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### Discussion on the role of the UN Security Council to reach findings and opinions on matters of international law to influence the behaviour of States.

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#### **Abstract:**

This discussion explores the UN Security Council's role in shaping international law and influencing State behavior. It examines how the Council reaches findings and opinions on legal matters and the impact of these decisions on global state conduct, highlighting its pivotal role in the global legal order.

**Keywords:** *UN Security Council, International Law, State Behavior, Global Legal Order, International Relations, Global Governance, United Nations Charter, Peace and Security, Geopolitical Landscape, Sovereign States, Compliance.*

#### **Introduction.**

It is no secret that, before the United Nations Security Council (UNSC) founding, history had not seen such a powerful multilateral organisation that was given authority to keep world peace and security globally<sup>1</sup>. The UN and the SC also were set up after the catastrophic war that the world suffered during 1938-1945. The primary goal of establishing such a principal body within the UN was to replace the role of the League of Nations, which once failed to preserve international peace after the First World War<sup>2</sup>. As stated in the UN Charter<sup>3</sup>, the role of the Security Council is vital in stimulating a “peaceful climate” that can influence state behaviour globally.

The SC is the only UN institution with authority to adopt resolutions legally binding on all member nations<sup>4</sup>. Therefore, it plays a crucial role in operating the UN missions. It has several functions, which all have authoritative nature. For instance, the SC will approve all new members of the UN<sup>5</sup>, the senior representatives of the UN

<sup>1</sup> Tharoor, S., ‘Security council reform: past, present, and future’. [2011] 25(4), *Ethics & International Affairs*, pp. 397-406.

<sup>2</sup> Kirgis, F.L., ‘The Security Council’s first fifty years’ [1995] 89(3), *American Journal of International Law*, pp.506-539.

<sup>3</sup> *United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), art 24.*

<sup>4</sup> *Ibid*, art 25.

<sup>5</sup> *Ibid*, art 4.



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are assigned by it<sup>6</sup>, and this very institution carries out election procedures for judges in the ICJ<sup>7</sup>. What makes this institution so unique and empowers it with intensive power is it can investigate any existing case or emerging cases that might be considered to endanger global order and security<sup>8</sup>. In addition, only the SC has the jurisdiction to define “any threat to the peace, breach of the peace, or act of aggression and shall recommendations”<sup>9</sup>.

It is essential to examine the SC’s organisational structure and membership policy in measuring its role in influencing state behaviour and domestic and external policies. As one of the UN’s six central principal bodies, the SC will soon celebrate its 80th anniversary. However, its “hegemonic policy” has been discussed continuously but has not changed since 1963 (Its membership policy has only been changed once throughout these years)<sup>10</sup>.

Soaring discussions around accelerating the process of reforming the structure of the SC were reembarbed in 1993 and are now being called the “Never ended working process”<sup>11</sup>. Most scholars mainly argue that the “political strategy that the Security Council represent today is already outdated. It largely portrays the post-war (WWII) policy of the world, not the ongoing international relations in the modern world”<sup>12</sup>. The UN Charter, on its primary purposes (Article 1, clause 2), prescribes that states should “develop friendly relations among nations based on respect for the principle of equal rights<sup>13</sup>...”. Does it seem like the seats of the SC (permanent and non-permanent) contributed equally? We may access the current geopolitical reflection of the SC from arithmetical, regional, and political perspectives, respectively.

**First**, at the time of UN establishment (1945), out of 51 countries, 11 (5 permanent and six non-permanent) states had seats in the SC, meaning 1/4 of member states were directly involved in the operational functions of the UNSC<sup>14</sup>. In comparison, today, only 15 countries out of 192 are considered to have seats on the UN

<sup>6</sup> *Ibid*, art 97.

<sup>7</sup> Statute of International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945), art 4.

<sup>8</sup> *The UN Charter* (n 3), art 34.

<sup>9</sup> *Ibid*, art 39.

<sup>10</sup> *A/RES/1991 (XVIII) of 17 December 1963* <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WMP%20A%20RES%201991A%20XVIII.pdf>> accessed 3 January 2023.

<sup>11</sup> *Gould, M. and Rablen, M.D., ‘Reform of the United Nations Security Council: equity and efficiency’*. [2017] 173(1), *Public Choice*, pp.145-168.

<sup>12</sup> *Thomas Weiss, ‘The illusion of UN Security Council reform’* [2003] 26 *Washington Quarterly*, pp. 147-149.

<sup>13</sup> *The UN Charter* (n 3), art 1.

<sup>14</sup> *Weiss, Thomas G., and Sam Daws, The Oxford Handbook on the United Nations, 2nd edition, (Oxford University Press, London 2018) chapter 7.* <<https://doi.org/10.1093/oxfordhb/9780198803164.001.0001>>, accessed 31 Dec. 2022.



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body, which is 3/10 of the total population of the world (excluding China, data shows nearly 1/10 of the world population).

**Second**, despite accounting for less than 5% of the global population, Western Europe is traditionally assigned 33% of the seats in the SC (not including Russia). 53 Pacific Asian countries (APCs) take the 20 per cent seats of the Council, although they give up almost 60 per cent of the world population. With more than 50 countries, African states have the same seats as the APCs, and Latin American representatives occupy 13 per cent of the SC's seats<sup>15</sup>.

**Lastly**, the five permanent members (PMs) of the SC with an “unstoppable” veto right on any resolution by the UNSC will soon celebrate their “diamond” 80th jubilee. It was for sure that all these 5 PMs were great power at the end of the Second World War. But at present, recently established small states such as Singapore can create an initiative to become a permanent member of the SC, claiming equity and variability principles within the Council<sup>16</sup>. Overall, with its possessing form and structure, the UNSC is becoming less relevant in addressing late “political recessions” in the international arena. New proposals on the reform of the Council purported by scholars and democratic countries; intractable international armed conflicts; and emerging of new great powers are making it blatantly clear that reform will happen, and it is only a matter of time.

It should be considered that, as Professor Hakimi mentioned, the unstable and unpredictable climate of international law does not mean it has stopped existing. “Conflict and cooperation, controversy and consensus go hand in hand” in international law<sup>17</sup>. Therefore, leaving aside effectiveness, the SC's existence as a principal body of the UN, the SC, plays a critical role in eliminating any bad intentions against the world community's peace and security.

We can throw light on the defensive and mediating role of the SC by dividing its history into three parts: first, the SC during the Cold War; second, the SC after the dissolution of the USSR; and finally, the SC in today's international relations.

International law is an arena where the interests of states never stop colliding with each other in different economic and political matters. No international norm can satisfy the needs and interests of all states equally<sup>18</sup>. The main goal of the UN, which

<sup>15</sup> *Ibid.*

<sup>16</sup> Nadin P, 'United Nations Security Council Reform' [2014] <<https://ourworld.unu.edu/en/united-nations-security-council-reform>>, accessed 31 December 2022

<sup>17</sup> Hakimi, M., 'The work of international law' [2017] 58, *Harv. Int'l LJ*, p.1.

<sup>18</sup> *Ibid.*



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is maintaining international peace and security, has never been achieved during its consecutive years<sup>19</sup>. The cold war period was very challenging for the UNSC, almost making it the UN's most ineffective body<sup>20</sup>. We can shed light on this argument from two different angles. **First**, the UNSC has never been an influential institution enough to control or influence the behaviours of state policy and second, the Council did (and is doing) its best to preserve the world from the next World War.

Considering the UN Security Council's ultimate goal, one might conclude that the latter argument is more plausible. As D. Hammarskjöld stated, "The United Nations exists to save us from hell, not to take us to heaven"<sup>21</sup>. During the cold war, it was not the SC, but the Soviet Union and the United States had much power over their own "territory" of influence. Roosevelt's vision of the UN Security Council as "broad directors of the world" put in charge of maintaining peace in the face of any potential tragedy had failed<sup>22</sup>. It was not only the UNSC that split within itself, and the world had already been divided into two parts under the influence of two GPs at that time.

During the Cold War, international law mainly emerged around the two big powers of the SC. Rather than collective action against the disorders in the world, the US and the USSR strived to extend their influence among the nations based on their political strategy<sup>23</sup>. Till the announcement of the USSR's boycott of the SC, the institution was not almost challenged with any severe conflicts on the international stage. It was 1950 when the US took advantage of the absence of the USSR's veto power, calling all member states of the Council to act against communists' interventions in south Korea<sup>24</sup>. Holistically examining the role of the SC in the Korean War at that time, one could assume that the SC served to express the unilateral interests of either the US or the USSR. Both superpowers within the SC and on the global stage had a significant role to play while respecting each other. Any collective actions by the SC reflected one of these states' interests. Korean War continued till 1953, and this armed conflict proved that SC abstained from deciding and moving with any resolution

<sup>19</sup> Hardwick, N.A., 'The UN during the Cold War: 'A Tool of Superpower Influence Stymied by Superpower Conflict?' [2011] *E-International Relations*. <<https://www.e-ir.info/2011/06/10/the-un-during-the-cold-war-a-tool-of-superpower-influence-stymied-by-superpower-conflict/>> accessed 3 January 2023

<sup>20</sup> *Ibid.*

<sup>21</sup> <<https://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations>> accessed 2 January 2023

<sup>22</sup> Dwyer, N., 'Out in the Cold: How Truman Killed Roosevelt's Vision for the United Nations' [2020], *Honors Projects Overview*, 173.

<sup>23</sup> Malone, D. and Malone, R.D.M. eds., *The UN Security Council: from the Cold War to the 21st century*, (Lynne Rienner Publishers, Colorado 2004), pp.165.

<sup>24</sup> Weiss, T., Forsythe, D. and R. Coate (1994), "The Reality of UN Security Efforts During the Cold War" in *The United Nations and Changing World Politics* (Boulder: Westview).



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because of being heavily dependent on the five permanent member states' veto power<sup>25</sup>. By determining this drawback, the UN came up with Resolution 377 A (V)<sup>26</sup>, which was a way out of that situation. The GA's adoption of resolution 377 A (V) acknowledged that the SC had failed to fulfil its primary goal in the absence of unanimity among the permanent members.

It is important to note that any emerging conflicts in the international community play an innovative role that can positively impact international law. Resolution 377 A (V) was named "Uniting for Peace" (the UFP). The "Uniting for Peace" was the solution to restrain the veto power of permanent members whenever it happens again (the UFP resolution was implemented 13 times till the present time). On the one hand, the UN approach to Korean War was considered by many scholars as a collective engagement to end the breach of peremptory norms<sup>27</sup>. On the other hand, some evaluated the UNSC's role in Korea as a police action. No matter what it was or how it approached the conflict, the SC, with the 'hand' of GA, could reach the Armistice Agreement between North and South, which today sides to stop all hostilities till they get mutual peace treatment (they are technically still in "frozen conflict").<sup>28</sup>

Although strategies and policies used in Korean War were under the authority of the UN, all decisions were made in Washington<sup>29</sup>.

While calling the SC ineffective in the Korean war, it should be admitted that "International law" managed to cope with the situation by "transferring" the responsibility of SC to the GA when the interests of five permanent members collided in the political arena. Professor Hakimi noted in one of her blogs<sup>30</sup> that the mechanism of international law never stopped watering its objectives. Sometimes it takes longer to find a solution, and other times it overestimates or underestimates the situation, making it more problematic. Sometimes, it cannot assist with any legal instrument, and it seems like it paused to exist<sup>31</sup>. But it is how it works and reflects in the behaviour of nations in the long run.

<sup>25</sup> *Ibid.*

<sup>26</sup> <[https://www.un.org/en/sc/repertoire/otherdocs/GAres377A\(v\).pdf](https://www.un.org/en/sc/repertoire/otherdocs/GAres377A(v).pdf)> accessed 1 January 2023.

<sup>27</sup> Wright, Q., *Collective security in the light of the Korean experience. In Proceedings of the American Society of International Law at its annual meeting (1921-1969) (Cambridge University Press, London 1951) vol. 45, pp. 165-181.*

<sup>28</sup> Baqi, M.S., *The Korean Conflict. In International Security Seminars. Retrieved on (Sultan Qaboos University Press, Oman 2018), vol. 3, No. 11*

<sup>29</sup> Weiss (n 24).

<sup>30</sup> <<https://harvardilj.org/2017/08/professor-hakimis-reply/>> accessed 4 January 2023.

<sup>31</sup> Joyner, D.H., 'Why I stopped believing in customary international law'. [2019] 9(1), *Asian Journal of International Law*, pp.31-45.



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Another crisis that happened in 1956 around the Suez Canal was not like Korean War. Different powers acted on this matter rather than the USSR and the US. Egypt, backed by the USSR, nationalised a foreign-owned canal. It fuelled the conflicts with Israel and assisted in beginning the Second Arab-Israeli War<sup>32</sup>. The UK and France took the position against the other permanent members and invaded Egypt<sup>33</sup>. Again, the SC's action was blocked by the veto powers of the UK and France, and it handed its responsibility to the GA by applying the UFP resolution<sup>34</sup>. It was the first time the UN used its Emergency Forces (UNEF) as an armed peacekeeping mission to stop further escalation of international armed conflict (IAF). Although they did not have a crucial role in this conflict, they put enough political pressure on France and the United Kingdom, which caused the conflict to cease in a week. From then on, the SC was highly dominated by US policy, which was challenged by first the USSR and then the Russian Federation.<sup>35</sup>

One can easily portray the role of the SC during the Cold War by looking at the number of UFP resolutions between 1951 and 2022. The adopting 11/13 Uniting for Peace resolutions during the Cold War demonstrates how two Superpowers have heavily influenced the SC<sup>36</sup>. However, it would be unjust to conclude that the UN failed to accomplish its goals during the Cold War. By declaring “all people have the right to self-determination”, the UN and all superpowers triggered the decolonisation process, which welcomed new “third world countries” to the international community.

After the dissolution of the Soviet Union, the SC began a new era in its history, authorising UN peacekeeping missions in many countries engaged in armed conflicts. Some scholars recall this period as the “golden era of international law”<sup>37</sup>. It seemed unstoppable after being “rusted” for years, and machines came forth with solutions to international conflicts. It had become even more influential by authorising transnational UN government in Cambodia<sup>38</sup>, Eastern Slavonia<sup>39</sup>, Baranja and Western

<sup>32</sup> Warner, G., 'Collusion of the Suez Crisis of 1956' [1979] 55(2), *International Affairs (Royal Institute of International Affairs)*, pp.226-239.

<sup>33</sup> Abernathy, David, *The Dynamics of Global Dominance: European Overseas Empires, 1415–1980*. (Yale University Press, Connecticut 2000).

<sup>34</sup> Weiss, T.G. and Kalbacher, D.Z., *In Security studies (Chapter: The United Nations)*, (Routledge Press London 2008), pp. 349-366.

<sup>35</sup> Abernathy (n 33).

<sup>36</sup> Hardwick (n 19).

<sup>37</sup> *The General Assembly declared the period 1990-1999 to be the United Nations Decade of International Law*, <<https://www.un.org/law/1990-1999/>> accessed 3 January 2023.

<sup>38</sup> Brown FZ. *Cambodia in 1991: an uncertain peace*. *Asian Survey*. 1992 Jan 1;32(1):88-96.

<sup>39</sup> Boothby, D., 'The political challenges of administering Eastern Slavonia'. [2004] 10, *Global Governance*, p.37.



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Syrmia<sup>40</sup>, Kosovo<sup>41</sup> and East Timor<sup>42</sup>. It also encountered serious drawbacks while maintaining its ultimate goal (prevent all nations from aggressions) in Mozambique, former Yugoslavia and Haiti. Overall, the UNSC still seemed like being “sharpened” through the conflicts and obstacles that came before it. The influence of the SC on states was never questioned till the US invaded Iraq in 2003 without authorised resolution of the Security Council<sup>43</sup>. The Sri Lankan Civil war in 2009 revealed that the UN faced a profound “systemic failure”, which technically concluded the “golden era”<sup>44</sup>. This statement was proved to be true in 2017 when the US attacked Syria with a missile strike without authorising it by the SC again.

No one knows how far this “systematic failure” will take to recover again. Climate change has already been one of the serious concerns of the Security Council since the international community realised that the peace and security of the world might be endangered not only under the threats of world wars or aggressions, but environmental issues also call the determined multilateral approaches which the SC could accomplish<sup>45</sup>. The Security Council is a more complex structure that has evolved through different global issues. While the SC’s opinions and rulings on state behaviour are being considered holistically, it should be noted that the SC’s concern of sustaining international peace and security is expanding<sup>46</sup>. Recently it has issued a resolution 2532<sup>47</sup>, which addressed the increasing tensions over the origination of the COVID-19 virus between the US and China. The SC explained that the expansion of COVID-19 might be a severe drawback to maintaining global peace and security. By this resolution, the SC was calling all parties to armed conflict to cease hostilities for at least 90 days for the first time. It also approached maintaining its objectives from a novel concept that suggests natural disasters and environmental issues might jeopardise

<sup>40</sup> *United Nations Security Council Resolution 1037. S/RES/1037(1996)*

<sup>41</sup> *Bothe, M. and Marauhn, T., UN administration of Kosovo and East Timor: concept, legality, and limitations of Security Council-mandated trusteeship administration. In Kosovo and the International Community (Martinus Nijhoff Publishers, Leiden 2002), pp. 217-242.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *‘Excerpts: Annan interview’. BBC News. 16 September 2004*

*<[http://news.bbc.co.uk/1/hi/world/middle\\_east/3661640.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3661640.stm)> accessed 4 January 2023.*

<sup>44</sup> *‘The United Nations system failed to meet its responsibilities,’ <<https://news.un.org/en/story/2012/11/425622>> accessed 3 January 2023.*

<sup>45</sup> *Schrijver, N., ‘International organization for environmental security’ [1989] 20(2), Bulletin of Peace Proposals, pp.115-122.*

<sup>46</sup> *Knight, A., ‘Global environmental threats: can the Security Council protect our earth’ [2005] 80, NYUL Rev., p.1549.*

<sup>47</sup> *<<https://documents-dds-ny.un.org/doc/UNDOC/LTD/N20/169/84/PDF/N2016984.pdf?OpenElement>> accessed 3 January 2023.*



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international peace too<sup>48</sup>. The most challenging task in international relations is not to deviate, holding the position of mediator and not letting the tensioned words reverse into bullets and missiles in the sky. Looking at the current affairs of international law and assessing it holistically, it can be concluded that the capacity of the SC to influence state behaviours is still adequate to some extent, retaining the legal order at least at a 'technical' level.

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<sup>48</sup> Negri, S., 'United Nations Security Council Resolution 2532' [2021] 60(1), *International Legal Materials*, pp.24-29.

