

From State Security to Human Security: The Evolving Nature of the United Nations Security Council's Jurisdiction

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Abstract

The article explores the changing nature of the concept of international security. It argues that the practice of the United Nations Security Council (the “UNSC”) is evolving from the protection of State security to the protection of Human Security. The former primarily concerns the protection of territorial integrity and the prohibition on the use of force as traditional components of security under the United Nations Charter. On the other hand, the latter is concerned with a broader set of threats affecting individuals and peoples within a State. Such threats include grave violations of Human Rights, public health emergencies, environmental issues, and other matters that are not directly related to the protection of State sovereignty. The article explores the significance of the shift towards human security and the extent to which the shift is taking place. It suggests that the new model of international security provides a range of benefits for the development of the international legal order, including a timelier response mechanism to a broader range of threats at an international level. In the meantime, the article suggests that the expansion of the concept of international security may still be affected by the traditional political limits of the UNSC.

French Translation

L'article explore la nature changeante du concept de sécurité internationale. Il fait valoir que la pratique du Conseil de sécurité des Nations unies (le “CSNU”) évolue de la protection de la sécurité de l'État à la protection de la sécurité humaine. La première concerne principalement la protection de l'intégrité territoriale et l'interdiction du recours à la force en tant que composantes traditionnelles de la sécurité en vertu de la Charte des Nations Unies. D'autre part, la seconde concerne un ensemble plus large de menaces auxquelles font face les individus et les peuples au sein d'un État. Ces menaces comprennent de graves violations des droits de l'homme, des urgences de santé publique, des questions environnementales et d'autres questions qui ne sont pas directement liées à la protection de la souveraineté de l'État. L'article explore l'importance du changement de pratique du CSNU vers la sécurité humaine et la mesure dans laquelle ce changement a lieu. Il suggère que le nouveau modèle de sécurité internationale offre une série d'avantages pour le développement de l'ordre juridique international, notamment un mécanisme de réponse plus rapide à un plus large éventail de menaces au niveau international. En attendant, l'article suggère que l'expansion du

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concept de sécurité internationale peut encore être affectée par les limites politiques traditionnelles du CSNU.

Spanish Translation

El artículo explora la naturaleza cambiante del concepto de la seguridad internacional. Argumenta que la práctica del Consejo de Seguridad de las Naciones Unidas (el “CSNU”) está evolucionando desde la protección de la seguridad del Estado a la protección de la seguridad humana. El primero se refiere principalmente a la protección de la integridad territorial y la prohibición del uso de la fuerza como componentes tradicionales de la seguridad en virtud de la Carta de las Naciones Unidas. Por otro lado, este último se ocupa de un conjunto más amplio de amenazas que afectan a personas y pueblos dentro de un Estado. Tales amenazas incluyen graves violaciones a los Derechos Humanos, emergencias de salud pública, temas ambientales y otros asuntos que no están directamente relacionados con la protección de la soberanía del Estado. El artículo explora la importancia del cambio hacia la seguridad humana y hasta qué punto se está produciendo. Sugiere que el nuevo modelo de seguridad internacional proporciona una serie de beneficios para el desarrollo del orden jurídico internacional, incluyendo un mecanismo de respuesta más oportuno a una gama más amplia de amenazas a nivel internacional. Mientras tanto, el artículo sugiere que la expansión del concepto de seguridad internacional aún puede verse afectada por los límites políticos tradicionales del CSNU.

Introduction**I. The United Nations Security Council: Core Jurisdiction**

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human security. It suggests that human security has become the core of international security, yet it has not entirely replaced the foundational State-focused approach to international law. The section discusses in depth the prospect of human security as a way of resolving the existing structural problems of the Council and how it may affect the Council's future development. The essay concludes that the move towards human security is an uninterrupted continuation of the development of international law, however, the shift itself cannot solve the existing limitations of the Council. The article suggests that a substantive qualitative shift in the Council's performance would require a direct effort in renegotiating its procedural and substantive norms.

I. The United Nations Security Council: Core Jurisdiction

The evolving nature of the Council's jurisdiction can be traced from its institutional history. The Council is one of the principal organs responsible for the maintenance of international peace and security.⁵ Established under the Charter, the Council is a fundamental part of the contemporary international legal system. Its legal structure and composition reflect the complicated political realities at the time of its conception and the need for a more effective system of maintaining peace in the current era.

The initial foundations of the Council were built upon the Atlantic Charter, the Moscow Conference and other documents that were produced in the WWII era.⁶ The Atlantic Charter is one of the first documents that outlines a commitment on the part of major States to establish a unified system of international peace and security.⁷ Citing the devastating effect of the two World Wars, the Western Allied forces vowed to outlaw wars in absolute terms and established a system to ensure prohibition of wars.⁸ The commitment was later supported by the Soviet Union who joined the Allied forces, followed by China and a number of other States.⁹ The meetings between States eventually translated into the Charter that established the Council as the principal organ for ensuring peace and security.

The political realities at the time were reflected in the Council's conception of security as its central goal. Even though the Charter does not specifically define security, the principles of the Charter and the practice of the Council reflect its focus on State and sovereignty. According to the Charter principles, the core foundations of the international legal order as defined in the post-WWII era were territorial integrity and non-intervention.¹⁰ Moreover, a number of primary operations after the formation of the Council were focused on upholding international peace by preventing State against State conflicts. Accordingly, the core concept of security in the post-WWII era focused on preventing States from waging wars against each other.¹¹ Consequently, the idea of international security became almost entirely State-centred, with some exceptions including decolonization and civil wars.¹² The

⁵ See *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 arts 24, 39–42 [*UN Charter*].

⁶ See "History of the United Nations", online: *United Nations* < www.un.org/en/sections/history/history-united-nations/ > ["UN History"].

⁷ See "1941: The Atlantic Charter", online: *United Nations* < <http://www.un.org/en/sections/history-united-nations-charter/1941-atlantic-charter/index.html> >.

⁸ *Ibid.*

⁹ See "UN History", *supra* note 6.

¹⁰ See *UN Charter*, *supra* note 5, arts 1–2.

¹¹ *Ibid.*, Oliver Dörr, "Use of Force, Prohibition of" in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2015).

¹² See Dörr, *supra* note 11; *Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res 1514 (XV), UNGAOR, 15th Sess, Supp 16, UN Doc A/4684 (Vol I) (1960) 66 [*G.A Resolution 1514*].

role of the Council in decolonization efforts was not as apparent since the Trusteeship Council and the General Assembly were heavily involved in the matter. The Council was more actively involved in resolving domestic conflicts, including the war on the Korean Peninsula and the conflict in Palestine. In the meantime, the core idea of security remained centred on States and possible military conflicts that destabilize State security. This article will discuss how the purely State-centric approach to security began to change in recent decades. Prior to this discussion, it is necessary to outline the core powers of the Council.

To uphold its primary duty of maintaining international peace, the Council was given a relatively broad range of powers. First, the Council has declarative powers derived from its ability to proclaim that certain actions of States or other entities constitute a threat to international peace.¹³ The Council can thus demand States or other groups to cease hostile actions and make essential proclamations, for example, on the legality of self-defence.¹⁴ In addition, the Council can make binding decisions on States and impose soft sanctions such as embargoes.¹⁵ If such measures fail, the Council can authorize the use of force to restore international peace and security.¹⁶ After the authorization, military operations may be conducted individually or jointly by States under the United Nations (“UN”) flag or under their own flags.¹⁷

It is necessary to highlight that the primary jurisdiction of the Council was constructed relatively narrowly. In particular, the Council was designed to make promulgations and decisions concerning specific threats to peace and security. The Council can declare a threat, demand to cease activities that pose a threat, and impose sanctions or authorize the use of force.¹⁸ As was widely discussed by legal scholars, the Council has an executive power reflected in its capacity to enforce peace-related provisions of the Charter.¹⁹

However, the nature of conflicts began to change since the establishment of the Council. While the founders of the Charter envisaged mainly inter-State conflicts, where State A invades State B, new conflicts emerged over time.²⁰ A considerable portion of conflicts were, in fact, of a domestic nature such as civil wars.²¹ Moreover, the Council had to deal with a range of decolonization disputes that occurred between emerging States and those between States and colonizing powers, which gave rise to a range of complex political and legal issues.²² On the legal side, the majority of problems were resolved by the International Court of Justice (“ICJ”) with regards to what constitutes interventions, the use of force, appropriate modes of self-defence, and so on.²³ While some questions remain

¹³ Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Portland: Hart Publishing, 2004) at 134.

¹⁴ *Ibid* at 148–149; Christopher Greenwood, “Self-Defense” in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2011).

¹⁵ *Ibid*.

¹⁶ *Ibid*; *UN Charter*, *supra* note 6, art 42.

¹⁷ Greenwood, *supra* note 14.

¹⁸ *Ibid*.

¹⁹ *Ibid*; Christoph Mikulaschek, *The Power of the Weak: How Informal Power-sharing Shapes the Work of the UN Security Council* (Princeton, NJ: Princeton University Press, 2017) at 5.

²⁰ *Ibid*. See also Max Roser, “War and Peace” (2019), online: *Our World in Data* <ourworldindata.org/war-and-peace>.

²¹ *Ibid*.

²² *Ibid*.

²³ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)*, [1986] ICJ Rep 14 [Nicaragua]; *Case Concerning Oil Platforms (Islamic Republic of Iran v United States of America)*, [2003] ICJ Rep 161 [IRI].

open to interpretation, the rules on the use of force impose similar standards.²⁴ However, the standards are not always complied with by States due to frequent political disagreements between them.

As was widely discussed in the literature, the core problem of the Council is its political structure. The Council consists of fifteen members.²⁵ Its five permanent members are China, the United States, Russia, the United Kingdom, and France.²⁶ The reason behind their permanent status is complicated; some attribute it to their possession of nuclear power, or to their status as allied powers who claimed victory in WWII.²⁷ The General Assembly elects the other ten members for a two-year term.²⁸

The composition of the Council is arguably its most criticized aspect. To elaborate, only permanent members can exercise veto power to block any resolutions of the Council.²⁹ In particular, Russia, China, and the United States have explicitly used their veto power on a number of occasions.³⁰ Some of the most well-known international crises did not receive a substantial response from the Council precisely due to the existing disagreements between Western and Eastern powers.³¹ The invasion of Iraq, the crisis in Syria, the contestable action in Libya, and NATO's invasion of Yugoslavia are some of the most obvious failures of the Council in performing its functions.³² Here lies a complex problem between politics and law on the extent of veto, the legality of the use of force, and political disagreements. Accordingly, the existing structure of the Council creates significant complications in facilitating proper institutional maintenance of international peace.

A. The Security Council as the International Legislator: Terrorism and Non Proliferation

The Council has expanded its jurisdiction in the last two decades regardless of the aforementioned complications. According to its originally envisaged role, the Council was to serve an executive role and focus on addressing threats to peace through the means confined to actions for the benefit or restraint of a particular State. However, following 9/11, the Council took a stronger stance on exerting its power and adopted an unusually broad jurisdiction to address matters beyond those of States. Contrary to the past resolutions designed to accommodate particular actors for certain violations, the Council issued resolutions 1373 and 1540 that concerned all member States in the contexts of international terrorism and human security.

²⁴ *Ibid.* See also Michael Wood, "International Law and the Use of Force: What Happens in Practice" (2013) 53 *Ind J of Int L* 345 at 346; Marc Weller et al, eds, *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015) at 80.

²⁵ See *UN Charter*, *supra* note 5, art 23.

²⁶ *Ibid.*

²⁷ Peter Nadin, *UN Security Council Reform*, 1st ed (London: Routledge, 2016) at 43–71.

²⁸ See *UN Charter*, *supra* note 5, art 23(2).

²⁹ *Ibid.*, art 27(3).

³⁰ See e.g. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, [1971] ICJ Rep 3.

³¹ See *GA Resolution 1514*, *supra* note 12; Greenwood, *supra* note 14; *UN Charter*, *supra* note 5.

³² See *Resolution 1441*, S Res 1441, UNSCOR, 58th Sess, Supp No 2, UN Doc A/58/2 (2002); B Simma, "NATO, the UN and the Use of Force: Legal Aspects" (1999) 4:2 *Eur J of Int L*; Sean D Murphy, "Assessing the Legality of Invading Iraq" (2004) 92:2 *Geo LJ* 173; Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm" (2013) 36:2 *UNSWLJ* 594; Muditha Halliyadde, "Syria - Another Drawback for R2P?: An Analysis of R2P's Failure to Change International Law on Humanitarian Intervention" (2016) 4 *Ind J L & Soc Equality* 215.

Starting with the resolution 1373 issued shortly after the 9/11 terrorist attack, the Council became more aggressive in enforcing both domestic and international counter-terrorism measures.³³ The Council decided that all States must refrain from financing any acts of terrorism, prevent individuals from engaging in such acts of financing, and freeze assets related to financing terrorism.³⁴ Moreover, the Council requested States to prevent any acts of recruitment and practical support that could be given to terrorists.³⁵ For example, the Council demanded that States prosecute individuals assisting with terrorist acts, financing, and recruitment.³⁶ Moreover, the resolution not only covered all member States but also specifically referred to terrorism as a source of threat.³⁷ This was significant since the resolution was not based on actions of a State, but rather on actions of a non-State entity. The question of whether the Council can tackle the matters of non-State entities is still partly in limbo.³⁸

Furthermore, one of the most controversial aspects of the resolution is a provision that internally criminalizes and enforce through domestic provisions a broad range of anti-terrorism measures.³⁹ This provision is complex. To begin with, it can be argued that the Council cannot decide on matters of domestic State law.⁴⁰ Granted that most States already have domestic anti-terrorism provisions, the jurisdiction of the Council cannot extend so far as to make pronouncements on how and what should be governed domestically. Naturally, it can be argued that if the domestic law affects matters of international peace, the Council can make pronouncements on those matters as a form of “incidental jurisdiction,” or through other plausible explanations.⁴¹ However, claiming that all States must outlaw specific acts since they have the slightest connection to the global anti-terrorist efforts appears to be an exaggeration of the powers of the Council over States. Moreover, many disputed the role of the Council as an international legislator.⁴² It was argued that the Charter did not initially envisage such broad powers to be given to the Council but reserved the capacity to make general pronouncements for States.

Following the resolution 1373, resolution 1540 was issued in 2004, taking a harder stance on preventing nuclear proliferation and the use of chemical and biological weapons.⁴³ It focuses broadly on domestic enforcement of non-proliferation norms and development of an internal mechanism to suppress the access of non-State actors to biological and chemical weapons.⁴⁴ The Council additionally established a committee to enforce the provisions of the resolution and obtain State reports on its implementation of non-

³³ See Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4; *SC Resolution 1373*, *supra* note 3.

³⁴ *Ibid* at 2.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ *Ibid* at 1.

³⁸ See *Nicaragua*, *supra* note 23; *IR1*, *supra* note 23; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, [2005] ICJ Rep 168 [DRC].

³⁹ *SC Resolution 1373*, *supra* note 3.

⁴⁰ DRC, *supra* note 38; Stefan Talmon, “The Security Council as World Legislature” (2005) 99:1 AJIL 175 at 176; Thomas A Schweitzer, “The United Nations as a Source of Domestic Law: Can Security Council Resolutions Be Enforced in American Courts?” (1979) 4:2 Yale J Intl L 162; Eric Rosand, “The Security Council As ‘Global Legislator’: Ultra Vires or Ultra Innovative?” (2004) 28 Fordham Intl LJ 542.

⁴¹ JG Merrills, *International Dispute Settlement* (New York: Cambridge University Press, 2005) at 136–140.

⁴² DRC, *supra* note 38; Tullio Treves, “The Security Council As Legislator,” in Aristotle Constantinides & Nikos Zaikos, eds, *The Diversity of International Law* (Leiden: Martinus Nijhoff Publishers, 2009) at 61.

⁴³ See *SC Resolution 1373*, *supra* note 3; *SC Resolution 1540*, *supra* note 3.

⁴⁴ See Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4.

proliferation by non-State actors.⁴⁵ Accordingly, the resolution further expanded the Council's powers into domestic and legislative realms, earning the discontent of States.⁴⁶ In particular, the non-aligned movement created concerns for a mismatch between the resolution and domestic realities of States.⁴⁷ However, the fundamental question of whether the Council can make quasi-legislative pronouncements was not broadly discussed by States.

Both resolutions contributed to the Council's expansion of its jurisdiction in the post-9/11 period. In the following years, the Council became more reluctant to make broad pronouncements on domestic law. However, the Council began to tackle a broader range of international crises such as virus outbreaks, economic problem, and global warming, subsequently widening the scope of its powers. The continuing expansion of the Council's jurisdiction can be exemplified by the Council's involvement in more recent matters of hydro-diplomacy and global health.

B. Exploring the Broad Involvement of the Security Council in Contemporary Issues Related to Human Rights

The outlined developments of the Council's legislative intervention were demonstrated in matters of hydro-diplomacy and the Ebola outbreak. Regardless of its benevolent intentions, the Council's efforts in these areas may exceed the boundary of its standard acts of diplomacy. For many years, the UN has been actively involved in resolving water disputes by establishing regional bodies and international frameworks for transboundary water management.⁴⁸ The Council's increasing involvement in the matter has been perceived as legitimate,⁴⁹ for water is considered a strategic means for the maintenance of international peace and security as repeatedly highlighted by the Secretary-General.⁵⁰ While the Member States are generally supportive of the Council's leadership in hydro-diplomacy, they are also wary of the possibility of the Council overriding national interests. Such concerns were expressed at the 7959th Security Council meeting, in which delegates from Russia and China expressly stated the need for respecting national sovereignty in water management.⁵¹ The discussion leads to two questions: whether the Council should continue to expand its jurisdiction in the matter, and what powers it can wield to address the matter.

Although the Council has so far acted in the spirit of preventive diplomacy, it is possible that it may impose obligations on the Member States by issuing a resolution if the regional UN bodies fail to mediate.⁵² This is especially so for high-dispute regions such as Central Asia, where water-abundant and water-scarce States have long been in dispute, as well as areas of armed conflicts that require protection of water infrastructure and supply.

⁴⁵ *Ibid*; Oliver Meier, "Non-cooperative arms control" in Oliver Meier & Christopher Daase, eds, *Arms Control in the 21st Century* (New York: Routledge, 2013) at 46–51.

⁴⁶ Meir, *supra* note 45 at 50–1.

⁴⁷ *Ibid*.

⁴⁸ Notably the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 17 March 1992, 1936 UNTS 269 (entered into force 6 October 1996) that became open for signature for all Member States since March 2016.

⁴⁹ Ban Ki-Moon, "Remarks to Security Council debate on Water, Peace, and Security" (delivered to Security Council debate on Water, Peace, and Security, 22 November 2016).

⁵⁰ United Nations, Meeting Coverage, SC/12856, "Sound Water Management, Investment in Security Vital to Sustain Adequate Supply, Access for All, Secretary-General Warns Security Council" (6 June 2017).

⁵¹ *Ibid*.

⁵² Such as the United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA). See "Mandate" (accessed 24 February 2019), online: *United Nations Centre for Preventive Diplomacy for Central Asia (UNRCCA)* <unrcca.unmissions.org/mandate>.

The Global High-Level Panel on Water and Peace, in its 2017 report, urged the Council to pass a resolution on water, peace, and security⁵³ akin to the resolution on the protection of civilians in armed conflicts.⁵⁴ This sentiment had been echoed by the participants at the inaugural UN Security Council Open Debate on Water, Peace and Security; the President of the Strategic Foresight Group suggested passing a resolution similar to resolution 2286⁵⁵ to accelerate the protection of water resources in areas of armed conflicts.⁵⁶ Doing so would enable the Council to order the Member States' compliance with the obligations under international law and human rights law.⁵⁷

Since the right to water has been explicitly recognized as a human right,⁵⁸ and water supply infrastructure as “cross-border critical infrastructure” requiring protection against acts of terrorism,⁵⁹ the Council is likely justified in issuing resolutions for matters of hydro-diplomacy. Yet such resolutions may not be received favourably by the Member States for their lack of domestic applicability and the Council's interference in national policymaking. Since the dispute concerns vested interests of some permanent members of the Council – for example, Russia as the leading supporter of Tajikistan and its construction of Rogun Dam – the resolutions may be affected by a veto or weak regional enforcement. As with the anti-terrorism resolutions, the new resolution for water disputes may allow opportunities for abuse by the Member States with ulterior motives. The concern for abuse was voiced at the abovementioned Open Debate, in which the delegate of Crimea warned Russia not to use the problem of water shortage as a means of propaganda, highlighting the political nature of water disputes. Accordingly, expanding the power of the Council is subject to political obstacles that may impair the Council's capacity for carrying out legitimate actions.

Nonetheless, expanding the Council's jurisdiction into a broader range of global issues can be useful for resolving non-political matters. The leading example is resolution 2176 on the Ebola outbreak, which extended the UN mission to Liberia by three months to help contain the virus.⁶⁰ Two days later, the Council passed resolution 2177, which declared the Ebola outbreak “a threat to international peace and security”⁶¹ and provided a basis for establishing the UN's first public health mission for coordinating international humanitarian support in West Africa.⁶² The prompt response by the Council was commended for bridging

⁵³ “A Matter of Survival: Report of the Global High-Level Panel on Water and Peace” (2017) at 28, online (pdf): *Global High-Level Panel on Water and Peace* <reliefweb.int/sites/reliefweb.int/files/resources/A_Matter_of_Survival_FINAL.pdf>.

⁵⁴ See *Protection of civilians in armed conflicts*, SC Res 1265, UNSCOR, 55th Sess, Supp No 2, UN Doc A/55/2 (2000) 296.

⁵⁵ See United Nations, “Secretary-General, in Security Council, Stresses Promotion of Water-resource Management as Tool to Foster Cooperation, Prevent Conflict” (22 November 2016), online: *UN Meetings Coverage & Press Releases* <www.un.org/press/en/2016/sc12598.doc.htm>.

⁵⁶ See *Protection of civilians in armed conflicts*, SC Res 2286, UNSCOR, 71st Sess, Supp No 2, UN Doc A/71/2 (2016) (Resolution 2286 was a timely strategy for protecting healthcare centres, workers, and transport from targeted attacks, and was unanimously adopted by the Council and co-sponsored by eighty Member States).

⁵⁷ See United Nations, “Security Council Adopts Resolution 2286 (2016), Strongly Condemning Attacks against Medical Facilities, Personnel in Conflict Situations” (3 May 2016), online: *UN Meetings Coverage & Press Releases* <https://www.un.org/press/en/2016/sc12347.doc.htm>.

⁵⁸ See *The Human Right to water and sanitation*, GA Res 64/292, 64th Sess, Supp No 49, UN Doc A/64/49 (Vol III) (2010) 45.

⁵⁹ *Threats to international peace and security caused by terrorist acts*, SC Res 2341, UNSCOR, 72nd Sess, Supp 2, UN Doc A/72/2 (2018) 26.

⁶⁰ See Adam Kamradt-Scott, “WHO's to blame? The World Health Organization and the 2014 Ebola outbreak in West Africa” (2016) 37:3 *Third World Q* 401 at 406–07.

⁶¹ *Ibid*, *Peace and security in Africa*, SC Res 2177, UNSCOR, 70th Sess Supp No 2, UN Doc A/70/2 (2014) 177 [*SC Resolution 2177*].

⁶² The United Nations Mission for Ebola Emergency Response (UNMEER); Ban Ki-Moon, *Identical letters dated 17 September 2014 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council*, A/69/389–S/2014/679, UNGAOR/UNSCOR, 69th Sess (17 September 2014); *Measures to contain and combat the recent Ebola outbreak in West Africa*, GA Res 69/1, UNGAOR, 69th Sess, Supp No 49, UN Doc A/69/49 (Vol I) (2014) 3 [*GA Resolution 69/1*]; Kamradt-Scott, *supra* note 60 at 407; *SC Resolution 2177*, *supra* note 61.

the gaps that the World Health Organization had failed to address. As such, the Council's exercise of global legislative power for containing Ebola has paved new milestones for synthesizing global health and security issues and increased synergistic efforts by the UN and other international organizations with technical expertise.⁶³

As such, the Council has been expanding its jurisdiction into areas that are not necessarily related to State security. Moreover, the effectiveness of the expansion varies across different types of involvement. In particular, the presence of conflicting political interests seems to correlate to the Council's capacity to resolve an increasing number of international threats. Granted that this problem has existed since the establishment of the Council, important questions remain: what is the reason for the expansion of the Council's jurisdiction beyond the traditional State security paradigm, and what are the prospects of the expansion? The following section will explore the reasoning for the expansion by arguing a case for human security as a new model of international security. The human security angle provides a compelling argument for the continuing expansion of the Council's jurisdiction and is useful for assessing whether the expansion on this basis is a valuable development for international law and international organizations.

II. From State Security to Human Security: Understanding the Expanding Jurisdiction

In light of the above discussions, it is apparent that the Council began to rapidly expand its jurisdiction into areas that were not previously covered by its mandate. Leaving aside the question of how effectively the Council can resolve such matters, the legality of the expansion must be questioned.⁶⁴ In order to understand the legality of the expanding jurisdiction and its content, it is necessary to understand the Charter and the concepts of security that the Council was designed to protect.⁶⁵ The matters of security and peace are not clearly defined in the Charter. These matters are, however, defined in the context of "acts of aggression or other breaches of peace."⁶⁶ In this context, security was traditionally confined to the actions of States vis-à-vis other States,⁶⁷ as shown in the post-WWII context and in the attribution of significant conflicts to inter-State wars. This further explains the difficulties faced by the Council in the context of internal disturbances and civil wars that have become more prominent in the UN era.⁶⁸ Thus the changing nature of the Council's jurisdiction can be understood through the changing nature of threats to security that can be more broadly tied to the concept of human security.

In comparison to the traditional model of State security, the concept of human security is not focused only on threats to territorial integrity or acts of aggression against a State as the primary beneficiary of international security.⁶⁹ On the contrary, human security

⁶³ *SC Resolution 2177*, *supra* note 61; Kamradt-Scott, *supra* note 60 (The UNMEER operates jointly under the leadership of the UN Secretariat and WHO subject to the mandate in the General Assembly Resolution 69/1); *GA Resolution 69/1*, *supra* note 62.

⁶⁴ Treves, *supra* note 42.

⁶⁵ *Ibid.*

⁶⁶ *UN Charter*, *supra* note 5, art 1.

⁶⁷ *Ibid.*; Dörr, *supra* note 11; *GA resolution 1514*, *supra* note 12.

⁶⁸ Roser, *supra* note 20.

⁶⁹ See Steve Grunau, "The Limits of Human Security: Canada in East Timor" (2003) 1:1 *The Dispatch: Quarterly Review of the Canadian Defence & Foreign Affairs Institute* <d3n8a8pro7vhmx.cloudfront.net/cdfai/pages/322/attachments/original/1413011405/The_Limits_of_Human_Security.pdf?1413011405>; Juergen Dedring, "Human Security and the UN Security Council" in Hideki Shinoda & How-Won Jeong, eds, *Conflict and human security: A search for new approaches of peace-building*, (Hiroshima: Institute for Peace Science, 2004) 45.

concerns threats that are associated with the violation of the rights of individuals and peoples. There are numerous examples of such rights, which can be better understood contextually. To illustrate, States have a right to territorial integrity and non-intervention.⁷⁰ The Council enforces this right. Similarly, individuals have rights that are recognized by international law. Such rights are expressed in various Human Rights documents and doctrines, as well as in international humanitarian, refugee, and criminal laws.⁷¹ The concept of human security suggests that the same protection granted to States and enforced by the Council can likewise be applied to the entitlements of individuals by way of Human Rights and various treaties. Moreover, the concept of human security may have a broader scope of applications than the traditional State security framework since it involves human rights.

Canada proposed one of the most concrete definitions of human security in coordination with the United Nations Development Programme (UNDP), which includes the protection of civilians, peace support, conflict prevention, governance and accountability, and finally, public safety. As will become evident from the discussion, all of these elements are becoming increasingly relevant in the practice of the Council. Consequently, it is possible to make a compelling case for the Council's traditional framework of State security being gradually replaced with a new framework for international peace.

Prior to discussing the protection and content of human security, it is necessary to address the question of legality and whether it is within the powers of the Council to change the content of its jurisdiction. It will be argued that there is a consistent international practice which shows that States, through their continuous actions, can alter certain rights and obligations under treaties. On the most basic level, both the Vienna Convention on the Law of the Treaties and the concept of evolutionary interpretation suggest that the obligations under international documents can change over time.⁷² Hence, it is a fairly recognized principle that the content of international norms can change over time through State practice. Moreover, the generally accepted practice of the Council indicates that States are capable of amending the internal rules of the legal bodies through which they are acting internationally.⁷³ The practice of counting an absent vote of a permanent member as a concurring vote under the Charter's rules is one of such examples.⁷⁴ Accordingly, it is within the capacity of the Council to amend and expand its jurisdiction through uncontested practice. Therefore, it is possible to argue that States gradually amend the concept of security through their continuous acceptance of the Council's broader involvement in humanitarian issues.

⁷⁰ See *UN Charter*, *supra* note 5, arts 1, 2, 51.

⁷¹ For example, consider the International Covenant on Civil and Political Rights, Geneva Conventions and other sources of human rights law and humanitarian law. See *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [ICCPR]; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) [*Geneva Convention: Armed Forces in the Field*]; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) [*Geneva Convention: Armed Forces in the Field*]; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) [*Geneva Convention: Armed Forces at Sea*]; *Geneva Convention relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) [*Geneva Convention: Prisoners of War*]; *Geneva Convention relative to the protection of civilian persons in time of war*, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) [*Geneva Convention: Protection of Civilian Persons*].

⁷² See *Vienna Convention on the law of treaties*, 23 May 1969, 1155 UNTS 331 arts 31–2 (entered into force 27 January 1980). See generally Eirik Bjorge, *The Evolutionary Interpretation of Treaties* (Oxford: Oxford University Press, 2014).

⁷³ Bjorge, *supra* note 72. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, [1971] ICJ Rep 16 [*Presence of South Africa in Namibia*].

⁷⁴ See *Presence of South Africa in Namibia*, *supra* note 73 at paras 21–2. See also *UN Charter*, *supra* note 5, art 27(3).

Regarding the content of human security, one must first consider individual integrity rights that are the foundational norms of any security-centered framework. In traditional State-centered security, individual integrity rights are represented by the territorial integrity of a State and non-intervention. In the context of human security, individual integrity rights represent the same idea of personal integrity, only having an individual rather than a State as a beneficiary. As such, there is no universal embodiment of the protection of individual integrity in international law. The right to individual integrity consists of the right to life, the prohibition of torture, the prohibition of weapons causing superfluous injury or unnecessary suffering, and others.⁷⁵ The scope of human security can be broader when considering the prohibition of arbitrary imprisonment, fair trial guarantees, and others.⁷⁶ A broad range of events can thus impair the protection of individual integrity as the foundation of human security.⁷⁷ Following this, one may interpret that human security is becoming increasingly more critical in the practice of the Council.⁷⁸

On the most basic level, the Council has been widely concerned with disturbances within States. Recent notable examples are the crises in Syria and Libya, where the Council condemned and expressed grave concern regarding Human Rights violations and the dismal humanitarian situation in the respective regions.⁷⁹ The pattern of condemning human rights abuses and acts of violence can be traced throughout the Council's recent history, including the attacks on Palestinian civilians, Human Rights abuses in South Sudan, and others.⁸⁰ Accordingly, acts of widespread violence against individuals have been largely recognized to fall within the domain of the Council's interpretation of security.

However, the scope of human security within the Council's jurisdiction goes beyond the ambit of its general role. An example of this includes the Council's involvement in the matters of non-State actors. Another obvious example is international terrorism that began in the age of the Council's lawmaking.⁸¹ Following the devastating 9/11 attack on civilians, the Council considered terrorism, which is usually conducted by non-State actors, as a threat to international peace and security.⁸² Following the narrow interpretation of the Charter, the terrorist attack did not involve any other States and, as such, did not threaten the territorial integrity of the United States.⁸³ This case is another example of the Council's involvement in preventing attacks targeted largely on individuals rather than purely on States. Moreover,

⁷⁵ See e.g. ICCPR, *supra* note 71 at arts 6–10; *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) arts 3–5 [UDHR].

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ See generally *On a General and Complete Embargo on all Deliveries of Weapons and Military Equipment to Liberia*, SC Res 788, UNSCOR, 48th Sess, Supp No 2, UN Doc A/48/2 (1992) 389; *On Expansion of the Sanctions Until the Return of the Legitimately Elected President to Haiti*, SC Res 917, UNSCOR, 49th Sess, Supp No 2, UN Doc A/49/2 (1994) 59; *On Violations of International Humanitarian Law in the Former Yugoslavia*, SC Res 1019, UNSCOR, 51st Sess, Supp No 2, UN Doc A/51/2 (1995) 86; *On the Situation in Yemen*, SC Res 2014, UNSCOR, 67th Sess, Supp No 2, UN Doc A/67/2 (2011); see also Mariano J Aznar-Gómez, “A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?” (2002) 13:1 Eur J Intl L 223 at 234.

⁷⁹ See *On Threats to Peace and Security Caused by Terrorist Acts by Al-Qaida and Associated Groups Operating in Libya*, SC Res 2214, UNSCOR, 2015, 70th Sess, Supp No 2, UN Doc A/70/2 (2015) 179 [SC Resolution 2214].

⁸⁰ *Ibid.*

⁸¹ Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4 at 86.

⁸² See *SC Resolution 1373*, *supra* note 3; *SC Resolution 1540*, *supra* note 3.

⁸³ *Ibid.* For the content of a narrow interpretation see also Christian Marxsen, “Territorial Integrity in International Law – Its Concept and Implications for Crimea” (2015) 75 Heidelberg J Intl L 7 at 13–16; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion*, Advisory Opinion, [2010] ICJ Rep 2010 403 at 403.

there are examples of a similar pattern being applied in cases of pro-democratic and humanitarian interventions that have concretized certain civil and political rights of individuals as sufficient reasons for State intervention.⁸⁴

The Council's consequent practice goes further into more complex issues affecting human security. As was suggested above, human security is concerned more broadly with human rights, and its enforcement thus became a part of the international security agenda.⁸⁵ Accordingly, a broad range of other matters that were discussed above became parts of the Council's agenda.⁸⁶ Citing the abovementioned case of hydro-diplomacy, the UN recognized the right to water as a human right.⁸⁷ As a result, access to water has direct implications for human security and the matters that can be addressed by the Council. Inevitably, there are geopolitical interests associated with the access to water. Meanwhile, the Council considers the access to drinking water as a matter of concern that falls under the umbrella of human security.

A similar logic can be applied to global health concerns and the Council's involvement in the Ebola outbreak.⁸⁸ From the perspectives of both individual integrity and the general right to health, virus outbreaks are potent threats to the human race but may be viewed as limited threats to State security unless they go completely unchecked.⁸⁹ Accordingly, the activities of the Council in the context of disease control are examples of a more dominant move towards human security over State security. This illustrates a significant shift in policy, as the Council has been consistently moving towards the protection of individual and collective well-being rather than remain preoccupied with the protection of sovereignty.

The human security approach is likely to be applied to a wide range of matters. Recently, the Council began to consider the matters of global warming and financial crises as possible threats to security.⁹⁰ Both do not pose an immediate threat to Statehood *per se* but can pose danger to the world's population and cause transborder catastrophes. The increasing international concern for problems beyond inter-State disputes can be further illustrated by the reiterated focus on "building a community for the shared future for mankind" as materialized in one of the Council's resolutions.⁹¹ Accordingly, the extent of the human security framework can also include the branch of social, economic, and cultural rights as a sub-branch of Human Rights. The inclusion of such rights in the jurisdiction of

⁸⁴ *Authorization to form a multinational force under unified command and control to restore the legitimately elected President and authorities of the Government of Haiti and extension of the mandate of the UN Mission in Haiti*, SC Res 940, UNSCOR, 50 Sess, Supp No 2, UN Doc A/50/2 (1995) 83; Claus Kreß & Benjamin Nußberger, *Pro-democratic intervention in current international law: the case of The Gambia in January 2017*, *Journal on the Use of Force and International Law*, (2017), 4:2; Vaughan Lowe & Antonios Tzanakopoulos, "Humanitarian Intervention" in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2011).

⁸⁵ See *UN Resolution 2214*, *supra* note 79 at 1.

⁸⁶ *Ibid.*

⁸⁷ Kamradt-Scott, *supra* note 60; *SC Resolution 2177*, *supra* note 61.

⁸⁸ See generally Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4; Merils, *supra* note 41; *DRC*, *supra* note 38; Treves, *supra* note 42; Kamradt-Scott, *supra* note 60; *SC Resolution 2177*, *supra* note 61.

⁸⁹ *SC Resolution 2177*, *supra* note 61.

⁹⁰ See *On Extension of the Mandate of the UN Assistance Mission in Somalia (UNSOM) Until 31 Mar 2019*, SC Res 2461, UNSCOR, 74th Sess, Supp No 2, UN Doc A/74/2 (2019) 105; *The situation in Somalia*, SC Res 2408, UNSCOR, 73rd Sess, Supp No 2, UN Doc A/73/2 (2018) 120 (extension of the UN's Assistance Mission in Somalia until 31 Mar 2019). See also *UN Charter*, *supra* note 5.

⁹¹ *On Extension of the Mandate of the UN Assistance Mission in Afghanistan (UNAMA) Until 17 Mar 2018*, SC Res 2344, UNSCOR, 72nd Sess, Supp No 2, UN Doc A/72/2 (2017) 131 at 1.

the Council is another example of the increasing importance of Human Rights regimes in the context of the international security. This creates a prospect for the Council to engage in a very wide range of international matters concerning both civil and social matters.

All in all, it can be inferred that a significant shift in the Council's jurisdiction can be explained by a consistent movement towards human security over State security. Meanwhile, as illustrated by the problems in Syria and Libya, the human security approach does not entirely alleviate drawbacks of the political and State interest-driven character of the Council. The following section will discuss the benefits and pitfalls of the Council's new approach and explore the ways in which the international system can better respond to a growing number of newly recognized threats.

III. Human Security and Its Prospects

The shift towards human security is better understood through the prism of disputes in Syria and Libya, the NATO bombings of Yugoslavia, the recognition of Kosovo, the invasion of Iraq, and others.⁹² The abovementioned events show a significant divide in the Council. The core problem is the continuing focus of the States and the Council on geopolitical matters.⁹³ In this regard, the shift to human security could partially alleviate the drawbacks of the traditional State-centred perspective and provide alternative approaches to the politics of international law based on humanitarian considerations. Protection of the general standard of human security from, for example, "freedom from need" and "freedom from fear", does not create a substantive political disagreement and can allow for a degree of neutrality in the Council's policy.⁹⁴ The core idea is that human security is not necessarily related to traditional State-centred concerns such as territorial integrity, thus it allows the Council to bypass political considerations and to form more effective international humanitarian responses.

Naturally, a number of issues concern both State and human security. Nonetheless, human security provides a positive space for the Council's reform. There are two elements to this argument: first, human security as a non-State centred approach, and second, as a more technocratic approach. As a non-State centred approach, human security allows for alternative discussions that are not focused on States but on individuals that exist outside of political ideologies or interests.⁹⁵ Human security in such a context could establish a more fruitful narrative for international law, theoretically as a more individuals-centred field of law and practically as an opportunity to broaden the scope of issues currently governed by international law. This narrative can allow international law to further deepen its approach of looking beyond States and focusing on the interests of non-State subjects. The second element provides a more technocratic approach based on the merit of the problem rather than the interests of the parties.⁹⁶ This could further clarify the rules of international law regarding the maintenance of peace and suggest more coherent means for their

⁹² *Ibid.* See also Anne Ryniker, "The ICRC's position on 'humanitarian intervention'" (2001) 83:842 *Intl Rev Red Cross* 527. See generally *Authorizing Member States to Use All Necessary Means to Implement Security Resolution 660 (1990) and All Relevant Resolutions*, SC Res 678, UNSCOR, 46th Sess, Supp No 2, UN Doc A/46/2 (1990) 85; *On the Deployment of International Civil and Security Presences in Kosovo*, SC Res 1244, UNSCOR, 54th Sess, Supp No 2, UN Doc A/54/2 (1999) 296 [*SC Resolution 1244*].

⁹³ *Ibid.*

⁹⁴ See Okhovat, *supra* note 1; Bianchi, *supra* note 1; Hartberg, *supra* note 2.

⁹⁵ See Okhovat, *supra* note 1; Bianchi, *supra* note 1; Hartberg, *supra* note 2; *SC Resolution 1373 supra* note 3; *SC Resolution 1540, supra* note 3; Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4.

⁹⁶ *Ibid.* See also various cases of the UNSC-based regional administrations.

implementation.⁹⁷ It would also allow for a more consistent practice in assessing what kinds of interventions should be made and when based on the types of human security violation.

The potential benefit of applying the non-State technocratic approach can be demonstrated by the addressing of health threats to international security.⁹⁸ Such kinds of threats do not cause substantive political disagreements because they are generally devoid of particular State interests and focus more broadly on the protection of humanity from epidemics that are not limited by State borders. A similar logic can be found in resolving economic matters and protecting standards of living, for they do not concern a political status of a State but rather the level of well-being of its people. Moreover, the illustrated issues often have a technocratic nature. As a result, these problems can be consistently identified and tackled by the Council within the boundary of its new security approach. Hence, the focus on human security opens up many doors for the Council to contribute to security in a much broader and arguably a more practical way by tackling issues that endanger populations within States rather than those that purely affect State borders.

Furthermore, the extent of the Council's focus on human security could be further developed through the Council's practice. At present, the Council continues to expand its jurisdiction, yet the extent to which the Council is pursuing the goal of human security is not clear. Hence having a more well-formulated conception of international human security may take more time since it requires either direct negotiations by States and non-State parties or a more robust practice of the abovementioned human security approach by the Council. This reveals an important point that even though the maintenance of human security appears to be a priority in the Council's activities, a complete transition into a new model of security would require a broader discussion on the content of the *UN Charter* and its security norms. Even if such norms may not necessarily address veto powers, a more direct discussion on the new types of security would benefit both the legitimacy and effectiveness of the Council in its transition into the new mode of security.

Going back to the benefits of human security over State security, human security brings another benefit to the international system in general. The focus on human security can provide faster responses to international threats. Considering that the Council is one of the few bodies with the binding power over States, its broader involvement in international issues can be useful for addressing rapidly emerging threats and for bypassing lengthy processes of treaty-making and State negotiations.⁹⁹ As noted from the examples of Ebola and global warming, the Council has the potential to provide binding responses and act as a coordinator of international efforts against various threats.¹⁰⁰ The Council, as it has previously done, can establish temporary bodies that could tackle internal and transboundary problems that pose a significant concern for human security.¹⁰¹ For example, it can establish temporary administrations in post-cataclysmic or post-war regions as it already did in multiple peacekeeping missions.¹⁰² Furthermore, it can form non-governing bodies to assist

⁹⁷ See generally Boon, *supra* note 4; Bydoon, *supra* note 4; Nasu, *supra* note 4; Merils, *supra* note 41; Treves, *supra* note 42; Kamradt-Scott, *supra* note 60; *SC Resolution 2177*, *supra* note 61.

⁹⁸ *SC Resolution 2177*, *supra* note 61.

⁹⁹ See e.g. the continuous problems with the ratification of UNCLOS in the USA in HN Scheiber, "Introduction: perspectives on the history of US non-ratification of the UN convention of the law of the sea, and on the prospects for an early reversal?" (2009) 1:1 *Publicist* 1.

¹⁰⁰ See the discussed examples with economic and public health stability in Okhovat, *supra* note 1; Bianchi, *supra* note 1; Hartberg, *supra* note 2.

¹⁰¹ *Ibid.* See also *SC Resolution 1244*, *supra* note 92.

¹⁰² *Ibid.*

with humanitarian problems, such as shortage of food or medical support.¹⁰³ This broader power is particularly useful because States by themselves often fail to provide timely responses to threats, as illustrated by how prolonged and complex the process of treaty-making is.

To illustrate this point, one may refer to the example of the Paris Agreement. The agreement itself took approximately six years to draft.¹⁰⁴ In addition to the relatively lengthy drafting period, the previous efforts in creating a framework of environmental law – still without a proper enforcement structure – took decades.¹⁰⁵ The Council can resolve this issue much faster than they do through traditional State negotiations by considering the parts of the environmental law framework relevant to human security. In particular, the Council could impose immediate measures that do not engender strong political disagreements. This would allow the Council to create a framework of first response that would surpass the current diplomatic and political limits of States in the international community.

A way forward for the Council to strengthen its human security approach could be to reconcile its work with those of other bodies concerned with human security. For example, the Council could expand its executive role by acting more broadly in support of international courts. Aside from the already-existing connection between the Council and international criminal courts, the Council could work more closely with various regional and international human rights bodies. While adhering to the practices of the European Court of Human Rights, the Inter-American Court of Human Rights, and African Court on Human and People's Rights, the Council could classify the most rampant human rights abuses as possible threats to human security.¹⁰⁶ However, the Council's interference may be reserved for large-scale or urgent threats considering the limited weight of Human Rights complaints filed by individuals. Meanwhile, a closer analysis of the impact of Human Rights compliance by the Council could help to form better the extents of human security that the Council is ought to protect.

Essentially, the shift of the Council towards the protection of human security can establish a solid legal ground and provide a potentially useful space for the Council's broader involvement in international affairs. It allows for an inclusive, technocratic, and non-State-centred involvement in international security. However, several obstacles have prevented the shift towards human security from having a significant impact on international affairs, as will be discussed below.

IV. Obstacles to Human Security: From Law to Practice

There are several obstacles that may hinder the impact of the Council's approach centred on human security. On the most basic level, States might begin to question the legality of the Council's ambition for expanding its jurisdiction. Fundamentally speaking,

¹⁰³ See Okhovat, *supra* note 1; Bianchi, *supra* note 1; Hartberg, *supra* note 2; *supra* note 5.

¹⁰⁴ See European Commission, "The road to Paris" (last visited 16 February 2019), online: *European Commission: policies, information, and services* <ec.europa.eu/clima/policies/international/negotiations/progress_en>.

¹⁰⁵ *Ibid.*

¹⁰⁶ See for example *Dicle for the Democracy Party v Turkey*, No 25141/94, (10 December 2002); *Yazgar and others v Turkey*, No 22723/93, [2002] II ECHR 395; *Socialist Party and Others v Turkey*, No 26482/95, (12 November 2003).

international law is considered to be a product of State consent.¹⁰⁷ As a result, all actions taken without State consent can arguably be invalid.¹⁰⁸ This is one of the reasons why the Council's resolutions on several occasions were argued to be *ultra vires*.¹⁰⁹ In essence, the nature of the existing international legal system is generally centred on strict adherence to the limits of permissible actions given to international organizations. As was exemplified in the *WHO Nuclear Weapons* case, international organizations are governed by "the principle of specialty" that prohibits them from exceeding the jurisdiction initially conferred to them by States.¹¹⁰ The Council is also subject to this restriction as it is a sub-body within an international organization. This could provide a ground for States to object to the Council's involvement in matters of human security, especially in the existence of competing political interests.¹¹¹

In the meantime, it was suggested above that the Council's legal powers and internal procedures were not always static, and the move towards human security can be considered as an organic change in its direction.¹¹² Accordingly, even if several States would object to the Council's growing jurisdiction, it is unlikely that the matters of legality will block the Council's activities. Considering the lack of substantive objections to the Council's jurisdictional expansion to date, it is unlikely that States will actively reject human security as a new paradigm for international peace. As Whittle argued, the broader international community and the UN General Assembly took action to support many of the Council's extensive human security measures.¹¹³ Meanwhile, more practical obstacles may negate the Council's human security direction.

Beyond the questions of legality, the core issue of the expansion of the Council's powers is the lack of its capacity to address long-existing limits of the Council. There are two main obstacles that the Council faces. The first issue is as old as the Council itself—any substantial or non-substantial political disagreements between the permanent members of the Council can immediately impair the capacity of the Council to address any given issues.¹¹⁴ The expansion of the Council's jurisdiction in no way solves the existing problem: it merely reconfirms the Council's lack of capacity to address threats, but in this instance on a broader scale. If this continues, States may stop looking for alternative solutions to humanitarian problems and rely on the Council without any guarantee of an efficient response. In many cases, this results in a complete paralysis of international responses to humanitarian catastrophes because of the member States' veto powers.¹¹⁵ In this regard, even though the Council may have more opportunities to act, there is no certainty in its capacity to address threats to peace. In the meantime, its apparent capacity to act can prevent States and non-State actors from developing alternative solutions in the hope that the

¹⁰⁷ See *The Case of the SS Lotus (France v Turkey)* (1927), PCIJ (Ser A) No 10 at paras 162, 214 [*Lotus*]; Samantha Besson, "Sovereignty, international law and democracy" (2011) 22:2 EJIL 373; Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (New York: Oxford University Press, 2005) at 224–26.

¹⁰⁸ *Lotus*, *supra* note 107.

¹⁰⁹ Devon Whittle, "The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action" (2015) 26:3 EJIL 671 at 690.

¹¹⁰ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory opinion, [1996] ICJ Rep 66 at para 25.

¹¹¹ *SC Resolution 1540*, *supra* note 3.

¹¹² Kamradt-Scott, *supra* note 60.

¹¹³ Whittle, *supra* note 109.

¹¹⁴ See Peter Ferdinand, *The positions of Russia and China at the UN Security Council in the light of recent crises* (Belgium: European Parliament, 2013) at 17–8.

¹¹⁵ See e.g. the failure in Syria and Libya, Okhovat, *supra* note 1; Bianchi, *supra* note 1; Hartberg, *supra* note 2.

Council will succeed in preventing such threats. Therefore, even if the Council's expanded jurisdiction may seem to increase the Council's capacity for addressing international issues, it will create other gaps in the system.

The second major issue is the lack of the Council's capacity to contextually address complex domestic situations, as evidenced by resolution 1540, the non-alignment movement, and several cases pertaining to anti-terrorism sanctions.¹¹⁶ Essentially, the Council is limited in its capacity to contextually address complex situations in domestic contexts. Most of its resolutions are modest in their lengths and limited in their capacity to grasp the problem. As was suggested by the non-alignment movement, the proposed models of the Council's legislation did not fit in a number of domestic contexts.¹¹⁷ Some mismatched the existing domestic legislations, while some placed individuals on terrorist lists without any concrete evidence.¹¹⁸ As was further exemplified by *Kadi v European Commission*, States were forced to implement decisions that were not derived from proper evidence, highlighting the problem of bureaucracy in enforcement and remedies.¹¹⁹ More broadly, regarding the status of the Council's resolutions as absolutely binding presents a range of problems in enforcement when the resolutions can lead to the violation of *jus cogens* and other international norms.¹²⁰ All in all, the Council's past encounters with substantive problems when addressing regionally sensitive matters warn that movement towards a broader human security might produce adverse results.

Accordingly, the new approaches to security do not fully resolve the Council's technical and procedural limitations. Even though the human security approach may potentially bolster the maintenance of international peace and generate meaningful UN-based actions, the practical limitations suggest a need for a direct reform of the Council at its source. Such a reform would address the political limits of the Council and allow for a more regionally sensitive approach in order to advance the protection of human rights while respecting State rights. A reliable alternative could be developed at regional levels based on the models of regional organizations similar to the European Union, the Organization for Security and Cooperation in Europe, or NATO, for a more practical and timely implementation of the human security approach. Such organizations could provide regionally tailored solutions to the problems emerging as a part of the human security concept and be less constrained by the geopolitical limitations of the UN. In the meantime, developing a more meaningful system of international responses requires more time and thought.

V. Conclusion

The Council's move towards a different notion of security from that initially envisaged in the Charter is both promising and challenging. On the one hand, the lean towards human security highlights a growing focus on individuals, rather than States, in international law. This allows for the Council to be more broadly involved in the

¹¹⁶ *SC Resolution 1540*, *supra* note 3; *SC Resolution 1373*, *supra* note 3; Bydoon, *supra* note 4; *Yassin Kadi v Council of the European Union and Commission of the European Communities*, C-402/05 and C-415/05, [2008] ECR I-06351 at paras 345–52 [*Kadi*].

¹¹⁷ *SC Resolution 1540*, *supra* note 3.

¹¹⁸ *Ibid.* See also *Kadi*, *supra* note 116 at paras 345–52. See also Ramses A Wessel, "Introduction to the forum: The Kadi case: Towards a more substantive hierarchy in international law?" (2008) 5 *International Organizations Law Review* 323. See also Juliane Kokott and Christoph Sobotta, "The Kadi case – constitutional core values and international law – finding the balance?" 23:4 *EJIL* 1015 at 1020.

¹¹⁹ *Kadi*, *supra* note 116 at paras 345–52; Wessel, *supra* note 118 at 325–26; Kokott and Christoph, *supra* note 18.

¹²⁰ *Kadi*, *supra* note 116 at paras 87–92, 270; Wessel, *supra* note 118 at 325–27.

international legal system to govern matters concerning individuals and their collective well-being. Moreover, the human security approach allows the Council to exercise its binding power over a wider range of matters, which in turn could lead to its stronger binding power in international law and faster responses to non-State-related threats to peace. In addition, the approach creates a new technocratic and non-State-centered paradigm for the concept of international security. Thus, the gradual shift towards human security as the foundational principle of international law appears to be promising. However, the abovementioned drawbacks may overshadow the prospects of improvement due to the Council's inherent structure. Most fundamentally, the problem of veto power cannot be resolved by the shift towards the human security model, which may leave a growing list of international matters left unaddressed or unresolved regardless of the stronger focus on human security. Moreover, there is little evidence to suggest that the Council, as a general body under international law, can adequately address the domestic and regional issues embodied in the concept of human security.

Nonetheless, a general conceptual shift towards human security could have a substantial impact on the practical and theoretical development of international law outside the context of the Council. In many ways, the human security approach represents a significant shift in the basis of the international legal system. In particular, the approach embodies the growing importance of positive sovereignty as an obligation of a State to protect its population. Moreover, the approach signals that certain Human Rights and humanitarian norms are becoming increasingly important within the international legal system. Even though there remains an opposition to the growing recognition of liberal governance from, say, authoritarian democracies, human security promotes the growing humanitarian nature of the international legal arrangements, an increasingly visible concern in international law. The varying results of this development will become more apparent as both international law and the Council continue to muddle through the challenges of political divides, economic threats, and environmental damages.