷ There are different ways to categorize these different schools of thought. For more in-depth discussion see Peter McRae, 'The Search for Meaning: Continuing Problems with the Interpretation of Treaties' (2002) 33(2) VUWLR 209; Jacobs (n 195); Hollis (n 172) Part V.

²²⁸ Jacobs (n 195) 319.

²²⁹ McRae (n 227) 213.

²³⁰ Julius Stone, 'Fictional Elements in Treaty Interpretation - A Study in the International Judicial Process' (1953) 1(3) Sydney L. Rev. 344, 355. See also McRae (n 227) 214-15.

²³¹ Gidon Gottlieb, 'The Conceptual World of the Yale School of International Law Reviews' (1968) 21 World Politics 108, 116-120. See also Merrills (n 219) 70.

This criticism is particularly pertinent when looking at constitutive documents which create international organisations. For example, the criticism is warranted where a strict reading of a treaty's provisions would, if applied today, prevent the organisation from achieving its purpose (which would also have been outlined in the treaty). A detailed explanation of the application of these rules (and the tension between the narrow reading of the text, and the purposes of the treaty) to constitutive treaties follows later in this chapter.

In contrast to the narrow approach, the broad approach considers what the States Parties 'meant' rather than what they specifically 'said'. It is consequently more subjective.²³² This approach relies more heavily on context, and the object and purpose elements in Article 31. It also allows for recourse to supplementary methods in Article 32 to confirm or determine a meaning. It is subjective, taking into account the intention of the parties and a broader context (extending to, in the case of constitutional documents, the purpose of the organisation itself).²³³ The ICJ demonstrated such an approach in *Certain Expenses of the United Nations* advisory opinion (*Certain Expenses*), which considered both the specific purposes of the provision in question (Article 17(2) of the UN Charter) and the overall purposes of the UN itself.²³⁴ *Witold* was also an example of the Court taking a broader approach to interpretation, noting that an ordinary meaning approach alone would have led to the narrower meaning preferred by the claimant.²³⁵

The broad method is not free of criticism. There is the risk that in promoting a 'broader, holistic' approach to interpretation, which is flexible, courts (or others charged with interpreting treaties) will use it to justify moving away from the plain meaning of the treaty. Consequently such an interpretation may differ from what was actually agreed to by the parties.²³⁶ Such an approach may further complicate what is already an unsettled process. At its broadest, this approach could advocate moving away entirely from the parties' expectations at the time of signing (should they be indeterminable) and relying on more general policies.²³⁷

²³² Jacobs (n 195).

²³³ Gottlieb, 'The Interpretation of Treaties by Tribunals' (n 198) 124.

²³⁴ *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)* ICJ Reports 1962 151, 162

²³⁵ *Witold* (n 213).

²³⁶ Orakhelashvili (n 188) 311.

²³⁷ *ibid* 309. This broadest view is known as the 'New Haven' School. For further discussion of this approach, see Richard A. Falk, 'On Treaty Interpretation and the New Haven Approach: Achievements and Prospects' (1968) 8 Va. J. Int'l L 323 and Asif H. Qureshi, 'Interpreting Exceptions in the WTO Agreement: Lessons from the New Haven School' (2014) 22(1) Asia Pacific Law Review 3.

The supporters of a broad approach argue that this is the best approach to serve the treaty and the parties. It does look primarily at the parties' true intentions and so will not be easily misled by careless or ambiguous language. A broad approach is more in line with the good faith requirement and, ultimately, more likely to give effect to the treaty. In addition, the risk of an approach that is too broad can be mitigated by the reliability of the evidence used to determine the parties' intentions and the treaty's purposes. In doing so, while many sources of information could be looked at, the interpreter (most often the State or courts) can assess how much weight to put on those sources.

Alongside these broader approaches is a growing view that rigid rules in interpretation are unnecessary, and that different treaties may need different, if complementary, approaches.²³⁸ This has been supported by the work of various international courts and tribunals, and while there is criticism that those courts have gone too broadly in their approaches, they are persuasive.²³⁹ For example, in the *Air Services Agreement Case* in 1978, the tribunal, in interpreting an agreement between France and the United States of America, looked at the context of wider international civilian aviation rules and not just the context of the agreement between the parties.²⁴⁰ The ECJ and the ECtHR have also adopted this approach when interpreting their 'own' treaties.²⁴¹ In *Mamatkulov and Askarov v Turkey*, for example, the ECtHR noted that although the ECHR must be interpreted in light of the VCLT, the Court must also

take into account the special nature of the Convention as an instrument of human rights protection ... Thus, the Convention must be interpreted so far as possible consistently with the other principles of international law of which it forms a part.'²⁴²

It is evident, then, that certain treaties, at least in the eyes of the ECtHR, can be interpreted using more expansive tools than those in the VCLT, especially those principles of international law of which the treaty forms a part. For this thesis, the unique category of constitutive treaties and their interpretation merit closer scrutiny.

²³⁸ Eirik Bjorge, 'Different Regimes, Different Methods of Interpretation?' in Eirik Bjorge (ed), *The Evolutionary Interpretation of Treaties* (OUP 2014), 23.

²³⁹ *ibid.* See also R Jennings, 'The Judiciary, International and National, and the Development of International Law' (1996) 45 ICLQ 1, 5–6.

²⁴⁰ *Air Services Agreement Case (United States v France)* (Arbitration Tribunal) (1978) 54 ILR 303, 326 at para 44.

²⁴¹ Bjorge (n 238) 30.

²⁴² *Mamatkulov and Askarov v Turkey* App nos 8183/10, 62963/13 (ECtHR, 4 February 2005), 111.

Section Three: Peculiarities of Interpreting the UN Charter

The broad approach to treaty interpretation is most justifiable when dealing with treaties that serve as constitutive instruments for international organisations, such as the UN.²⁴³ Indeed, the VCLT itself accepts that such treaties are unique in Article 5:

The present Convention applies to any treaty which is the constituent instrument of an international organisation and to any treaty adopted within an international organisation without prejudice to any relevant rules of the organisation.²⁴⁴

Although the rules of the VCLT apply to these treaties, they leave open the possibility for organisations to have their own rules of interpretation. In the absence of such rules, though, there have been different approaches. In the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* advisory opinion (Nuclear Weapons), the ICJ observed,

... the constituent instruments of international organisations are also treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which parties entrust the task of realising common goals. Such treaties can raise specific problems of interpretation owing, inter alia, to their character, which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties.²⁴⁵

There are two ways in which the interpretation of constituent treaties could be seen as diverging from that of other treaties. Firstly, less emphasis may be placed on the intention of the parties at the time of signing, and more on ensuring the treaty is effective.²⁴⁶ The influence of this effectiveness, or *effet utile* principle, on interpreting the UN Charter is significant. Interpreters often rely on effectiveness more often than a textual approach. Secondly, the practice of the

²⁴³ Catherine Brölmann, 'Specialized Rules of Treaty Interpretation: International Organizations' in Hollis (n 172) 524-542.

²⁴⁴ VCLT art 5.

²⁴⁵ *Legality of the Use by A State of Nuclear Weapons in an Armed Conflict* (Advisory Opinion) ICJ Reports 1996 66, para 19.

²⁴⁶ Kadelbach (n 30) 80. See also Jan Klabbers, *An Introduction to International Institutional Law* (CUP 2009) 87.

international organisation itself becomes a tool for interpretation, different from the subsequent practice of the parties (as provided for in Article 31(3)(b) of the VCLT). These divergences in the approach have not been free of criticism. However, there are many who would accept that the approach is within the rules of, or at the least complementary to, the VCLT.²⁴⁷ Additionally, it has been suggested that the UN Charter, in particular, should be ‘regarded as a living instrument’ to be interpreted in an ‘evolutionary manner, permitting the organisation to fulfil its purpose in changing circumstances.’²⁴⁸

The UN Charter is the most significant constitutive treaty in existence. It has been interpreted by States, international courts, and the UN itself. Understanding how these bodies have interpreted the Charter helps with the later analysis in this thesis, assessing whether climate change can pose a risk to the maintenance of international peace and security and a ‘threat to the peace’ for the purposes of Chapter VII.

The UN determines its powers and duties by interpreting its Charter. This has been seen particularly in the actions of its central bodies, the UN General Assembly (UNGA) and the UN Security Council (UNSC). The ICJ noted in *Certain Expenses* that the organs of the UN must determine their own jurisdiction.²⁴⁹ It follows that this is done by interpreting their constitutive treaty – the Charter.²⁵⁰ During the negotiations to establish the UN, the parties explicitly rejected making the ICJ the authoritative arbiter on the interpretation of the Charter. It has nonetheless emerged to provide some of the more persuasive interpretations. As such, much of the following discussion utilises analysis by the ICJ, acknowledging that while persuasive, it is not authoritative.

Turning to the first divergence in interpretive practice related to constitutive treaties (that of reliance on effectiveness), this approach can be seen in several international tribunal decisions and opinions before and after the drafting of the VCLT. Most significantly, the ICJ concluded in its 1949 *Reparation for Injuries Suffered in the Service of the United Nations* advisory opinion (*Reparations*), that the UN Charter could, and should, be interpreted as having attributed

²⁴⁷ E Lauterpacht QC, ‘The Development of the Law of International Organization by the Decisions of International Tribunals’ (1976) 152 *The Hague Academy Collected Courses Online*, 460–1. See also Bjorge (n 221) 37–40 and Dapo Akande, ‘International Organizations’ in Malcolm Evans (ed) *International Law* (5th edn, OUP, 2018) 227, 238.

²⁴⁸ Bjorge (n 238) 37–40.

²⁴⁹ *Certain Expenses* (n 234) 168.

²⁵⁰ *ibid.*

international legal personality to the UN itself.²⁵¹ There is nothing in the text of the Charter that grants the organisation such status. However, during the San Francisco Conference it was decided that this did not require explicit mention, as it would be implicit from the provisions of the Charter as a whole.²⁵² The Court's analysis, however, was based on the effectiveness of the Charter. The UN could not carry out its duties and functions (and therefore the intentions of the States Parties) without being granted such status.²⁵³ The ICJ's conclusion in this case has been criticised because the same finding could have been made by considering the travaux préparatoires rather than reliance on effectiveness. Nevertheless, the opinion remains influential.²⁵⁴

The ICJ's practice of looking at an interpretation's effectiveness is perhaps an extension of the 'object and purpose' approach set forth in the VCLT. Rather than looking to the object and purpose of the treaty (Article 31(1)), it relies upon the organisation's 'purposes and objectives'. It prefers the interpretation that best achieves those ends and allows the organisation to remain effective.²⁵⁵ The ICJ also took this approach in 1972 in its Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal advisory opinion. There, the ICJ was asked, among other things, to consider whether the administrative tribunal is itself an organ of the UN and, therefore, able to request an opinion from the Court. The ICJ found, having referred to Article 7 (which created the principal organs of the UN) and Article 22 (which expressly empowers the UNGA to create subsidiary organs) of the Charter, that the purpose of those articles was to enable the UN to achieve its purposes and functions.²⁵⁶ The Court concluded that restricting the UNGA's ability to establish subsidiary organs would be contrary to the Charter's object and purpose as it would impact the effectiveness of the UN.²⁵⁷

Similarly, the ICTY in *Prosecutor v Tadić* (*Tadić*) considered whether it was within the powers of the UNSC to establish the ICTY itself.²⁵⁸ It rejected the argument that the UNSC was not

²⁵¹ *Reparation for injuries suffered in the service of the United Nations* (Advisory Opinion) ICJ Reports 1949 174, 178–9.

²⁵² Dame Rosalyn Higgins DBE QC and others, 'Part 2 The United Nations: What it is, 11 The Legal Personality of the United Nations' in Dame Rosalyn Higgins DBE QC and others (eds) (n 140), para 11.09–12.

²⁵³ *Reparations* (n 251).

²⁵⁴ Broilmann (n 243). See also Shabati Rosene, *Developments in the Law of Treaties 1945–1986* (CUP 1989) 238; and IM Sinclair *The Vienna Convention on the Law of Treaties* (Manchester University Press 1984) 131.

²⁵⁵ Lauterpacht (n 247) 420.

²⁵⁶ *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal* (Advisory Opinion) ICJ Reports 1973 166, 172.

²⁵⁷ Lauterpacht (n 247) 422.

²⁵⁸ *Tadić* (n 154).

empowered to create the ICTY under Chapter VII. As there was an armed conflict in the former Yugoslavia, the question of whether Article 39 should have been engaged was quickly dispensed; it was clear that there was at least a threat to the peace by the continued conflict. Having accepted that, the question was whether establishing the tribunal was a measure ‘other than armed force’ provided for by Article 41. The ICTY found that the UNSC enjoyed broad discretion in deciding what measures were appropriate as long as they were not inconsistent with the purposes and principles of the Charter.²⁵⁹ Although not authoritative, this decision demonstrates the broad way in which the Charter has been interpreted by the bodies (if not the Member States) required to comply with it.

Another way to consider the principle of effectiveness is from the basic premise that the organisation must have the power to conduct its required functions. Therefore, any interpretation of the constitutive treaty must lend itself to that end. The ICJ employed this logic in the Reparations opinion, and it was also used much earlier by the Permanent Court of International Justice (PCIJ) in the Jurisdiction of the European Commission of the Danube between Galatz and Braila advisory opinion in 1927.²⁶⁰

On several occasions, tribunals have relied on the practice of the organisations themselves as an interpretive tool (the second divergence from standard treaty interpretation). For instance, the ICJ has often turned to the organisation’s practice to confirm an already arrived-at interpretation rather than solve a contested interpretation.²⁶¹ In the Nuclear Weapons advisory opinion, the ICJ utilised the VCLT’s methods of interpretation but also referred to the organisation’s practice (in this case, WHO).²⁶² In interpreting the provisions of the WHO Constitution, it stated:

Interpreted in accordance with their ordinary meaning, in their context and in the light of the object and purpose of the WHO Constitution, as well as of the practice followed by the Organization, the provisions of its Article 2 may be read as authorizing the Organization to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health

²⁵⁹ *ibid* paras 26–40.

²⁶⁰ *Reparations* (n 251) 179 and *Jurisdiction of the European Commission of the Danube Between Galatz and Braila* (Advisory Opinion) (1927) PCIJ Rep Series B No 14 6, 64.

²⁶¹ *Akande* (n 247).

²⁶² *Legality of the Use by A State of Nuclear Weapons in an Armed Conflict* (n 245).

of populations in the event of such weapons being used or such activities engaged in.²⁶³
(added emphasis)

The ICJ then considered the practice of the WHO itself to determine its own jurisdiction and considered the WHO Constitution, in light of its relationship to the UN Charter, as a ‘specialised agency’. This, too, was a departure from traditional treaty interpretation methods:

As these provisions [Article 63 of the UN Charter] demonstrate, the Charter of the United Nations laid the basis of a “system” designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The exercise of these powers by the organizations belonging to the “United Nations system” is co-ordinated, notably, by the relationship agreements concluded between the United Nations and each of the specialized agencies ...

It follows ... that the WHO Constitution can only be interpreted, as far as the powers conferred upon that Organization are concerned, by taking due account not only of the general principle of speciality but also of the logic of the overall system contemplated by the Charter.²⁶⁴

This notion of an overall system approach differs from one seen elsewhere in treaty interpretation, though it can be seen as an extension of context and subsequent practice elements.

Perhaps the most prominent example of organisational practice informing treaty interpretation is the understanding of the powers of the five permanent members of the UNSC. Although the UN Charter, at Article 27, provides that any UNSC decision must include the ‘concurring vote’ of all five permanent members, the UNSC and its members have consistently considered an abstention to be such a vote.²⁶⁵ The ICJ relied on this practice in its *Legal Consequences for States of South Africa’s Continued Presence in Namibia* advisory opinion.²⁶⁶ There, South Africa argued

²⁶³ *ibid* para 21.

²⁶⁴ *ibid* para 26.

²⁶⁵ UN Charter art 27(3). See also Akande (n 247).

²⁶⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 277 (1970) (Advisory Opinion) (1971)* ICJ. Reports 1971 16.

that not all permanent members of the UNSC had voted in the affirmative on the resolution in question, and, therefore, it contravened Article 27. The ICJ rejected this, stating,

[...] the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions. By abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote. This procedure followed by the Security Council ... has been generally accepted by Members of the United Nations and evidences a general practice of that Organization.²⁶⁷

It should be noted that the ICJ referred not only to the practice of the UN as an organisation, but also to the practice of the Members of the UN, who are the parties to the UN Charter. Here, there is some congruence with Article 31(3)(b) of the VCLT. For the UN in particular, it is persuasive to suggest that the actions of the UN itself are the actions of the parties, given the universality of membership. The membership of the UN and the parties to the Charter are one and the same, and to separate the practice of the organisation and its members from the parties is arbitrary.

It is evident then that although there are established methods of treaty interpretation in the VCLT, there has been, over time, varying ways such methods are applied. This is particularly true when dealing with constitutive treaties, and perhaps even more so when interpreting the UN Charter. Although it was established earlier in this thesis that there is a general link between climate change and security, it is more challenging to make the case that climate change is a matter of international peace and security for the purposes of the UN Charter. To make such a case requires close interpretation of the UN Charter, using the methods discussed here, to allow for climate change to firmly settle within the purview of the UNSC.

²⁶⁷ *ibid* 22.

Chapter Five: Climate Change as a ‘Threat to the Peace’?

Section One: International Peace and Security, and Threat to the Peace

Having established, in Chapter Three, the increasing willingness of States to combat climate change under the auspices of the United Nations Security Council (UNSC), it becomes crucial to examine the compatibility of such actions with the United Nations (UN) Charter. Chapter Two of this thesis discussed the connection between climate change and security, considering security in a broad sense. This wider perspective encompasses the role of climate change in instigating or intensifying conflicts and its impact on food, energy, and water security. In everyday parlance, climate change is a security issue. However, for the UNSC to intervene, it must also affect the ‘maintenance of international peace and security.’²⁶⁸ For UNSC to utilise its powers under Chapter VII of the UN Charter, it must also find that climate change is a ‘threat to the peace’ for the purposes of Article 39. This chapter delves into the fundamental question of whether climate change falls within the UNSC’s jurisdiction, utilising the treaty interpretive mechanisms discussed in Chapter Four. Without establishing this connection, justifying any UNSC action, be under Chapter VI or VII, would be untenable.

Turning first then to the question of ‘international peace and security’. Article 24 of the UN Charter sets out the UNSC’s functions and powers. Article 24(1) states that the members of the UN ‘confer on the Security Council primary responsibility for the maintenance of international peace and security.’²⁶⁹ In the absence of a definition of ‘international peace and security’ in the Charter itself, the Vienna Convention on the Law of Treaties (VCLT) directs us first to consider the term’s ordinary meaning in context.

For a comprehensive understanding of the term ‘international peace and security’ it is crucial to consider the context, which includes the rest of the text of the treaty. The term ‘international peace and security’ appears 32 times in the UN Charter, primarily in reference to the functions of the UNSC. However, it is also an overarching purpose of the UN itself, provided for in Article 1(1) and the Preamble. This term, as used in Article 1, is not explicitly linked to conflict. It is Article 2(4), which expressly prohibits using force ‘against the territorial integrity or the political independence of any State’. Article 2(4) does not refer to ‘international peace and security’.

²⁶⁸ UN Charter, art 24.

²⁶⁹ *ibid.*

Therefore, it is evident that ‘international peace and security’ extends beyond merely avoiding the use of force between States, a crucial point for this analysis.

This is further supported when considering the Charter’s overall object and purpose. Ultimately, the Charter’s purpose was to establish the UN.²⁷⁰ Articles 1 and 2 set forth the UN’s purposes and principles. Article 1 states that the purposes of the UN are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.²⁷¹

Article 2 states that the UN and its Members will act in accordance with the following principles:

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

²⁷⁰ *ibid* Preamble.

²⁷¹ *ibid* art 1.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.²⁷²

Both these Articles serve to flexibly guide the actions of the UN's principal organs, including the UNSC.²⁷³ Neither the principles nor the purposes are worded to be legally binding but instead are presented as political objectives. However, the elements of Articles 1 and 2 related to security are considered binding under customary international law.²⁷⁴ For Article 1 this includes the obligation to take collective measures to prevent and remove threats to the peace, suppression of acts of aggression and to settle disputes through peaceful means. In respect of Article 2 it is the ban on the use of force against territory or political independence of any State that is binding.

The content of Article 1(1), (2) and (3), together with the Preamble, combine to suggest peace is more than the absence of war, and include those situations that perhaps precipitate war.²⁷⁵

Wolfrum describes the purposes as meant to lead to a 'diminution of those issues likely to cause

²⁷² UN Charter, art 2.

²⁷³ Wolfrum (n 25) para 4.

²⁷⁴ *ibid.*

²⁷⁵ *ibid* para 8.

war.²⁷⁶ Article 1(1) notes that one the purposes of the UN is to take measures for both the prevention and removal of threats to the peace. The inclusion of ‘prevention’ here suggests an intent to intervene well before an issue reaches conflict. Article 1(2) states that developing ‘friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.’ Here the purpose is to strengthen universal peace through friendly relations. Lastly Article 1(3) looks to achieve international cooperation to solve problems that may well lead to conflict. Taken holistically, Article 1 demonstrates that maintaining peace can be read to include matters which may tangentially prevent conflict, and not just the absence of conflict itself.

The UNGA has also highlighted the linkage between strengthening international peace and security, and issues such as decolonisation, disarmament, and development.²⁷⁷ For instance in 1982 the UNGA, in Resolution 37/16, declared 1986 would be the International Year of Peace.²⁷⁸ This was followed by a formal proclamation annexed in UNGA Resolution 40/3, in which it became clear the UNGA was open to considering a broader view on ‘peace’.²⁷⁹ The Resolution itself concentrated the UN’s and Member States’ efforts on ‘the promotion and achievement of the ideals of peace by all possible means’.²⁸⁰ In addition, the Proclamation of the International Year of Peace (annexed to UNGA Resolution 40/3) presented a broad consideration of the term and states that:

the promotion of international peace and security required continuing and positive action by States and peoples aimed at the prevention of war, removal of various threats to the peace - including the nuclear threat - respect for the principle of non-use of force, the resolution of conflicts and the peaceful settlement of disputes, confidence-building measures, disarmament, the maintenance of outer space for peaceful uses, development, the promotion and exercise of human rights and fundamental freedoms, decolonization in accordance with the principle of self-determination, the elimination of racial

²⁷⁶ *ibid.*

²⁷⁷ *ibid.*

²⁷⁸ UNGA Res 37/16 (16 November 1982) UN Doc A/RES/37/16.

²⁷⁹ UNGA Res 40/3 (n 27).

²⁸⁰ *ibid.*, Annex.

discrimination and apartheid, the enhancement of the quality of life, satisfaction of human needs and the protection of the environment.²⁸¹

Although referring, as it must, to the prevention of war, this is a clear statement by the UNGA that international peace and security includes matters beyond war and, most relevantly for this thesis, extends to the protection of the environment. Protection of the environment must of course include mitigating the impact of climate change. Consider the closing statement of the proclamation, which ‘solemnly proclaims 1986 to be the International Year of Peace and calls upon all peoples to join with the United Nations in resolute efforts to safeguard peace and the future of humanity.’²⁸² One interpretation of this statement would suggest that a threat to the future of humanity is a threat to the peace, be that through conflict or other threats. As explained in Chapter Two of this thesis, the effects of climate change are undoubtedly a threat to the future of humanity, even in the absence of an armed conflict.

The UNSC followed, to some extent, the UNGA’s interpretation when it held its first meeting at the level of Head of State in 1992. There, the then President of the UNSC (Sir John Major from the United Kingdom), made a statement on behalf of the members. It included:

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.²⁸³

In 2004, the then UN Secretary-General, Kofi Annan promoted a broader interpretation when he commissioned the High-level Panel on Threats, Challenges and Change to analyse threats and challenges to international peace and security and make recommendations based on that analysis.²⁸⁴ In its report, the Panel defined ‘any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security.’²⁸⁵ The report went on to group such threats under six ‘clusters’, the first of which is ‘Economic and social threats, including poverty, infectious disease and

²⁸¹ *ibid*, Annex.

²⁸² *ibid*, Annex.

²⁸³ UNSC Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting (31 January 1992) UN DOC S/PV.3046 143 and UNSC Presidential Note (31 January 1992) UN Doc S/23500.

²⁸⁴ The High-Level Panel on Threats, Challenges and Change, ‘A More Secure World: Our Shared Responsibility’ (2004) UN Doc A/59/565.

²⁸⁵ *ibid* 12.

environmental degradation'.²⁸⁶ Under this view, climate change would threaten 'international security' because it is a process that leads to lessening life chances, and is within the first cluster. Additionally, the report specifically notes that climate change falls within the problem of global environmental degradation. It states:

[e]nvironmental degradation has enhanced the destructive potential of natural disasters and in some cases hastened their occurrence. ... More than two billion people were affected by such disasters in the last decade, If climate change produces more acute flooding, heat waves, droughts and storms, this pace may accelerate.

Rarely are environmental concerns factored into security, development or humanitarian strategies. ... Most attempts to create governance structures to tackle the problems of global environmental degradation have not effectively addressed climate change, deforestation and desertification. Regional and global multilateral treaties on the environment are undermined by inadequate implementation and enforcement by the Member States.²⁸⁷

In this, the report makes a clear link between environmental degradation (including climate change) and security, lamenting that it is not more often factored in security strategies. The report recommends greater cohesion between international institutions in tackling these issues, and in respect of climate change, calls on Member States to reflect on the short-comings of the Kyoto Protocol.²⁸⁸

Most of the remaining clusters included in the report (inter-state conflict, internal conflict, including civil war, genocide and other large-scale atrocities, terrorism and transnational organised crime) would also be exacerbated by the growing impact of climate change. Though not linked in the report, the discussion in Chapter Two of this thesis has already laid clear the ways in which climate change impacts traditional threats. This includes growing competition over resources and increased displacement of populations.

The panel also interpreted the powers of the UNSC as broadly as it had interpreted threat. The report noted that

²⁸⁶ *ibid* 12.

²⁸⁷ *ibid* 27.

²⁸⁸ *ibid* 31–32.

Chapter VII is inherently broad enough, and has been interpreted broadly enough, to allow the Security Council to approve any coercive action at all, including military action, against a State when it deems this [']necessary to maintain or restore international peace and security[']. That is the case whether the threat is occurring now, in the imminent future or in the more distant future; whether it involves the State's own actions or those of non-state actors it harbours or supports; or whether it takes the form of an act or omission, an actual or potential act of violence or simply a challenge to the Council's authority.²⁸⁹

There is evidence in the remainder of the UN Charter to support this statement and the Panel's interpretation of 'peace and security'. Article 2(4) specifically prohibits the use of force, yet the maintenance of peace and security is not framed anywhere in the text as relating that prohibition. It must, then, mean something broader than a state of no war, and if it does, climate change and its impact on people, States, and the world, must fall within the UNSC's mandate.

Climate change impacts the UN's ability to maintain international peace and security, and so can be categorised as a threat to security. However, it is perhaps less clear as to whether the threat climate change poses to international peace and security reaches the threshold of 'threat to the peace' for the purposes of Article 39. By the first and narrow approach, 'threat to the peace' only refers to matters likely to imminently lead to conflict or other more traditional security threats. The second approach to interpretation is broader and allows for a reading of the text that encompasses threats to peace in a more holistic sense. This includes matters that generally threaten peace and stability. Climate change is a threat to security and, in common usage, is really a threat to the peace. However, whether Article 39 can be engaged depends on how broadly one views the term 'threat to the peace', that is, how preventative or remote from an actual conflict a threat can be to permit a determination by the UNSC under Article 39.

The broader interpretation is more persuasive. If, as per the narrow interpretation, a threat to the peace would not include matters deemed to be a threat to security and the UNSC could not effectively discharge its obligations to maintain international peace and security. It would be prevented from using its most significant powers to manage international security matters. The narrow position is untenable. The broader interpretation, however, is more reasonable. This is

²⁸⁹ *ibid* 55.

supported by the following analysis of the phrase ‘threat to the peace’ through the lens of the VCLT, considering specific conditions relating to constitutive treaties (outlined in Chapter Three). Additionally, the actions of the UNSC and Member States show little opposition to this view.

Within the Charter, there is no restriction on the UNSC’s ability to make a determination under Article 39, and no definition of a threat to the peace. The only limitation on the UNSC is found in Article 24(2), which requires it to act in accordance with the purposes and principles of the UN itself.²⁹⁰ The notion of peace is open to interpretations in ordinary vernacular. The Charter itself utilises the term in several ways, including linking it to diplomatic relations, self-determination and equal rights (Article 1(2)), but also to the absence of violence (Art 2(3) ‘peaceful means’).²⁹¹ There is undoubtedly an overlap here with the interpretation of the ‘maintenance of peace and security’ discussed above.

In its ordinary usage, the term ‘threat’ refers to something likely, but has yet, to happen.²⁹² There is no debate over whether the UNSC can declare something a threat to the peace before actual conflict occurs. However, the narrow and broad approaches diverge over how close that nexus to threat must be. For example, a narrow interpretation would stop short of seeing generalised threats or acts of conflict prevention as falling within the ambit of Article 39. A broad interpretation would include threats that are more remote from conflict. The UNSC has (as will be discussed later in this chapter), on several occasions, taken action on general threats to peace. It has also considered issues that arise following the conclusion of hostilities to avoid a renewal of conflict. Both align with a broad interpretation, with a general, rather than a specific, link to conflict.

In considering the ordinary meaning of the term to be interpreted in context, the VCLT is primarily concerned with the text of the remainder of the treaty. When considering the meaning of ‘threat to the peace’ then, it is logical to turn first to the preamble of the UN Charter. Preambles are specifically referred to in Article 31(2) of the VCLT as forming part of the context in which consider the ordinary meaning of the terms. The Preamble states, in part, that the Charter was established:

²⁹⁰ Vaughan Lowe and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (OUP 2010) 6.

²⁹¹ Krisch (n 153) para 7.

²⁹² ‘threat, n.’ (*OED Online*, September 2013) <<https://doi.org/10.1093/OED/6594990113>> accessed 20 June 2023.

to practice tolerance and live together in peace with one another as good neighbours, and
to unite our strength to maintain international peace and security, and
to ensure, by the acceptance of principles and the institution of methods, that armed
force shall not be used, save in the common interest, and
to employ international machinery for the promotion of the economic and social
advancement of all peoples[.]²⁹³

Although the Preamble may have a limited impact on the decisions of the UN organs (including whether the UNSC declares climate change a ‘threat to peace’), it is nonetheless a valuable tool to aid in interpretation. The wording demonstrates that in drafting the UN Charter, the intent of the States involved was not confined to avoidance of conflict, but extended to neighbourliness and greater social and economic advancement. The text of the Preamble, when read alongside Article 39, supports an interpretation that broadens the ‘threat to the peace’ beyond war or conflict-type situations.

The term ‘peace’ is used throughout the Charter. It does not define ‘international peace and security’, and ‘international security’ does not appear elsewhere in the text.²⁹⁴ This is significant, as it suggests that the terms ‘security’ and ‘peace’ have different, if interrelated, meanings. The text of Article 39 also only mentions ‘peace’, rather than ‘international peace’. Such usage permits an interpretation that allows actions by the UNSC where the threat is primarily internal to a State. The UNSC has taken such action in the past, even where there is little chance the threat would extend outside the State involved.²⁹⁵

Independently from security, ‘peace’ can be read broadly to include anything required to maintain peace, or read narrowly as simply the absence of a threat of force against any State’s territorial integrity or political independence (as provided by Article 2(4)). Had Article 39 been intended to only be relevant at times of conflict or other traditional threats, it could have referred to a breach of Article 2(4) as the trigger, rather than including the more flexible ‘threat to the peace.’ In the context of the remainder of the Charter, it is reasonable to conclude that peace is more than just

²⁹³ UN Charter, Preamble.

²⁹⁴ Wolfrum (n 25), paras 8–9.

²⁹⁵ See for example, the UNSC response to the conflicts in Palestine in 1948 and the Congo in 1961.

the absence of war or the threat of war.²⁹⁶ As such, treating climate change as a ‘threat to the peace’ is reasonable in light of the term’s ordinary meaning in context.

In addition to context, the VCLT requires consideration of subsequent agreements between the parties on the interpretation of the treaty or its application, and subsequent practice of the parties in applying the treaty, which establishes agreement on its interpretation.²⁹⁷ Put simply, actions by the parties in respect of implementing the Charter can suggest how it should be interpreted. The practice of States is difficult to divorce from the practice of the UN. Nevertheless, Tamsin Paige’s 2019 analysis of the UNSC permanent members’ understanding of ‘threat to the peace’ provides valuable data.²⁹⁸ In that study, Paige sought to understand how the five permanent members of the UNSC have approached ‘threats to the peace’ under Article 39 through an empirical analysis of their opposition or support of UNSC decisions. This differs from other work on the question, which has primarily looked to the text of UNSC Resolutions themselves rather than the specific views of the members of the UNSC.

Paige found patterns in how the permanent members have opposed or approved of ‘threat to the peace’ UNSC Resolutions, despite there being no discernible pattern when considering the UNSC as a ‘single, monolithic, coherent entity’.²⁹⁹ For example, the study found that the United States of America tends to oppose a determination where it views the matter as not sufficiently serious and supports one where there are violations of international law or UNSC Resolutions. The United Kingdom was similar in its approach, whereas France and China tended to rely on the principle of non-interference when opposing determinations. Lastly, Russia initially opposed such determinations due to a general lack of faith in the solutions presented, but trended towards support where threats were of an international character or involved self-determination.³⁰⁰ Although it may be difficult to discern a clear pattern in Article 39 determinations from UNSC Resolutions themselves, there is clear consistency in practice from each individual permanent member.

²⁹⁶ Wolfrum (n 27), para 9.

²⁹⁷ VCLT article 31(3).

²⁹⁸ Tamsin Phillipa Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the Un Security Council to the Concept of ‘threat to the Peace’ under Article 39 of the UN Charter* (Brill 2019).

²⁹⁹ *ibid* 277.

³⁰⁰ Note, this analysis was conducted in 2019, and so does not take into account any decision since then.

There is no universally consistent subsequent practice between the permanent members. Despite this, applying the permanent members' independent practice to the issue of climate change suggests that there is room within their varying interpretations of 'threat to the peace' to justify a determination. For the United States of America and the United Kingdom, the security threat posed by climate change must meet a sufficient threshold of seriousness to trigger their support. As explained in the earlier parts of this thesis, the risk posed by climate change is sufficiently serious and becoming more serious as extreme weather events increase. Although the current frameworks on climate change are not enforceable against States, the consistent failure to meet climate change goals is a challenge to the international order, if not international law itself. This would also fall into the triggers for the United States of America and the United Kingdom (as a breach of international law). Neither of these scenarios, however, would trigger France and China (given their preference for non-interference).

The actions of the UNGA are another indicator of State practice in interpreting the Charter when considering climate change. In April 2023, the UNGA sought an advisory opinion from the ICJ on the Obligations of States concerning Climate Change.³⁰¹ The resolution underlying the request acknowledged that 'as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat'.³⁰² It further noted (with 'profound alarm') that as the adverse effects of climate change increase, the impacts include displacement of persons, 'further threatening food security, water available and livelihoods...'.³⁰³ The UNGA asked the ICJ to consider the following questions:

Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

³⁰¹ UNGA Res 77/276 (4 April 2023) UN Doc A/RES/77/276.

³⁰² *ibid.*

³⁰³ *ibid.*

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
- (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?³⁰⁴

Although the request does not refer to climate change as a threat to the peace, it is clear that the UNGA believes that the effects of climate change are impacting global security. If the ICJ does opine on States' obligations, it may assist States in raising disputes where those obligations are not met.

A definite, if non-binding, comment from the ICJ on State obligations may also help the UNSC in making a determination under Article 39, where it is clear that States are acting in violation of international law. Until the ICJ releases its advisory opinion, it will be challenging to determine what these violations may entail. The Court could, for example, opine that a failure to mitigate the impact of climate change violates the right to a clean, healthy, and sustainable environment, and thus would violate international human rights law.³⁰⁵ It could also be found that States have violated their obligations under the Paris Agreement by not applying the principle of due diligence when setting their National Determined Contributions (NDCs), and consequently

³⁰⁴ *ibid.*

³⁰⁵ Note that UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300 found that a clean, healthy, and sustainable environment was a human right. The resolution was unanimously adopted, suggesting that all Member States agreed that this was a basic human right. For wider discussion of the right to a clean environment as a human right see, John H. Knox, 'Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Focus Report on Human Rights' (19 July 2018) UN Doc A/73/188; Jacob Katz Cogan and others (eds), 'The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment' (2023) 117(1) *The American Journal of International Law* 128; Professor Malgosia Fitzmaurice and Dr Jill Marshall, 'The Human Right to a Clean Environment – Phantom or Reality? The European Court of Human Rights and English Courts Perspective on Balancing Rights in Environmental Cases' (2007) 76 *Nordic Journal of International Law* 103.

setting inadequate goals.³⁰⁶ As Paige found, such violations of international law were among the primary reasons the UNSC members were willing to declare threats to the peace.³⁰⁷

Although the five permanent members of the UNSC provide the majority of State practice when looking at approaches to Article 39 (due to their constant presence on the Council), other States also provide some insight during their UNSC terms. For example, UNSC Resolution 2177, which declared the Ebola crisis as ‘threat to the peace’ in 2014, was co-sponsored by 130 states, the largest ever for a UNSC Resolution. This suggests that those 130 States saw Ebola, a non-traditional security threat, as a ‘threat to the peace’.³⁰⁸ It must be noted though that Brazil and Colombia did not view the disease as reaching the threshold required for Article 39. During the debate, Brazil recognised that the disease had the potential to ‘destabilise fragile situations in Liberia, Guinea and Sierra Leone and spread far beyond the affected countries.’³⁰⁹ However, it further stated, ‘we underline the need to treat the outbreak first and foremost as a health emergency and a social and development challenge rather than a threat to peace and security.’³¹⁰ Colombia agreed, stating that the outbreak was a crisis but could not ‘be characterized as a threat to international peace and security in general.’³¹¹ Brazil and Colombia were the outliers in the debate, and all other States who spoke supported the characterisation of the outbreak as a threat to peace and security, albeit for differing reasons.³¹² UNSC Resolution 2177 will be discussed in further detail later in the chapter during the analysis of the subsequent practice of the organisation itself.

Since all States are parties to the UN Charter, it is difficult to identify consistent State practices and agreements between them all. However, the divergent views of small numbers of States (such as Colombia and Brazil concerning Ebola) do not undermine the interpretative value of

³⁰⁶ For discussion on the potential outcome and findings of the ICJ’s advisory opinion on climate change see, Daniel Bodansky, ‘An ICJ Advisory Opinion on Climate Change: Ten Questions and Answers (Center for Climate and Energy Solutions, October 2022) <<https://www.c2es.org/wp-content/uploads/2022/10/an-icj-advisory-opinion-on-climate-change-ten-questions-and-answers.pdf>> and Maria Antonia Tigre and Jorge Alejandro Carrillo Bañuelos ‘The ICJ’s Advisory Opinion on Climate Change: What Happens Now?’ (Climate Law: A Sabin Centre Blog, Columbia Law School, 29 March 2023) <<https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/>>.

³⁰⁷ Paige (n 298).

³⁰⁸ UNSC Resolution 2177 (18 September 2014) UN Doc S/RES/2177.

³⁰⁹ UNSC ‘69th Session 7268th Meeting’ (18 September 2014) UN Doc S/PV/7268 28.

³¹⁰ Anna Hood, ‘Ebola: A Threat to the Parameters of a Threat to the Peace?’ (2015) 16 Melbourne Journal of International Law 29 37.

³¹¹ UNSC (n 309) 45.

³¹² Anna Hood categorises these reasons in five groups – prospect of conflict, instability within States, Human Security, Emergency or Crisis and the need for international action and cooperation (n 310) 38.

considering the alignment of a majority of States' views. Indeed, the practice of the UNSC requires only a majority (and the permanent five) to make a decision binding on all Member States. For these reasons, the practice of the UNSC holds more significant value than the practice of individual Member States when interpreting the Charter, and such practice will be discussed later in this chapter.

The last pertinent part of Article 31 of the VCLT requires consideration of the treaty's object and purposes. For the UN Charter, the primary purpose is outlined in the preamble:

[...] our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.³¹³

The primary purpose of the UN Charter was to establish the United Nations. In that case, the next logical step is to consider the UN's purposes and which interpretation best affects those purposes. Article 1(1) details the purpose most linked to peace and security:

[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace[.]³¹⁴

In the *Certain Expenses* case, the ICJ made specific note of the importance of peace and security to the UN observing, '[t]he primary place ascribed to international peace and security is natural since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition.'³¹⁵ The opposite can also be true, that fulfilment of those other purposes helps to ensure international peace and security.

³¹³ UN Charter Preamble.

³¹⁴ *ibid* art 1(1).

³¹⁵ *Certain Expenses* (n 234) 168.

Looking at the object and purpose as a tool in interpreting the UN Charter and Article 39, it can be concluded that the UN's overarching purpose is to maintain international peace and security, and suppressing acts of aggression and avoiding conflict is just one objective within that purpose.³¹⁶ This is supported by the wording of Article 39 itself, which considers an act of aggression as one of the three triggers of Chapter VII action, suggesting that a 'threat to the peace' does not have to be an act of aggression or armed force.

Article 32 of the VCLT permits recourse to the preparatory material of the treaty to confirm an interpretation, or to determine a meaning where an interpretation under Article 31 results in an ambiguous, obscure, absurd, or unreasonable outcome. It is useful then to consider the preparatory material of the Charter to confirm a broad interpretation, which could include climate change as a threat to the peace within the scope of Article 39.

The decision to leave the term 'threat to the peace' undefined was deliberate, and subsequent attempts to provide clarity have failed.³¹⁷ This lack of definition in Article 39 could be explained in two opposing ways. The drafters did not define 'threat to the peace' as it was considered that the meaning would be self-evident and refer to conflict. Contrastingly, it could also have been left open to allow for an evolutionary interpretation, with the expectation that threats would change over time. It is this latter interpretation of the drafters' decisions that would allow for the inclusion of climate change as a threat to the peace.

The option to define or restrict within the text was open to the drafters, as evidenced by the preparatory materials. By keeping the triggers in Article 39 undefined, the drafters deliberately left the door open for a broader interpretation (rather than expecting that the term was narrow and self-explanatory, referring only to conflict). Indeed, at the time, the United States Secretary of State, Edward Stettinius, reported that 'an overwhelming majority of the participating governments thought that the circumstances in which threats to the peace or aggression might occur are so varied that the provision should be left as broad and as flexible as possible.'³¹⁸ This view is supported by the report of Mr Paul Boncour, a rapporteur at the conference that established the UN. In his report on the part of the draft related to the role of the UNSC, he

³¹⁶ Wolfrum (n 25) para 17.

³¹⁷ Paige (n 298) 1–2.

³¹⁸ Edward R. Stettinius, Jr, *Report to the President on the Results of the San Francisco Conference* (U.S. Govt. Print. Off. 1945) 90–91.

noted that the committee charged with reviewing it decided to leave to the Council the entire decision as to what constitutes a threat to the peace, a breach of the peace, or an act of aggression.³¹⁹ Although the UN was created in the shadow of international conflict, it is evident that avoiding armed conflict was not the only threat to peace and security in the creators' minds. The preparatory materials for the Charter support a broad interpretation of Article 39, and therefore the consideration of climate change as a threat to the peace.

After considering the ordinary meaning, context, and object and purpose, as well as the preparatory materials, it is fair to conclude that 'threat to the peace' in Article 39 can extend to include the threat posed by climate change. This position is further bolstered by now looking to the specific interpretative considerations relevant to constitutive treaties, namely effectiveness and organisational practice.

Looking firstly to the principle of effectiveness. For the Charter to be effective, it must be interpreted in such a way that it allows the UN to achieve its purpose. When the Charter was drafted, it was likely unforeseeable that a threat to the environment could threaten peace; certainly, climate change was not something contemplated. The historical context at the time of drafting would suggest the primary aim of the UN was to avoid another international armed conflict. There were attempts to define and narrow the scope of Article 39 at the time of drafting, particularly by smaller States, so it could be clear when and how enforcement action by the UNSC would be used.³²⁰ These were opposed as previous attempts to define such triggers had proven inadequate, and there was a need to ensure that the UNSC could meet all possible situations of threat.³²¹ Ultimately, the text that was agreed upon is broad and without limitation. As the ICJ noted in the Namibia case, the text must be read as 'by definition evolutionary'.³²² The UN, and by extension the UNSC, would be unable to be effective in maintaining international peace and security if 'threat to the peace' were to be limited to a narrow definition, not allowing for development as new threats emerge. This analysis leads to the same conclusion as that related to

³¹⁹ Paul Boncour, 'Report on Chapter VIII, Section B' (1945) UN Doc 881, III/3/46.

³²⁰ Nico Krisch, 'Ch.VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Introduction to Chapter VII: The General Framework' in Bruno Simma and others (eds) (n 153) para 6. See also, Grayson Kirk, 'The Enforcement of Security' (1945) 55(1) Yale Law Journal 1081 and Edward Luck, 'A Council for all Seasons: The Creation of The Security Council and Its Relevance Today' in Lowe (n 290).

³²¹ Kirk (n 320) 1088.

³²² *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 277* (n 266) para 53.

‘object and purpose’, that the UNSC cannot discharge its overall purpose if it cannot consider climate change as a ‘threat to the peace’.

Turning secondly to organisational practice, in the case of the UN, its own subsequent practice is more helpful than the States Parties’ practice when interpreting its own treaty. The UNSC is itself the best arbiter of what its own powers are and its actions follow the same trajectory as those of States in that a broader interpretation of ‘threat to the peace’ is becoming more common. To understand UNSC practice in respect of Article 39, it is necessary to conduct an overview generally of its resolutions, particularly when invoking Chapter VII.

In the years immediately following the establishment of the UN, little agreement could be reached between the five permanent members in the context of the Cold War, and it was rare that the UNSC would act under Chapter VII. Indeed, the UNSC adopted more resolutions between 1988 and 1994 than it had in the almost 40 years prior.³²³ However, there were a few occasions when the UNSC reached a consensus and determined a ‘threat to the peace’ under Article 39 before 1988. These included, in 1965 in respect of the illegal, racist regime in Southern Rhodesia (now Zimbabwe); in 1969, about the Civil War in Zaire (now the Democratic Republic of the Congo); and in 1977, in condemning the system of Apartheid in South Africa.³²⁴ All were internal matters, not yet creating international conflict; an indication of a shift, even then, away from just interstate conflict.³²⁵

Following the conclusion of the Cold War and the dissolution of the Soviet Union, the UNSC was significantly more active and made several Article 39 determinations. In 1991, it determined the situation in respect of the Kurds and Shiite Muslims in Iraq to be a ‘threat to the peace’, specifically, the repression of civilians and the consequential flow of refugees across international borders.³²⁶ Inger Osterdahl notes that it is unclear whether the violence to the population, or the movement of people across the border triggered the threat.³²⁷ Still, as the latter is a direct

³²³ Inger Osterdahl, *The Interpretation by the Security Council of Article 39 of the UN Charter*, (Uppsala: Och Justus Forlag 1998) 10.

³²⁴ *ibid.* See also UNSC Res 161 (21 February 1961) UN Doc S/RES/161 on the Situation in the Congo (France and USSR abstaining); UNSC Res 216 (12 November 1965) UN Doc S/RES/216 on Southern Rhodesia (France abstaining); and UNSC Res 392 (19 June 1977) UN Doc S/RES/392 and UNSC Res 417 (31 October 1977) on South Africa (unanimous).

³²⁵ Osterdahl (n 323) 81.

³²⁶ UNSC Res 688 (5 April 1991) UN Doc S/RES/688.

³²⁷ Osterdahl (n 323) 45.

consequence of the former, it seems pertinent to have included both in the determination.³²⁸ Similar resolutions were made regarding the situations in Haiti in 1993 and Rwanda in 1994.³²⁹ In both cases, internal violence and/or political unrest led to the mass movement of refugees across borders, leading the UNSC to consider the situation a threat.

The UNSC also began to consider situations causing extreme humanitarian consequences internally to a State to be a threat, even in the absence of mass movement of persons. This was seen in respect of the UNSC's Resolutions regarding Somalia in 1992.³³⁰ In that situation, the UNSC determined that the internal conflict and severe humanitarian consequences threatened international peace and security, partially due to the inability to provide humanitarian aid to the civilian population.³³¹ UNSC Resolution 794 authorised Member States to use 'all necessary means' to establish a secure environment for the delivery of humanitarian relief in Somalia.³³² This is significant as 'all necessary means' allows for Article 42 measures, including the use of military force. The extreme humanitarian crisis in Somalia itself was not an armed conflict (although the ongoing Somali Civil War had caused the suffering). The willingness of the UNSC to invoke Articles 39 and 42 to respond to the humanitarian crisis (rather than the Civil War itself) demonstrates a broader interpretation of 'threat to the peace' by the organisation. It is foreseeable that humanitarian crises resulting from climate change (including the movement of people, famine, and drought) may also trigger Article 39, even without a triggering or exacerbating conflict.

The last category of threats which formed the majority of the determinations in the 1990s were related to Sudan and Libya, though again from a different starting point. Both Libya and Sudan refused to extradite international terrorism suspects to the victim States (Libya, being those allegedly responsible for the Lockerbie aircraft crash in 1988, and Sudan, the man accused of attempting to assassinate the President of Egypt in 1995).³³³ In both cases, the threat perceived by

³²⁸ *ibid.*

³²⁹ For Haiti see UNSC Res 841 (16 June 1993) UN Doc S/RES/841; for Rwanda see UNSC Res 912 (21 April 1994) UN Doc S/RES/912. Both these resolutions were the start point for UNSC action, many subsequent resolutions followed.

³³⁰ UNSC Res 794 (3 December 1992) UN Doc S/RES/794. As in n 329, this resolution started the UNSC action, but there were many subsequent resolution on the same situation.

³³¹ Osterdahl (n 323) 53–54.

³³² UNSC Res 794 (n 312) para 10.

³³³ Osterdahl (n 323) 75–77.

the UNSC was the States' refusal to comply with previous UNSC demands.³³⁴ Following this precedent, should the UNSC issue decisions in respect of climate change and States fail to comply, this failure could trigger an Article 39 determination.

These three categories (conflict or political unrest leading to the mass movement of people, severe humanitarian crises, and failure to comply with UNSC resolutions) lie outside the narrow traditional view of Article 39 in that they did not include hostilities by one State on another. All included internal issues that had yet to cross international boundaries. Yet, all still have some link to violence or conflict, which perhaps more easily fit within the common usage of 'threat'. If only relying on these examples, it is undoubtedly simpler to characterise climate change as a 'threat' where there is a tangible link to conflict or traditional threats. Since 2000, however, further resolutions have suggested this may no longer be the case.

The UNSC has used its powers regarding non-traditional security threats, unrelated to conflict or violence, most often in response to health crises. In 2000, the UNSC debated the HIV/AIDS crisis in Africa.³³⁵ The United States of America, in particular, took a strong view, stating that 'AIDS is one of the most devastating threats ever to confront the world community [...] The United Nations was created to stop wars. Now we must wage and win a great and peaceful war of our time – the war against AIDS.'³³⁶ The United Kingdom partially supported the United States of America in this view, particularly when considering the crisis as a broader humanitarian issue directly impacting UN peacekeeping operations in Africa.³³⁷ Russia took the view that AIDS was one of the most 'serious non-military threats to peace and security', though still considered it better suited to the UNGA and other organs of the UN.³³⁸ In contrast, France believed that the UNGA and Secretariat better addressed the crisis, as it was linked to health, economics, and politics, not security.³³⁹ France, however, did acknowledge a link between the AIDS pandemic and deteriorating peace and security, but still viewed it as outside the UNSC mandate.³⁴⁰ The United States of America was the only permanent member to find the pandemic to be a 'threat to the

³³⁴ For Libya see UNSC Res 731 (21 January 1992) UN Doc S/Res/731 and for Sudan see UNSC Res 1044 (21 January 1996) UN Doc S/Res/1044.

³³⁵ UNSC, '55th Session, 4087th Meeting' (10 January 2000) UN Doc S/PV.4087.

³³⁶ *ibid* 7.

³³⁷ Paige (n 280) 164.

³³⁸ *ibid* 165.

³³⁹ *ibid*.

³⁴⁰ *ibid*.

peace' by arguing the threat was sufficiently grave to make the 'existence of the threat self-evident.'³⁴¹

The divergence in the views of the five permanent members resulted in a UNSC resolution that indicated the HIV/AIDS pandemic, 'if unchecked,' could threaten stability and security.³⁴² It did not go so far as to evoke Article 39, but did encourage Member States to work together to address the impact the pandemic may have. This was further developed in 2011 with UNSC Resolution 1983, and the UNSC recognised that HIV/AIDS posed a significant challenge to the 'development and stability' of States.³⁴³ Without declaring the pandemic a threat to the peace under Article 39, no more substantial action could be recommended or directed under Chapter VII. Although not quite reaching the threshold of a 'threat', these resolutions indicate that Member States were open to viewing Article 39 as applying beyond conventional conflict.

The UNSC's response to the 2014 Ebola health crisis went further than its response to the HIV/AIDS epidemic. As mentioned earlier in this thesis, UNSC Resolution 2177 determined the Ebola crisis was a threat to international peace and security under Article 39.³⁴⁴ This was the first time the UNSC had explicitly used Article 39 to deal with a health threat and the decision was almost unanimous across all member States who spoke (with the exception of Brazil and Colombia).³⁴⁵ Anna Hood has considered the Ebola determination in detail, analysing how each State was able to conclude that the disease could be a threat to the peace.³⁴⁶ She found that some States still conceptualised their support for the resolution through the lens of conflict. Lithuania and Chile, for example, noted that the risk Ebola posed in Guinea, Liberia and Sierra Leone was compounded as they were post-conflict States, where the pandemic could weaken already fragile economic and political systems, and cause a reversion to conflict.³⁴⁷ Other States took a broader view.³⁴⁸ Some saw it as likely to create instability as well as humanitarian, social, and economic

³⁴¹ *ibid* 166.

³⁴² UNSC Res 1308 (17 July 2000) UN Doc S/RES/1308.

³⁴³ UNSC Res 1983 (17 June 2011) UN Doc S/RES/1983.

³⁴⁴ UNSC Res 2177 (n 308).

³⁴⁵ Hood (n 310) 37–8.

³⁴⁶ *ibid*.

³⁴⁷ *ibid* 38.

³⁴⁸ *ibid*.

consequences within each affected State, but stopped short of it being likely to cause conflict in the short term.³⁴⁹

Most significantly for this thesis, Hood found that some States drew upon the broader concept of ‘human security’, something unique when compared to previous Article 39 practices.³⁵⁰ This perspective suggests that threats to human life, beyond those caused by conflict (such as hunger, disease, poverty, and environmental damage), may rise to the level of a threat to the peace. While no State specifically used the phrase ‘human security’, they did look to humanitarian concerns, such as the number of cases and deaths (Guyana, Nicaragua and China), or the fact that health systems generally were overwhelmed, impacting the overall health of the populations (Liberia). Others stretched the line further, linking the significance of the health crisis to the degradation of living conditions, access to food, and increase in poverty.³⁵¹

Resolution 2177 mandated international action and established the UN’s first global medical mission.³⁵² This resolution indicates the UNSC’s willingness to make determinations under Article 39 for non-traditional threats to the peace, even while recognising that other UN organisations (such as the World Health Organisation and the UNGA) have a role to play. The UNSC has, therefore, demonstrated that it does not consider itself prevented from acting, even where it may seem more appropriate for another UN organ to respond. This also shows a shift in perspective and a tentative agreement, that issues likely to threaten ‘human security’ can fall under the purview of the UNSC.

More recently, the UNSC called for greater global cooperation in creating equitable access to the COVID-19 vaccination.³⁵³ While that Resolution stopped short of declaring the COVID-19 pandemic to be a threat to the peace, it did state that the UNSC considered that ‘the unprecedented extent of the COVID-19 pandemic is likely to endanger the maintenance of international peace and security’.³⁵⁴ This is another very recent acceptance by the UNSC of its

³⁴⁹ UNSC Res 2177 (n 308). See comments from African Union, Canada, Chad, China, France, Guinea, Israel, Jordan, Korea, Liberia, Lithuania, Luxembourg, the Netherlands, Nicaragua, Norway, Sierra Leone, Spain, Turkey and Uruguay.

³⁵⁰ Hood (n 310) 40.

³⁵¹ *ibid* 42.

³⁵² Sebastian von Einsiedel and David M. Malone, ‘Security Council’ in Thomas G. Weiss and Sam Daws (eds) *The Oxford Handbook on the United Nations* (Oxford Academic 2018) 155–56. The UN Mission for Ebola Emergency Response (UNMEER) was the UN’s first ever emergency health mission, and was in operation from September 2014 to 31 July 2015.

³⁵³ UNSC Res 2565 (26 February 2021) UN Doc S/RES/2565.

³⁵⁴ *ibid*.

ability to make resolutions is beyond that related to conflict. It is not difficult to draw an analogy between the threat attributed to health emergencies, and that being posed by climate change. Both cause human suffering and threaten the maintenance of international peace and security if left unmanaged.

Outside of health emergencies, the UNSC has also used Article 39 to respond to the threats of terrorism and weapons of mass destruction in the early 2000s. UNSC Resolution 1373 was explicitly enacted under Chapter VII of the Charter in the immediate aftermath of the terrorist attacks of September 11th 2001.³⁵⁵ The Resolution declared that such acts of international terrorism constitute a threat to international peace and security, and directed action by Member States. Though it did not refer to Article 39, it can be assumed that in invoking Chapter VII, the UNSC considered terrorism a ‘threat to the peace’ as it directed action under Chapter VII. Terrorism is ultimately a criminal enterprise, not traditionally linked to inter-State relations or conflict. Although that link is now perhaps stronger than in the past, the point stands that terrorism is not in and of itself conflict.

UNSC Resolution 1540 in 2004 which declared the proliferation of weapons of mass destruction (WMDs) a ‘threat to the peace’ and, again under Chapter VII, directed action by States to stop their spread.³⁵⁶ Disarmament and regulation of armaments is already clearly the purview of the UNGA. Article 11 of the UN Charter states

The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.³⁵⁷

The UNSC adopted Resolution 1540 independently from the UNGA. This demonstrates that the UNSC is willing and able to take action on matters not only from outside their direct area of responsibility, but also where the matter may be specifically assigned to another UN body.

Although both international terrorism and the proliferation of WMDs are clearly linked to physical harm to a person or people, they are not directly related to a potential or existing conflict.

³⁵⁵ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.

³⁵⁶ UNSC Res 1540 (29 April 2004) UN Doc S/RES/1540.

³⁵⁷ UN Charter, art 11.

Neither is linked to a specific place or time, further supporting the view that a ‘threat’ does not have to be specific or directly related to a conflict. The ‘threats to the peace’ posed by terrorism and the proliferation of WMDs are analogous to that posed by climate change, in that all are threats to the peace that are precursors to, or exacerbators of, conflict, rather than conflict themselves. Climate change is also not linked to a specific time or place. Still, it presents an overall threat to humanity, both in relation to the potential for violence and harm against individuals and to overall stability. The willingness of the UNSC to take action on the proliferation of arms rebuts, at least partially, the argument that climate change belongs to other UN organs. If disarmament can be brought under the UNSC’s purview, in spite of Article 11(1), it follows that they are not barred from doing so in respect of climate change.

The UNSC has made resolutions regarding several other non-traditional security matters, though it has stopped short of making Article 39 determinations in those situations. In 2010, following the earthquake in Haiti, the UNSC increased the presence of the UN Stabilisation Mission in Haiti (MINUSTAH) to assist in ‘the immediate recovery, reconstruction and stability efforts.’³⁵⁸ The increase included nearly 9,000 additional military personnel and another 3,500 police personnel. It is not clear whether such action would have occurred had MINUSTAH not already been present in Haiti; however, it does show a willingness on the part of the UNSC to take action after a natural disaster.³⁵⁹ Additionally, although the post-earthquake extension to MINUSTAH did not mention Chapter VII, the mission’s initial establishment in 2004 was under Chapter VII powers after the UNSC had determined that the situation in Haiti ‘constitutes a threat to international peace and security.’³⁶⁰ This indicates that where there is an existing security situation, the UNSC may take action where a non-traditional security issue (such as climate change) may exacerbate that situation.

The discussion above demonstrates that Article 39 can be interpreted in such a way that threats to the peace can include precursors to conflict or generic threats not linked to a time or place. Can, then, climate change be construed as such a thing? To answer that question, it is helpful to consider two likely consequences of climate change: mass migration or transnational movement

³⁵⁸ UNSC Res 1908 (19 January 2010) UN Doc S/RES/1908.

³⁵⁹ Nevitt, ‘Is Climate Change a Threat to International Peace and Security’ (n 19) 547.

³⁶⁰ UNSC Res 1542 (20 April 2004) UN Doc S/RES/1542.

of people; and the increased likelihood of internal political and economic instability (including humanitarian concerns).

Turning firstly to the transnational mass movement of people, the UNSC determined that mass migration threatened peace in the early 1990s.³⁶¹ Civil wars, repression of populations, and political instability were the root causes of migration in those cases. For example, in UNSC Resolution 688, the UNSC made clear that a primary concern for international peace and security concerning the repression of parts of the civilian population in Iraq was the ‘massive flow of refugees towards and across international frontiers...’³⁶² Similarly, in UNSC Resolution 841, the UNSC found the potential for an increasing number of Haitians seeking refuge outside of Haiti to impact peace and security.³⁶³ There is ample evidence to suggest that climate change will lead to migration and the mass displacement of populations. For instance, in the Pacific, the rising sea levels caused by climate change have already led to the relocation of entire communities from low-lying islands such as Kiribati and the outer islands of Papua New Guinea. This is a clear example of how climate change can directly result in mass migration.³⁶⁴ Following the UNSC practice concerning Iraq and Haiti, it is reasonable to conclude that the potential migration of people due to climate change could be a ‘threat to the peace’, initiating UNSC action.

Secondly, UNSC practice supports the notion that a threat to the peace can be related to a purely internal issue within one state. As Osterdahl argues, the phrase in Article 39 is ‘threat to the peace,’ not ‘threat to international peace.’³⁶⁵ This has been demonstrated through the resolutions in response to the Ebola crisis and those regarding the protection of the Kurds in Iraq, the response to the Rwandan Genocide, and the political situation in Haiti in 1994.³⁶⁶ All were purely internal issues, likely to cause instability within a State and have devastating effects on the population of the States. Still, none were likely to cause transboundary or international problems. Climate change could be a trigger that causes purely internal issues, such as poverty, famine, and

³⁶¹ For a general discussion of the UNSC and Humanitarian intervention, see Jennifer M. Welsh, ‘The Security Council and Humanitarian Intervention’ in Lowe and others (eds) (n 290).

³⁶² UNSC Res 688 (n 326) and Welsh (n 361), 538-9.

³⁶³ UNSC Res 841 (16 June 1993) UN Doc S/RES/841.

³⁶⁴ See also earlier discussion in this thesis on the migration from the Carteret Islands in Papua New Guinea and *Teitooa v New Zealand* (pp20–21).

³⁶⁵ Inger Osterdahl, ‘By All Means, Intervene! The Security Council and the Use of Force under Chapter VII of the UN Charter in Iraq (to protect the Kurds), in Bosnia, Somalia, Rwanda and Haiti?’ (1997) 66 *Nordic Journal of International Law* 241, 270–71.

³⁶⁶ *ibid.*

drought, due to extreme localised weather events. Additionally, as with the Ebola crisis, the risk of a return to violence or repression posed to States immediately post-conflict or to those with already vulnerable government institutions is increased by climate change. As France noted in the Ebola meetings, ‘the Ebola virus is threatening to erase the peace dividends and ignite chaos in those countries.’³⁶⁷ This statement could equally be applied to the threat that climate change’s consequences pose to the internal and human security of States in the same situation.

Having established that the UN Charter can be interpreted in such a way as to include climate change as a ‘threat to the peace’, it is now necessary to consider what this means in practice. If the UNSC were to declare climate change a ‘threat’ using Article 39, it would then be able to use its extensive, and binding, powers in Chapters VI and VII. Next follows an analysis of what that would look like, further utilising previous examples of UNSC practice when responding to non-traditional threats.

³⁶⁷ UNSC (n 309) 10.

Section Two: Options Open to the UN Security Council

The most significant UNSC powers are found in Chapter VII of the UN Charter and trigger following a determination under Article 39. Before such a determination is made the UNSC may (under Article 40) call on the parties to comply with such provisional measures as it deems necessary to prevent further aggravation of the situation. The use of provisional measures under Article 40 is not a required step, and the UNSC can move to Articles 41 and 42 should they determine a threat to the peace, breach of the peace, or act of aggression already exists.

Article 41 provides for a range of measures, not including armed force, such as economic sanctions and severance of diplomatic relations.³⁶⁸ Although not entirely clear from the text (which uses the words ‘calls upon’), measures decided by the UNSC are binding on Member States.³⁶⁹ Measures are often ordered to compel compliance with UNSC decisions; however, they occasionally result from a State’s request. This was the case with UNSC Resolution 713 in 1991, which ordered an arms embargo for the former Yugoslavia following requests from other European nations.³⁷⁰ Contemporary resolutions under Article 41 include arms embargoes, travel bans, and asset freezes. They apply in varying degrees against several states, including Somalia, Yemen, the Democratic People’s Republic of Korea, Mali and South Sudan, and against specific groups such as the Taliban, Da’esh, and Al-Qaida.³⁷¹ The lack of a resolution from the UNSC does not prevent other States from taking unilateral action akin to that provided for in Article 41. For example, many States enacted sanctions against Russia following the invasion of Ukraine in February 2022.³⁷²

Article 42 goes further and permits using armed force to restore international peace and security, it states

³⁶⁸ UN Charter, art 41.

³⁶⁹ Nico Krisch, ‘Ch.VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 41’ in Bruno Simma and others (eds) (n 153) para 10.

³⁷⁰ UNSC Res 713 (25 September 1991) UN Doc S/RES/713.

³⁷¹ Department of Political and Peacebuilding Affairs Division, ‘Part VII: Actions with respect to threats to the peace, and acts of aggression (Chapter VII of the Charter)’ in *Repertoire of the Practice of the Security Council* (24th Supp, UN 2021) Table 4 42.

³⁷² See for example New Zealand <<https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions/russia-sanctions-register/>>, the United States (Executive Order 14024, 15 April 2021) and The European Union <<https://www.consilium.europa.eu/en/policies/sanctions-against-russia/sanctions-against-russia-explained/>> all last accessed on 27 August 2024.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces, as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.³⁷³

These measures taken by the UNSC under Article 42 are known as ‘enforcement actions’. Although initially intended to be conducted by a UN permanent force (which was never established), enforcement actions are now undertaken by Member State-provided personnel under UN command on an ad hoc basis by Member States, or regional security organisations under UNSC authorisation.³⁷⁴ Examples of Article 42 authorisations or mandates include the use of force to repel an act of aggression by one State against another (Iraq’s invasion of Kuwait in 1990), naval blockades to enforce sanctions (in Haiti and Sierra Leone), and peacekeeping operations (such as those in the Former Yugoslavia, Somalia, Kosovo and Timor Leste).³⁷⁵

Should the UNSC find climate change to be a ‘threat to the peace’ and make such a determination under Article 39, Articles 41 and 42 provide options for their response. There are a number of examples from past UNSC practice which could be drawn upon as a model for UNSC action on climate change.

Using Resolution 2177 (response to the Ebola crisis) as a model, the UNSC could issue a resolution using Article 41 and call on members to assist States most impacted by climate change or, indeed, to help States to mitigate climate change.³⁷⁶ Such assistance could include financial support, expertise, and equipment. Article 41 measures could also enforce compliance with mitigation measures, noting that most emission reduction targets are unmet. These could be embargoes on natural resources from States not meeting clean energy goals, or transportation sanctions from States not meeting emission reduction targets due to ineffectual regulation on the continued use of fossil fuels.

³⁷³ UN Charter, art 42.

³⁷⁴ Nico Krisch, ‘Ch.VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 42’ in Bruno Simma and others (eds) (n 153) paras 3–5.

³⁷⁵ UNSC, ‘FAQ’ (*United Nations Security Council*) <<https://www.un.org/securitycouncil/content/faq>> last accessed 18 June 2024.

³⁷⁶ UNSC Res 2177 (n 308).

The UNSC's reaction to the Haiti Earthquake presents a slightly different set of circumstances analogous to the effects of climate change, if not directed at stemming the cause itself.³⁷⁷ The UNSC's use of Chapter VII to respond to a natural disaster bodes well for any argument that Chapter VII can be used to respond to climate change. It indicates that the increasingly frequent extreme weather events resulting from climate change can prompt a robust response, especially in unstable communities. As this demonstrates, the UNSC can respond to climate change in situations where the havoc wreaked by natural disasters will embolden instability (notwithstanding that Haiti was already hosting a UN peacekeeping force) and threaten human security.

It is more challenging to envision how Article 42 measures would be appropriate in response to climate change. However, if climate change is a 'threat to the peace' under Article 39, the option is open to the UNSC, even in the absence of violence or conflict. There is, of course, the possibility of actual aggression or conflict linked to the problem, such as those discussed earlier (the possibility of new territorial wars in the Arctic, or conflict over access to cross-border waterways). A decision by the UN to permit 'all necessary means' to end such a conflict is in keeping with the traditional use of Article 42. This is where it is most likely that the UNSC would use Article 42 in responding to climate change, where it is causing or exacerbating traditional conflict.

Even in the absence of conflict, there may be ways in which enforcement measures could be appropriate. For example, the mass migration of people (climate refugees) across borders may become so disruptive that it requires UNSC intervention. This could be done through UN peacekeeping forces monitoring borders and guarding refugee and migrant camps on either side. Such a mission could be similar to the UN Mission in South Sudan (UNMISS). That mission's mandate (most recently extended in UNSC Resolution 2726) authorised the use of all necessary means to 'prevent a return to civil war in South Sudan, to build durable peace at the local and national levels, and to support inclusive and accountable governance and free, fair, and peaceful elections...'³⁷⁸ Although the majority of the tasks for UNMISS are related closely to the prevention of further violence against the civilian population, there are also tasks associated with the management of internally displaced persons (IDPs) and refugees. Specifically:

³⁷⁷ UNSC Res 1908 (n 358).

³⁷⁸ UNSC Res 2567 (12 March 2021) UN Doc S/RES/2567. See also UNSC Res 2677 (15 March 2023) UN Doc S/RES/2677; and UNSC Res 2726 (14 March 2024) UN Doc S/RES/2726.

(viii) [t]o foster a secure environment for the safe, informed, voluntary, and dignified return, relocation, resettlement or integration into host communities for IDPs and refugees when and to locations where conditions are conducive, including through monitoring of, ensuring respect for human rights by, where compatible and in strict compliance with the United Nations Human Rights Due Diligence Policy (HRDDP)[...].³⁷⁹

It is easy to imagine such a task where the IDPs and refugees in question have been moved due to the effects of climate change. This is especially true when the mass arrival of people will exacerbate already existing resource scarcity or ethnic tensions.

A humanitarian crisis might also justify Article 42 action where food, water, or energy is so limited (or indeed disproportionately distributed) that third-party intervention is needed to ensure access or to protect the flow of humanitarian aid.³⁸⁰ Again, the UNMISS mandate provides an existing example. Resolution 2567 also authorises the use of all necessary means to:

contribute, in close coordination with humanitarian actors, to the creation of security conditions conducive to the delivery of humanitarian assistance, so as to allow, in accordance with international law, including applicable international humanitarian law, all humanitarian personnel full, safe and unhindered access to all those in need in South Sudan and timely delivery of humanitarian assistance, including IDPs and refugees, consistent with UN guiding principles of humanitarian assistance, including humanity, impartiality, neutrality, and independence[.]³⁸¹

A mandate such as this could also be implemented where humanitarian assistance is needed to respond to a climate-related crisis. If climate change had already been declared a ‘threat to the peace’, such a response could simply build on an existing mandate on climate. This would remove the need to debate whether the specific moment or event was a ‘threat to the peace’, as it could fall under an over-arching response to climate change.

³⁷⁹ UNSC Res 2567 (n 352).

³⁸⁰ It is foreseeable that a food crisis such as the one somewhat resolved by the Black Sea Grain Initiative (following the start of the Russia/Ukraine War) could occur as a result of climate change. Article 42 powers would enable States to take more robust action in enforcing such initiatives.

³⁸¹ UNSC Res 2567 (n 352).

It is also feasible that one State's action or inaction concerning climate change could be considered a risk to others and create a transboundary dispute. For example, the Amazon Rainforest is recognised as playing a 'key role in combating climate change', and deforestation would have significant global consequences.³⁸² As a 'carbon sink', the Amazon absorbs around 5% of the carbon dioxide in the atmosphere and is therefore helping to stem carbon dioxide emissions, one of the main drivers of climate change.³⁸³ It is not unreasonable to foresee that the destruction of such a vital tool in curtailing climate change threatens the peace, noting the consequences would be the acceleration of climate change, including more frequent and severe weather events worldwide.

Although this analysis does support the view that climate change itself is a threat to the peace, it is unlikely, given the disharmony within the UNSC, that there will be sufficient agreement making an Article 39 determination to that effect. There is little consensus among the permanent five members on how to approach non-traditional threats. It is doubtful that these members would support any UNSC Resolution that would place a greater onus on them to mitigate climate change. There is certainly, though, scope for discreet events or specific actions (such as deforestation) to be deemed a threat, particularly if such actions threaten other States who may be considering what action they could take to respond unilaterally.

Without an Article 39 determination, the UNSC would still be free to consider actions under Chapter VI. If a dispute between States threatens the maintenance of international peace and security, those States are legally obligated to seek a peaceful solution (Article 33). Article 34 empowers the UNSC to investigate such a dispute or situation to determine whether its continuance would endanger international peace and security.

The UNSC could find that climate change is a situation whose continuance would endanger international peace and security. This would then be followed by recommendations for States to cooperate in implementing mitigation measures or supporting States vulnerable to the effects. Those recommendations could include intensifying mitigation efforts and refraining from acts that would exacerbate an existing or worsening situation.³⁸⁴ Recalling the previous discussion on

³⁸² Anna Jean Kaiser 'Explainer: Role of the Amazon in global climate change' (*Phys, Org* 27 August 2019) <https://phys.org/news/2019-08-role-amazon-global-climate.html#google_vignette> last accessed 18 June 2024.

³⁸³ *ibid.*

³⁸⁴ Louise Goodwin, 'The UN Security Council and Non-Traditional Security Threats: Why the Failures of the Council's Covid-19 Response Dampens Hopes for Council Action on Climate Change' (2022) 53 *VUWLR* 251, 256.

the forthcoming ICJ advisory opinion on climate change, it would be open to the UNSC to make recommendations based on the ICJ finding on States' obligations in this area.

Any Member can bring such a dispute or situation to the UNSC for consideration. The UNSC can then make recommendations as to how it could be resolved. Where the matter at hand is a dispute rather than a situation, the parties are obliged to refer the issue to the UNSC if they cannot reach a pacific resolution (Article 37). The UNSC has not differentiated its power to make recommendations regarding a dispute from those related to a situation.³⁸⁵

The UNSC has often recommended that the parties involved in the dispute enter into negotiations. Still, the parties have been advised to move to an arbitral tribunal at least once.³⁸⁶ In some cases, it has made recommendations short of a binding decision, such as requesting that Eritrea and Ethiopia adopt 'confidence-building measures' and cooperate with the authority charged with resolving their disputed boundary.³⁸⁷ These are more political or diplomatic solutions than legal or traditional dispute resolution methods.³⁸⁸ Ultimately, none of these recommendations or requests have a binding effect without agreement from the parties.

Climate change could be central to a dispute between States, perhaps most likely on humanitarian grounds. Take, for example, a State that intentionally or knowingly causes pollution, exacerbating climate effects in other States. It would be open to another State to claim that its citizens' rights are being violated by the other State's actions (or negligence).³⁸⁹ Such a claim could be brought to the UNSC's attention under Chapter VI.

For valid reasons, Chapter VI is not often considered when contemplating options for UNSC action regarding climate change. Firstly, recommendations by the UNSC under Chapter VI are not binding on States and are no more enforceable than the existing framework or work done by the UNGA. Secondly, although Article 34 refers to both disputes and situations, the remainder of Chapter VI primarily provides dispute resolution methods.

³⁸⁵ Christian Tomuschat, 'Ch.VI Pacific Settlement of Disputes' in Bruno Simma and others (eds), (n 25), para 38.

³⁸⁶ UNSC Res 118 (13 October 1956) UN Doc S/RES/118.

³⁸⁷ UNSC Res 1369 (14 September 2001) UN Doc S/Res/1369.

³⁸⁸ Tomuschat (n 385), para 45.

³⁸⁹ Sam Blakenship, 'If You Can Bomb It, You Can Litigate It: Climate War, Complicit States and a World on Fire' (2021) 20(1) Washington University Global Studies Law Review 227. Blakenship notes also the example of Australia's mishandling of the 2020 forest fires – stating that had the Government deliberately started the fires (for example to clear land for agriculture) then such an action may qualify, but it's inadequate response to the fires would not.

It is evident that the UNSC has numerous tools at its disposal which could compel Member States to take greater action to mitigate the effects of climate change. For the UNSC to engage the more robust powers it needs to determine that climate change as a 'threat to the peace' for the purposes of Article 39. An overall determination, similar to that related to the threat of international terrorism would make the pathway to action easier. Should climate change already be determined a threat under Article 39, any subsequent resolution directing action could occur swiftly in response to discreet climate-related events. In addition, the UNSC has a role to play even where there is no Article 39 determination, noting that there may be disputes between States on climate change that require UNSC intervention.

Chapter Six: Conclusion

There is an undeniable and urgent reality: climate change stands as one of the most formidable challenges humankind has ever encountered. Whether viewed as a catalyst for traditional security threats or as a discreet threat itself, the repercussions of rising sea levels and global warming have already begun to disrupt international peace and security. This thesis has asserted that the concept of ‘threat to the peace’ in Article 39 of the United Nations (UN) Charter is sufficiently comprehensive to encompass non-traditional security threats, including climate change. This final chapter pulls together the analysis to reinforce the thesis’s central argument: that the UN Security Council (UNSC) is empowered to determine that climate change is a ‘threat to the peace’, and that it should make such a determination and subsequent binding resolutions to spur States to greater action.

When considering climate change through the lens of its consequences, rising sea and atmospheric temperatures, extreme weather events, famine, drought and mass movement of populations, there is a clear link to security. After canvassing the general history of international reaction to, and mitigation of, climate change, it was apparent that a stronger hand was needed in the conversation. The strongest mechanism in the international legal community (outside of a new multi-lateral treaty) is a UNSC Resolution using the powers of Chapter VII of the UN Charter. To prove that climate change could fall under these provisions required an exercise in treaty interpretation.

The analysis in chapter four of this thesis concluded that there are various methods of interpreting the rules for interpretation contained in the Vienna Convention on the Law of Treaties. It further found that the status of the UN Charter as a constitutive treaty, permitted a more expansive approach to interpretation. That approach relied more heavily on the object and purpose of the treaty and the practice of its organisation. It drew on examples from previous UNSC practice, and commentary from the International Court of Justice, to support this approach interpretation. Relying in this broad approach was crucial in establishing the next step of the thesis’ argument, that climate change could (and indeed should) be considered as a ‘threat to the peace.’

The broad approach to treaty interpretation adopted in chapter five allowed for a conclusion that climate change is intrinsically linked to international peace and security. It therefore falls within

the UNSC's purview, as per Article 24 of the Charter. This was, though, only the first step in getting to Article 39. Yes, climate change impacts international peace and security, but it is not automatically a 'threat to the peace.' Certain consequences of climate change will, in their own right, escalate to the level of threat (or even breach) of the peace, particularly when associated with conflict. Notable examples include migration as a result of changes in the climate, climate-related humanitarian crises, and isolated extreme weather events. It was not immediately evident that climate change itself could fit within the meaning of 'threat to the peace.'

After looking at the previous practice of the UNSC and its members, it became clear that there are circumstances where it was willing to look at Article 39 more broadly than just discreet events giving rise to, or exacerbating, conflict. There were some that were linked to violence (if not conflict), such as the UNSC Resolutions on weapons of mass destruction and international terrorism.³⁹⁰ However there were also examples that were more removed from threat in a traditional sense. These included responses to epidemics (such as Ebola) and disaster relief (such as the Haiti Earthquake).³⁹¹ The thesis found that given the UNSC's previous willingness to include non-traditional threats under Article 39, climate change itself would be able to reach the level of 'threat to the peace.'

Having established that climate change could be a 'threat to the peace' it was necessary to then consider what, if anything, that would mean for UNSC action. Although it is open to the UNSC to make an Article 39 determination in this way, it does not automatically imply that the more extreme powers of the UNSC would be appropriate. Article 42 allows for the UNSC to take all necessary means to maintain or restore international peace and security. Based on past UNSC practice, it is most probable that any substantial Article 42 action of this nature would only be triggered by a higher physical or violent threat associated with a specific climate change-related event. For instance, it might involve the loss of territory due to rising sea levels leading to territorial or resource disputes between nations, or the exposure of previously uninhabitable land, which in turn leads to conflict as States vie for access and resources. Such means could involve deploying forces to manage mass migration, or military operations to restore peace where an extreme climate event has broken down governmental systems.

³⁹⁰ UNSC Res 1540 (n 356) and UNSC Res 1373 (n 355).

³⁹¹ UNSC Res 2177 (n 308) and UNSC Res 1908 (n 358).

It seems then that Article 41 measures are more appropriate for dealing with the overall threat of climate change. In particular Article 41 allows for measures short of the use of force to respond to matters determined a 'threat to the peace.' As long as the measures are consistent with the Charter, they may be permitted. For climate change, the UNSC could consider binding orders on States to comply with international standards to reduce climate change's effects (noting the limitation on interfering in domestic matters of States). Where States have wilfully refused to take any action or caused deliberate harm to neighbouring States, Article 41 would allow for the UNSC to call upon Members to implement any number of measures, including economic sanctions or severing of diplomatic relations. Such harm could include rerouting cross-boundary resources (such as water), denying access to another State, or recklessly failing to curb pollution to the detriment of other States.

A determination under Article 39 would also be impactful, even without immediate follow-up action. The UNSC confirming that climate change is generally a 'threat to peace' would place greater gravitas on the situation, potentially leading to increased political and international pressure for the State or States concerned to take the matter more seriously. Additionally, such a determination would make action more accessible later on. Where an event linked to climate change requires immediate action under Chapter VII, the existing determination that climate change is a 'threat to the peace' will remove one obstacle to passing the resolution.

Although this thesis finds that it is open to the UNSC to consider non-traditional security matters (and thus climate change) as threats to the peace in accordance with Article 39, there are risks should it do so. While there has been UN practice and widespread State acceptance of expansion beyond conflict-related threats, it has yet to become universal or consistent. There are States that remain sceptical of such a broad reading, and legitimately so.

The main concern from some States is that non-traditional security threats, particularly environmental issues, are more appropriately handled by other UN bodies, such as the UN General Assembly (UNGA) and the UN Environment Programme (UNEP). There is also a prevailing view that there are existing mechanisms, such as the United Nations Framework Convention on Climate Change (UNFCCC), which would be undermined should the UNSC interfere. Lastly, there is the concern that the UNSC's power rests in the hands of a few States rather than the many, and there is little accountability. As such, there is the risk that States may act in bad faith to interfere with the internal domestic affairs of other States. Overall, the

apprehension is that if the UNSC takes on climate change, it will militarise or securitise the matter when the actual mission of the UNSC is to prevent conflict.

While these fears are understandable, the argument for UNSC involvement is stronger. Climate change is not a new; its effects are growing exponentially. The UNFCCC has existed since the early 1990s, and some 30 years later, States are not on track to meet the needed climate commitments.³⁹² At the latest Conference of the Parties (COP28), UN Climate Change Executive General Simon Stiell said in his closing remarks that the world is headed towards three degrees of global warming, which will still equate to ‘mass human suffering’. The number must be kept to 1.5 degrees, and, as he noted, progress has not been fast enough. He further called upon states to provide greater resources to the UN Climate Change Programme, which is ‘creaking under the weight of mandated processes and workstreams.’³⁹³ The existing framework has been unable to require the level of commitment from States, to make an impactful difference.

It is evident that States are increasingly accepting that climate change will impact international peace and security, but that the existing climate change bodies and mechanisms are not sufficient to mitigate that impact. On World Environment Day 2024, UN Secretary-General Guterres laid plain the choices States are facing in respect of climate change:

We do have a choice: Creating tipping points for climate progress – or careening to tipping points for climate disaster. This is an all-in moment. The United Nations is all-in – working to build trust, find solutions, and inspire the cooperation our world so desperately needs. ... Together, we can win. But it’s time for leaders to decide whose side they’re on. Tomorrow is too late. Now is the time to mobilise, now is the time to act, now is the time to deliver.³⁹⁴

In declaring climate change a ‘threat to the peace’, the UNSC can send a clear message to that now is the time to act, and create a ‘tipping point for climate progress’, one that is sorely needed.

³⁹² UNCC, ‘COP28 Event Highlights Urgent Need to Accelerate Development and Implementation of National Adaptation Plans’ (UNCC, 28 December 2023) <<https://unfccc.int/news/cop28-event-highlights-urgent-need-to-accelerate-development-and-implementation-of-national>> last accessed 18 June 2024.

³⁹³ UN Climate Change Executive Secretary Simon Stiell, ‘COP28 Closing Speech’ (COP28, Dubai, 13 December 2023) <<https://unfccc.int/news/we-didn-t-turn-the-page-on-the-fossil-fuel-era-but-this-outcome-is-the-beginning-of-the-end-un>> last accessed 18 June 2024.

³⁹⁴ UN Secretary-General António Guterres, ‘Secretary-General’s Special Address on Climate Action “A Moment of Truth”’ (World Environment Day, New York City, 5 June 2024) <<https://www.un.org/sg/speeches/2024-06-05/secretary-generals-special-address-climate-action-moment-of-truth%C2%A0>> accessed 19 September 2024.

Bibliography

Cases

European Cases

Golder v United Kingdom App no 4451/70 (ECtHR, 1 June 1973)

Engel & Others v Netherlands App nos 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR, 8 June 1976)

Witold Litwa v Poland App no 26629/95 (ECtHR, 4 April 2000)

Ezeh & Connors v United Kingdom App nos 39665/98 and 40086/98 (ECtHR 9 October 2003)

Mamatkulov and Askarov v Turkey App nos 8183/10, 62963/13 (ECtHR, 4 February 2005)

International Cases

Air Services Agreement Case (United States v France) (Arbitration Tribunal) (1978) 54 ILR 303

Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal (Advisory Opinion) ICJ Reports 1973 166

'Award in the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands (Belgium v Netherlands) (Decision) (24 May 2005) XXVII RIAA 35

Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter) ICJ Reports 1962 151

Competence of the General Assembly for the Admission of a State to the United Nations (Advisory Opinion) ICJ Reports 1950 4

Interpretation of Peace Treaties (second phase) (Advisory Opinion) ICJ Reports 1950, 221

Jurisdiction of the European Commission of the Danube Between Galatz and Braila (Advisory Opinion) (1927) PCIJ Rep Series B No 14 6, 64

Kasikili/Sedudu Island (Botswana/Namibia) (Judgement) ICJ Reports 1999, 1045.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 277 (1970) (Advisory Opinion) ICJ Reports 1971 16

Legality of the Use by A State of Nuclear Weapons in an Armed Conflict (Advisory Opinion) ICJ Reports 1996 66

Oil Platforms (Islamic Republic of Iran v. United States of America) (Preliminary Objections, Judgment), ICJ Reports 1996 (II), 812

Prosecutor v. Tadic, (Jurisdiction) IT-91-1-AR72, (20 October 1995)

Reparation for injuries suffered in the service of the United Nations (Advisory Opinion) ICJ Reports 1949 174

Territorial Dispute (Libyan Arab Jarnahiriya/Chad) (Judgement) ICJ Reports 1994, 21

United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear (8 November 1996) WT/DS24/R

Treaties

The Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Montreal Protocol on Substances that Deplete the Ozone Layer (opened for signature on 16 September 1987, entered into force on 1 January 1989) 1522 UNTS 3

Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 79

The United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

Vienna Convention for the Protection of the Ozone Layer (opened for signature 22 March 1985, entered into force 28 September 1988) 1513 UNTS 293

Books

Dodds F, Higham A and Sherman R (eds), *Climate Change and Energy Insecurity: The Challenge for Peace, Security and Development* (Taylor & Francis 2009)

Higgins R and others (eds) *Oppenheim's International Law: United Nations* (OUP, 2017)

Hollis DB (ed), *The Oxford Guide to Treaties* (2nd edn, OUP, 2020)

Klabbers K, *An Introduction to International Institutional Law* (CUP 2009)

Kolb R, *An Introduction to the Law of the United Nations* (Hart Publishing, 2010)

- Lauterpacht E, 'The Development of the Law of International Organization by the Decisions of International Tribunals' (Hague Academy, 1976)
- Lee JR, *Climate Change and Armed Conflict: Hot and Cold Wars* (Taylor & Francis Group 2009)
- Lowe V and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (OUP 2010)
- Murakami M, *Managing Water for Peace in the Middle East; Alternative Strategies* (United Nations University Press 1995)
- Nasu H, *The Concept of Security in International Law* (West Point Press 2022)
- Orakhelashvili A (ed), *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008)
- Osterdahl I, *The Interpretation by the Security Council of Article 39 of the UN Charter*, (Uppsala: Och Justus Forlag 1998)
- Paige TP, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'threat to the Peace' under Article 39 of the UN Charter* (BRILL 2019)
- Rosene S, *Developments in the Law of Treaties 1945-1986* (CUP 1989)
- Scott S and Ku C, *Climate Change and the UN Security Council* (Edward Elgar Publishing 2018)
- Sinclair IM, *The Vienna Convention on the Law of Treaties* (Manchester University Press 1984)
- Stettinius, Jr ER, *Report to the President on the Results of the San Francisco Conference* (U.S. Govt. Print. Off. 1945)
- Weiss TG and Daws S (eds) *The Oxford Handbook on the United Nations* (Oxford Academic 2018)

Book Chapters

- Akande D, 'International Organizations' in Evans M (ed) *International Law* (5th edn, OUP, 2018)
- Brölmann C, 'Specialized Rules of Treaty Interpretation: International Organizations' in Hollis DB (ed), *The Oxford Guide to Treaties* (2nd edn, OUP, 2020)
- Gardiner R, 'The Vienna Convention Rules on Treaty Interpretation' in Hollis DB (ed), *The Oxford Guide to Treaties* (2nd edn, OUP, 2020)
- Higgins R and others, 'Part 3 The United Nations: What it Does, 28 Peaceful Settlement of Disputes' in Higgins R others (eds) *Oppenheim's International Law: United Nations* (OUP, 2017)
- Intergovernmental Panel on Climate Change, 'Summary for Policymakers' in Pörtner H-O, and others (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, (CUP 2023)

- Kadelbach S, 'Interpretation of the Charter' in Simma B and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012)
- Khan D, 'Drafting History' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012)
- Krisch K, 'Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression' in Simma B and others (eds), *The Charter of the United Nations: A Commentary: Volume II* (3rd edn, OUP 2012)
- Luck E, 'A Council for all Seasons: The Creation of The Security Council and Its Relevance Today' in Lowe V and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (OUP 2010)
- Magiera S, 'Chapter IV: The General Assembly, Composition' in Simma B and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012)
- Orakhelashvili A, 'Treaty Interpretation: Rules and Methods' in Orakhelashvili A (ed), *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008)
- Kimble M, 'Climate Risks and Insecurities' in Dodds F, Higham A and Sherman R (eds), *Climate Change and Energy Insecurity: The Challenge for Peace, Security and Development* (Taylor & Francis 2009)
- Sorel J and Eveno VB, 'Volume I, Part III Observance, Application and Interpretation of Treaties, s.3 Interpretation of Treaties, Art.31 1969 Vienna Convention' in Corten O and Klein P (eds) *Vienna Convention on the Law of Treaties* (OUP, 2011)
- Tomuschat C, 'Ch.VI Pacific Settlement of Disputes' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012)
- von Einsiedel S and Malone DM, 'Security Council' in Weiss TG and Daws S (eds) *The Oxford Handbook on the United Nations* (Oxford Academic 2018)
- Wolfrum R, 'Chapter I: Purposes and Principles' in Simma B and others (eds), *The Charter of the United Nations: A Commentary: Volume I* (3rd edn, OUP 2012)

Journal Articles

- Behrens A, 'The Role of Renewables in the Interaction between Climate Change Policy and Energy Security in Europe' (2010) 1(1) *Renewable Energy Law and Policy Review* 5
- Blakenship S, 'If You Can Bomb It, You Can Litigate It: Climate War, Complicit States and a World on Fire' (2021) 20(1) *Wash. U. Global Stud. L. Rev.* 227
- Bring O, 'Peacekeeping and Peacemaking: Prospective Issues for the United Nations' (1995) 20 *Melb U L Rev* 55
- Chamberlin TC, 'An Attempt to Frame a Working Hypothesis of the Cause of Glacial Periods on an Atmospheric Basis' (1899) 7 *The Journal of Geology* 545

- Cogan JK and others (eds), 'The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment' (2023) 117(1) *The American Journal of International Law* 128
- Cole D, 'Climate Change and Collective Action' (2008) 61(1) *C.L.P* 229
- Conca K, 'Is There a Role for the UN Security Council on Climate Change?' (2019) 61(1) *Environment: Science and Policy for Sustainable Development* 4
- Desai BH, 'Regulating Global Climate Change: From Common Concern to Planetary Concern' (2022) 52(5) *Environ Policy Law* 33
- Doelle M, 'Climate Change and the Use of the Dispute Settlement Regime of the Law of the Sea Convention' (2006) 37 *Ocean Development & International Law* 319
- Edwards JB, 'The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea' (2013) 32(3) *Refugee Survey Quarterly* 52
- Falk RA, 'On Treaty Interpretation and the New Haven Approach: Achievements and Prospects' (1968) 8 *Va. J. Int'l L* 323
- Feria-Tinta M, 'On the Request for an Advisory Opinion on Climate Change under UNCLOS before the International Tribunal for the Law of the Sea' (2023) 14(1) *Journal of International Dispute Settlement* 391
- Fitzmaurice M and Marshall J, 'The Human Right to a Clean Environment – Phantom or Reality? The European Court of Human Rights and English Courts Perspective on Balancing Rights in Environmental Cases' (2007) 76 *Nordic Journal of International Law* 103
- Goodwin L, 'The UN Security Council and Non-Traditional Security Threats: Why the Failures of the Council's Covid-19 Response Dampens Hopes for Council Action on Climate Change' (2022) 53 *VUWLR* 251
- Gottlieb G, 'The Conceptual World of the Yale School of International Law Reviews' (1968) 21 *World Politics* 108
- 'The Interpretation of Treaties by Tribunals' (1969) 63 *Am. Soc'y Int'l L. Proc.* 122
- Gunningham N, 'Confronting the Challenge of Energy Governance' (2012) 1(1) *Transnational Environmental Law* 119
- Hautereau-Boutonnet M and Maljean-Dubois S, 'The Paris Agreement on Climate Change: A Subtle Combination of Tools and Actors for Better Enforcement?+' (2022) 52 *Environmental Policy and Law* 389
- Hood A, 'Ebola: A Threat to the Parameters of a Threat to the Peace?' (2015) 16 *Melbourne Journal of International Law* 29
- Jacobs FG, 'Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties before the Vienna Diplomatic Conference' (1969) 18 *ICLQ* 318

Jennings R, 'The Judiciary, International and National, and the Development of International Law' (1996) 45 ICLQ 1

Kirk G, 'The Enforcement of Security' (1945) 55(1) Yale Law Journal 1081

Lee S and Bautista L, 'Part XII of the United Nations Convention on the Law of the Sea and the Duty to Mitigate Against Climate Change: Making Out a Claim, Causation, and Related Issues' (2018) 45(1) Ecology Law Quarterly 129

Linderfalk U, 'Is Treaty Interpretation an Art or a Science? International Law and Rational Decision Making' 26(1) Eur. J. Int'l L. 169

Matz-Lütz N and Christiansen L, 'UNGA as the Anchor: Global Environmental Conferencing' (2020) 50(6) Environ Policy Law 519

McLachlan C, 'The Principle of Systemic Integration and Article 31 (3)(C) of the Vienna Convention' (2005) 54 Int'l & Comp. L. Q. 279

McRae P, 'The Search for Meaning: Continuing Problems with the Interpretation of Treaties' (2002) 33(2) VUWLR 209

Merrills JG, 'Two Approaches to Treaty Interpretation' (1968) 4 Aust. YBIL 55

Nevitt M, 'On Environmental Law, Climate Change, & National Security Law' (2020) 44 Harv Envtl L Rev 321

——— 'Is Climate Change a Threat to International Peace and Security?' (2021) 42 Mich. J. Int'l L. 527

Osterdahl I, 'By All Means, Intervene! The Security Council and the Use of Force under Chapter VII of the UN Charter in Iraq (to protect the Kurds), in Bosnia, Somalia, Rwanda and Haiti' (1997) 66 Nordic Journal of International Law 241

Qureshi AH, 'Interpreting Exceptions in the WTO Agreement: Lessons from the New Haven School' (2014) 22(1) Asia Pacific Law Review 3

Scartozzi CM, 'Climate Change in the UN Security Council: An Analysis of Discourses and Organizational Trends' (2022) 23 International Studies Perspectives 290

Scolum BG and Wong J, 'The Vienna Convention and Ordinary Meaning in International Law' (2021) 46(2) Yale J. Int'l L. 191

Stone J, 'Fictional Elements in Treaty Interpretation - A Study in the International Judicial Process' (1953) 1(3) Sydney L. Rev. 344

Thynne K, 'The Universality of IHL – Surmounting the Law Bastion of the Pacific' (2010) 41(2) VUWLR 135

Official Publications and Other Authorities

United Nations

Boncour P, 'Report on Chapter VIII, Section B' (1945) UN Doc 881, III/3/46

Department of Political and Peacebuilding Affairs, 'Repertoire of the Practice of the Security Council, Supplement 2021' (2023) UN Doc ST/PSCA/1/Add.24 49-51

Guterres A, 'Secretary-General's Special Address on Climate Action "A Moment of Truth"' (World Environment Day, New York City, 5 June 2024) <<https://www.un.org/sg/speeches/2024-06-05/secretary-generals-special-address-climate-action-moment-of-truth%C2%A0>> accessed 19 September 2024

High-Level Panel on Threats, Challenges and Change, 'A More Secure World: Our Shared Responsibility' (2004) UN Doc A/59/565

IPCC, *The Evidence is Clear: The time for action is now. We can halve emissions by 2030* IPCC Press Release (2022/15/PR 4 April 2022)

Knox JH, 'Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Focus Report on Human Rights' (19 July 2018) UN Doc A/73/188

Lee H, 'IPCC Chairs Remarks' (2nd World Ocean Summit Asia-Pacific, Singapore, 29 November 2022) <<https://www.ipcc.ch/2022/11/29/ipcc-chair-2nd-world-ocean-summit-asia-pacific>> last accessed 17 June 2024

Lee H, 'Statement by IPCC Chair during the Opening of UNFCCC COP27' (COP27, Sharm-El-Sheikh, 6 November 2022) <<https://www.ipcc.ch/2022/11/07/statement-ipcc-chair-hoesung-lee-cop27>> last accessed 17 June 2024

Mohammed AJ, 'Statement by the Secretary-General at the conclusion of COP27' (COP27, Sharm el-Sheikh 19 November 22) <<https://www.un.org/sg/en/content/sg/statement/2022-11-19/statement-the-secretary-general-the-conclusion-of-cop27%C2%A0sharm-el-sheikh%C2%A0%C2%A0>> last accessed 17 June 2024

Stiell S, 'COP28 Closing Speech' (COP28, Dubai, 13 December 2023) <<https://unfccc.int/news/we-didn-t-turn-the-page-on-the-fossil-fuel-era-but-this-outcome-is-the-beginning-of-the-end-un>> last accessed 18 June 2024

UNCC, 'COP28 Event Highlights Urgent Need to Accelerate Development and Implementation of National Adaptation Plans' (UNCC, 28 December 2023) <<https://unfccc.int/news/cop28-event-highlights-urgent-need-to-accelerate-development-and-implementation-of-national>> last accessed 18 June 2024

UNCHR Communication No 2727/2016, *Teitoo v New Zealand*, UN Doc CCPR/C/127/D/2728/2016

UNGA 'Report of the Secretary-General: In larger freedom: towards development, security, and human rights for all' (2005) UN Doc A/59/2005.

UNGA Res 37/16 (16 November 1982) UN Doc A/RES/37/16

UNGA Res 40/3 (24 October 1985) UN Doc A/RES/40/3

UNGA Res 43/53 (6 December 1988) UN Doc A/RES/43/53

UNGA Res 77/165 (14 December 2022) UN Doc A/RES/77/165

UNGA Res 77/276 (4 April 2023) UN Doc A/RES/77/276

UNSC '55th Session, 4087th Meeting' (10 January 2000) UN Doc S/PV.4087

UNSC '66th Session 6587th Meeting' (20 July 2011) UN Doc S/PV.6587

UNSC '76th Session 8926th Meeting' (13 December 2021) UN Doc S/PV.8926

UNSC '69th Session 7268th Meeting' (18 September 2014) UN Doc S/PV/7268

UNSC 'Security Council Holds First-ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers' (17 April 2007) Press Release SC/9000

UNSC "Explosive" Growth of Digital Technologies Creating New Potential for Conflict, Disarmament Chief Tells Security Council in First-Ever Debate on Cyberthreats' (29 June 2021) Press Release SC/14563

UNSC Draft Res UN Doc S/2021/990

UNSC Presidential Statement (20 July 2011) UN Doc S/PRST/2011/15

UNSC Provisional Rules of Procedure (1946) UN Doc S/96/Rev.7 Rule 1

UNSC Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting (31 January 1992) UN DOC S/PV.3046 143 and UNSC Presidential Note (31 January 1992) UN Doc S/23500

UNSC Res 118 (13 October 1956) UN Doc S/RES/118

UNSC Res 688 (5 April 1991) UN Doc S/RES/688

UNSC Res 713 (25 September 1991) UN Doc S/RES/713

UNSC Res 794 (3 December 1992) UN Doc S/RES/794

UNSC Res 841 (16 June 1993) UN Doc S/RES/841

UNSC Res 1308 (17 July 2000) UN Doc S/RES/1308

UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

UNSC Res 1540 (29 April 2004) UN Doc S/RES/1540

UNSC Res 1542 (20 April 2004) UN Doc S/RES/1542

UNSC Res 1908 (19 January 2010) UN Doc S/RES/1908
UNSC Res 1983 (17 June 2011) UN Doc S/RES/1983
UNSC Res 2177 (18 September 2014) UN Doc S/RES/2177
UNSC Rec 2349 (31 March 2017) UN Doc S/RES/2349
UNSC Res 2565 (26 February 2021) UN Doc S/RES/2565
UNSC Res 2567 (12 March 2021) UN Doc S/RES/2567
UNSC Res 2677 (15 March 2023) UN Doc S/RES/2677
UNSC Res 2726 (14 March 2024) UN Doc S/RES/2726

Other

Association of Southeast Asian Nations, *ASEAN Political-Security Community Blueprint* (ASEAN June 2009) 8

Biden J, *Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation* (Executive Order 14024, 15 April 2021)

Biden J, *National Security Strategy* (Washington, D.C: White House October 2022)

Council of the European Union, *Climate Change and International Security – Paper from the High Representative and the European Commission to the European Council* (EU Publications Office, 2008)

Council of the European Union, *Strategic Compass for Security and Defence – For a European Union that protects its citizens, values and interests and contributes to international peace and security* (EU, 21 March 2022)

HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy* (APS Group 2021)

International Law Commission, 'Draft Articles on the Law of Treaties with Commentaries' (1966) 2 Yearbook of the International Law Commission 221

Ministry of Defence United Kingdom, *Global Strategic Trends* (6th edn Ministry of Defence UK 2018)

Mobjörk M, Krampe F and Tarif K, 'Pathways of Climate Insecurity: Guidance for Policymakers' (Stockholm International Peace Research Institute (SIPRI) Policy Brief November 2020)

National Intelligence Council, *Climate Change and International Responses Increasing Challenges to US National Security Through 2040* (NIC-NIE-2021-10030-A October 2021)

National Research Council, *Carbon Dioxide and Climate: A Scientific Assessment* (The National Academies Press 1979)

New Zealand Ministry of Defence, *Defence Assessment 2021: he moana pukepuke a ekengia e te waka* (Ministry of Defence December 2021)

Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (Pacific Islands Forum Secretariat, 2022)

President's Science Advisory Committee, *Restoring the Quality of Our Environment: Report of the Environmental Pollution Panel* (U.S. Government Printing Office 1965)

Press F, *Release of Fossil CO2 and the Possibility of a Catastrophic Climate Change* (Memorandum to President Carter, 7 July 1977)

Security Council Report, 'Research Report: The UN Security Council and Climate Change' (21 June 2021) <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/climate_security_2021.pdf> last accessed 16 June 2024

Smith D and Vivekananda J, *A Climate of Conflict: The Links between Climate Change, Peace and War* (International Alert 2007)

World Meteorological Organisation, *Proceedings of the World Climate Conference: A Conference of Experts on Climate and Mankind* (WMO, 1979)

Walcock H, 'Third Report on the Law of Treaties' (1964) II Yearbook of the International Law Commission 5

Websites

Berlind A, 'NATO and the Environment' (*American Diplomacy*, March 2009) <<https://americandiplomacy.web.unc.edu/2009/03/nato-and-the-environment>> last accessed 17 June 2024

Bodansky D, 'An ICJ Advisory Opinion on Climate Change: Ten Questions and Answers' (Center for Climate and Energy Solutions, October 2022) <<https://www.c2es.org/wp-content/uploads/2022/10/an-icj-advisory-opinion-on-climate-change-ten-questions-and-answers.pdf>> last accessed 19 September 2024

Buchanan E, 'Russia's 2021 National Security Strategy: Cool Change Forecasted for the Polar Regions' (*Royal United Services Institute*, 14 July 2021) <<https://www.rusi.org/explore-our-research/publications/commentary/russias-2021-national-security-strategy-cool-change-forecasted-polar-regions>> last accessed 17 June 2024

Copernicus Climate Change Service, 'The 2022 Annual Climate Summary: Global Climate Highlights 2022' <<https://climate.copernicus.eu/global-climate-highlights-2022>> accessed 2 February 2023

Dziadosz A, 'US Halts German Security Council Push for UN Climate Conflict Monitoring' (*Clean Energy Wire*, 24 July 2022) <<https://www.cleanenergywire.org/news/us-halts-german-security-council-push-un-climate-conflict-monitoring>> last accessed 16 June 2024

ECtHR 'Grand Chamber rulings in the climate change cases' (9 April 2024) <https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases?p1back_url=%2Fsearch%3Fq%3D%2522climate%2Bchange%2522> last accessed 18 September 2024

The European Union <<https://www.consilium.europa.eu/en/policies/sanctions-against-russia/sanctions-against-russia-explained/>> last accessed on 27 August 2024

Fu J, 'Tensions rise in the Klamath Basin as feds further reduce water allotments to farmers' (*The Counter*, 21 May 2021) <<https://thecounter.org/klamath-basin-feds-water-allotments-drought-releases-usbr-farmers-fisheries>> last accessed 16 June 2024

G20, 'G20 Leaders' Declaration Shaping an Interconnected World' (2017) <https://www.g20germany.de/Content/EN/Anlagen/G20/G20-leaders-declaration_blob=publicationFile&v=11.pdf> last accessed 16 June 2024

IPCC, 'About' <<https://www.ipcc.ch/about>> last accessed 18 June 2024

Kaiser AJ, 'Explainer" Role of the Amazon in global climate change' (*Phys, Org* 27 August 2019) <https://phys.org/news/2019-08-role-amazon-global-climate.html#google_vignette> last accessed 18 June 2024

NATO Science for Peace and Security Programme <https://nato.int/science/studies_and_projects/index.htm> last accessed 18 September 2024

NATO Science for Peace and Security, 'Introduction' <https://www.nato.int/science/about_sps/introduction.htm> last accessed 17 June 2024

Navarro F, 'How the Inter-American Court Could Advance Protection for Climate-Displaced Individuals' (2024) <<https://www.justsecurity.org/96690/inter-american-court-climate-displacement>> accessed 13 June 2024

New Zealand Ministry of Foreign Affairs, <<https://www.mfat.govt.nz/en/countries-and-regions/europe/ukraine/russian-invasion-of-ukraine/sanctions/russia-sanctions-register>> last accessed 27 August 2024

NTV, 'US Blocks German Climate Push' (*NTV*, 24 July 2020) <<https://www.ntv.de/politik/USA-blockieren-deutschen-Klimavorstoss-article21930552.html>> last accessed 16 June 2024

Nunoz SM, 'Understanding the human side of climate relocation' (*The Conversation*, 5 June 2019) <<https://theconversation.com/understanding-the-human-side-of-climate-change-relocation-115887>> accessed 16 June 2024.

Pacific Islands Forum, 'Peace and Security' <<https://forumsec.org/peace-and-security>> last accessed 15 March 2024

Talmon S, 'Germany Fails to Integrate Climate Security Concerns Into the Work of the Security Council' (*German Practice in International Law*, 31 August 2021) <<https://gpil.jura.uni-bonn.de/2021/08/germany-fails-to-integrate-climate-security-concerns-into-the-work-of-the-security-council>> last accessed 16 June 2024

Tigre MA and Bañuelos JAC, 'The ICJ's Advisory Opinion on Climate Change: What Happens Now?' (Climate Law: A Sabin Centre Blog, Columbia Law School, 29 March 2023) <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now> last accessed 19 September 2024

UN Environment Programme, 'Timeline' <<https://ozone.unep.org/ozone-timeline>> last accessed on 15 March 2024

UNICEF, 'The Last Islanders: rising sea levels in Papua New Guinea' (20 March 2017) <<https://www.unicef.org/png/stories/last-islanders-rising-sea-levels-papua-new-guinea>> accessed 16 June 2024

US Geological Survey, 'How Can Climate Change affect Natural Disasters?' <<https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters>> accessed 3 February 2023

UNSC, 'FAQ' (*United Nations Security Council*) <<https://www.un.org/securitycouncil/content/faq>> last accessed 18 June 2024