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The United Nations Security Council and International Peace and Security: A Critical Legal Examination

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Abstract

This paper examines the legal authority of the United Nations Security Council to maintain international peace and security and critiques the doctrinal and institutional tensions that emerge when that authority is exercised in practice. The Charter designates the Council as the organ with “primary responsibility” for peace and security, and it enables binding decision-making with potentially far-reaching consequences for states and individuals. Yet the same framework also conditions the Council’s powers by reference to the Purposes and Principles of the United Nations, raising persistent questions of legality, legitimacy, and accountability, especially when Council measures operate in general and prospective ways resembling regulation, or when sanctions regimes implicate procedural fairness and effective remedies. The analysis proceeds through a doctrinal reading of Charter provisions and select practice (including counterterrorism and non-proliferation “thematic” resolutions), and then turns to control mechanisms, including the jurisprudential fallout surrounding targeted sanctions and incremental innovations in political accountability. Ultimately, the paper argues that the Council’s legal capacity is both robust and structurally under-disciplined, and that a credible collective security system requires not only effectiveness but also legally intelligible limits and minimum due-process guarantees.

Keywords: *Security Council; collective security; Chapter VII; sanctions; veto; accountability; due process*

1. Introduction

The Security Council sits at the legal and political center of the post-1945 collective security architecture. In the Charter's institutional design, states conferred "primary responsibility" for the maintenance of international peace and security upon the Council, while simultaneously affirming that, in performing those duties, it acts "on their behalf" (United Nations, 1945, art. 24). At the level of black-letter law, the Council's authority is thus not merely recommendatory: it can adopt decisions that require implementation by all members, thereby projecting legal consequences outward from a limited-membership body onto the wider membership.

At the same time, the Council's mandate has never been exhausted by the Charter's text alone. Its practice has expanded, contracted, and reconfigured in response to crises, geopolitical alignments, and shifting conceptions of "threats to the peace." This dynamic character is the source of much of the Council's institutional resilience. It is also the source of recurring legal anxiety, because elasticity in mandate can shade into indeterminacy of limits. Some of the most serious critiques arise where Council action resembles lawmaking (for example, "thematic" obligations directed to all states), and where targeted sanctions engage individual rights with thin procedural safeguards. (Bianchi, 2006; Kokott & Sobotta, 2012).

1.1 Research Problem

The research problem can be stated plainly, though not simply: **how can the Security Council's expansive responsibility for peace and security be reconciled with the Charter's legal constraints and with baseline rule-of-law expectations?** The Council is empowered to act decisively; yet it is also expected to act *lawfully*, meaning in conformity with Charter purposes, and in a manner that does not corrode the normative coherence of the international legal system. (United Nations, 1945, art. 24(2); de Wet, 2004).

This paper advances the claim that the Council's legal authority is best understood as (i) *textually grounded but practice-amplified*, and (ii) *constrained in principle but weakly constrained in enforcement*. The result is a persistent accountability gap: legality debates exist in doctrine and litigation spillovers, but they rarely mature into a stable, systemic review practice at the UN level. (de Wet, 2004; Kokott & Sobotta, 2012).

1.2 Methodological Approach and Materials

The approach is doctrinal and critical. It proceeds by:

- (a) close reading of relevant Charter provisions (especially arts. 24, 25, and Chapter VII);
- (b) examination of illustrative Council practice (selected sanctions and thematic resolutions); and
- (c) assessment of external constraint mechanisms (judicial reasoning in regional courts, advisory perspectives, and political accountability innovations). (United Nations, 1945; Security Council Report, 2018; International Court of Justice, 1971).

The paper does not attempt an empirical evaluation of conflict outcomes. It is, rather, a legal examination of authority-claims and constraint-claims, because, in practice, the Council's legitimacy arguments often turn on whether its outputs are *recognizably legal* as well as strategically effective.

1.3 Structure and Limitations

Section 2 sets out the Charter framework. Section 3 identifies practice-based expansions (thematic resolutions and sanctions). Section 4 focuses on limits and accountability, including jurisprudential "spillover" and political innovations. Section 5 provides reform options grounded in law and institutional design. Section 6 concludes.

2. The Charter's Allocation of Authority for International Peace and Security

2.1 Article 24 and the Delegated "Primary Responsibility"

Article 24(1) performs two related legal moves: it grants the Council "primary responsibility" and it records members' agreement that the Council acts on their behalf (United Nations, 1945, art. 24). This duality is often overlooked in superficial discussions. "Primary" does not necessarily mean "exclusive," yet "on behalf" suggests a representational logic that can be invoked to justify binding authority and institutional deference. The Council's legal self-understanding is frequently built on that representational premise.

2.1.1 Acting "on behalf" of Members

The "on behalf" clause supplies an argument for why decisions taken by a fifteen-member body may bind a universal membership. It also supplies a counter-argument: acting "on behalf" ought to imply some

fiduciary discipline, at least a duty to act within mandate and to provide intelligible reasons (even if not judicially reviewable in a classic sense). The Charter itself links mandate to constraint by requiring the Council, in discharging its duties, to act in accordance with UN Purposes and Principles (United Nations, 1945, art. 24(2)). The Security Council Report handbook explicitly underscores this conditioning logic. (Security Council Report, 2018).

2.1.2 The meaning of “primary” in institutional practice

“Primary responsibility” has enabled flexible institutional development: the Council often coordinates with regional arrangements, delegates implementation burdens to states, and uses subsidiary bodies for monitoring and reporting. But “primary” has also normalized a hierarchy of attention, where the Council’s agenda selection becomes an indirect form of norm-setting, some crises become “peace and security” problems; some do not. This selectivity is not merely political; it has legal salience because the Council’s Chapter VII determinations can trigger binding obligations and enforcement measures. (Security Council Report, 2018).

2.2 Article 25, Binding Decisions, and Article 103 Primacy

A central legal hinge is Article 25: members “agree to accept and carry out” Security Council decisions “in accordance with the present Charter” (United Nations, 1945, art. 25). This provision is frequently paired with Article 103, which provides that Charter obligations

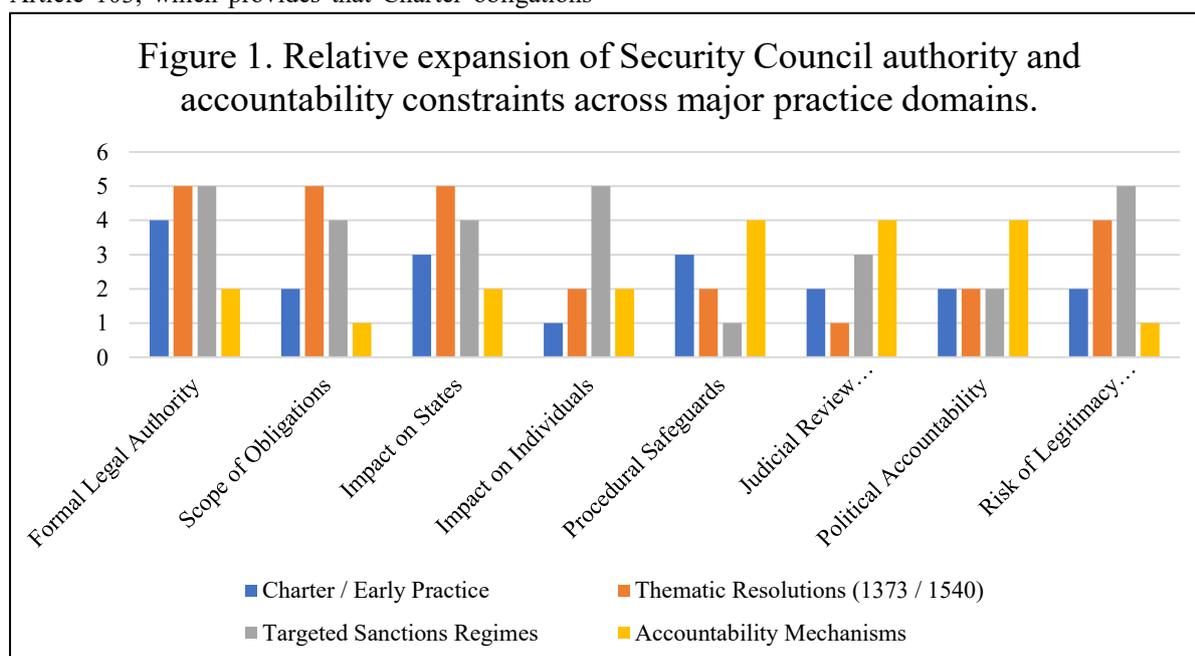
prevail over obligations under other international agreements in the event of conflict (United Nations, 1945, art. 103). Together, these provisions help explain why Council action can generate downstream compliance duties even in legally crowded environments.

2.2.1 Binding force and compliance

Two notes matter. First, not all Council outputs are “decisions” in the Article 25 sense; resolution language and context are often used to infer intent. Second, even where binding force is accepted, implementation remains a function of political will and domestic legal translation, producing uneven compliance and occasional contestation of legal meaning. (United Nations Office of Legal Affairs, 2019/2016; Security Council Report, 2018).

2.2.2 Norm conflicts and Article 103

Article 103 supplies a supremacy clause for Charter obligations, and it has become a doctrinal focal point in litigation and scholarship surrounding sanctions and rights-conflicts. The key legal tension is this: if the Charter prevails, are there any external limits at all? One mainstream answer is that peremptory norms (*jus cogens*) and the Charter’s own purpose-and-principles constraints still matter as interpretive and substantive limits. The debate is not settled; what *is* clear is that Article 103 is repeatedly invoked precisely because Council measures can collide with other normative commitments. (United Nations Office of Legal Affairs, 2023; Bianchi, 2006).



2.3 Chapter VI and Chapter VII as Complementary Regimes

The Charter differentiates pacific settlement (Chapter VI) from enforcement action with respect to threats to the peace, breaches of the peace, and acts of aggression (Chapter VII). Chapter VII includes Articles 39-51 and provides the Council's strongest legal tools, including non-forcible measures and, in principle, authorization of force. (United Nations, 1945; Security Council Report, 2018).

2.3.1 Pacific settlement measures

Chapter VI emphasizes negotiated and procedural pathways. While often described as "non-binding," Chapter VI can structure authoritative diplomacy and shape expectations of conduct. The Council's ability to mix Chapter VI language with Chapter VII signaling can, however, blur legal categories in practice, which is one reason interpretive disputes persist. (Security Council Report, 2018).

2.3.2 Enforcement measures under Articles 39-42

Article 39 enables the Council to determine the existence of a threat to the peace and decide upon measures. The Council may impose measures not involving armed force (commonly associated with Article 41) and may authorize force where necessary (Article 42). Because the Charter does not define "threat to the peace," the Council's discretion is structurally wide, yet this very openness fuels critiques that legality becomes contingent on political bargaining rather than principled classification. (United Nations, 1945; de Wet, 2004).

Table 1

Charter Provisions Structuring the Peace-and-Security Mandate

Charter provision	Core legal function	Why it is contested in scholarship/practice
Art. 24	Allocates "primary responsibility"; Council acts "on behalf" of members	Scope of discretion, whether "on behalf" implies fiduciary constraints

Art. 24(2)	Requires conformity with Purposes and Principles	Operative legal limit or mainly programmatic?
Art. 25	Duty to carry out Council "decisions"	Meaning of "decision"; bindingness of different resolution language
Ch. VII (Arts. 39-51)	Enforcement authority for threats/breaches/aggression	Undefined "threat to peace" expands discretion
Art. 103	Charter obligations prevail over other treaty obligations	Interaction with human rights obligations and jus cogens claims

3. Practice-Based Expansion and the "Legislative" Turn

3.1 Thematic, Generally Applicable Resolutions

3.1.1 Resolution 1373 and counter-terrorism obligations

Security Council Resolution 1373 (2001) is widely treated as a paradigmatic example of the Council imposing broadly framed obligations on all states in response to terrorism, including duties relating to financing and suppression of terrorist acts (United Nations Security Council, 2001). The resolution's generality, obligations not limited to a single territorial conflict, has encouraged "legislative" characterizations in the literature, precisely because it looks less like crisis management and more like normative programming. (Bianchi, 2006).

3.1.2 Resolution 1540 and non-proliferation obligations

Resolution 1540 similarly imposes obligations aimed at preventing proliferation of nuclear, chemical, and biological weapons to non-state actors, requiring states to adopt and enforce appropriate measures and laws. (United Nations Office for Disarmament Affairs). Its architecture is structurally comparable to 1373 in the sense that it aims to shape domestic legal orders through internationally mandated templates, again raising questions about the Council's institutional role relative to general treaty-making processes.

3.2 Targeted Sanctions and Listing Procedures

3.2.1 The 1267/1989/2253 regime and the Ombudsperson

Targeted sanctions regimes generated acute due-process critiques because individuals could face asset freezes and related measures with limited notice, evidence access, or meaningful remedy. In response, the Council established the Office of the Ombudsperson via Resolution 1904 (2009) and subsequently renewed and adjusted that mandate through later resolutions; the UN's own description indicates the Ombudsperson mechanism has been repeatedly extended and that the current mandate runs to a specified end-date. (United Nations Security Council, 2009; United Nations Security Council).

3.2.2 Due process and domestic/regional litigation (Kadi)

A central flashpoint arose in European litigation: the Court of Justice of the European Union judgment in *Kadi* (2008) is often read as insisting that implementing measures must remain reviewable against fundamental rights standards within the EU legal order, even when those measures give effect to Security Council sanctions. (Court of Justice of the European Union, 2008; Kokott & Sobotta, 2012). The resulting legal "friction" illustrates a broader systemic problem: when Council action is legally supreme in one register (Article 103 arguments), but practically dependent on domestic and regional implementation, contestation migrates to those implementing sites.

Table 2

Selected Modalities of Council Action and Recurrent Legal Critiques

Modality	Practice	Recurrent legal critique
Thematic obligations addressed to all states	Res. 1373; Res. 1540	"Legislative" appearance; weak participation/representation
Targeted sanctions (individuals)	1267/1989/2253 architecture;	Due process, evidence access, and remedy deficits

ual listings)	Ombudsperson	
Binding decisions backed by Article 25/103 logic	"Decides" language in Chapter VII practice	Norm conflicts; fragmentation spillovers into other legal orders
Veto-driven (in)action	Permanent-member veto practice	Legitimacy crisis where atrocity prevention is blocked

4. Limits, Accountability, and Review

4.1 Ultra Vires Debates and Substantive Constraints

4.1.1 Purposes and Principles as interpretive limits

Even in the absence of a formalized review court for Security Council decisions, Article 24(2) remains textually important because it makes fidelity to Purposes and Principles an internal condition on the performance of duties (United Nations, 1945, art. 24(2)). The legal debate is not whether the Council is constrained at all, but *how those constraints matter*: as enforceable limits, as interpretive presumptions, or as political standards. The latter view is descriptively plausible; it is also normatively fragile, because it permits legality to collapse into discretion whenever enforcement is unlikely. (Security Council Report, 2018; de Wet, 2004).

4.1.2 Jus cogens and human rights constraints

A recurring line of argument holds that peremptory norms and minimum human-rights standards constitute constraints that cannot be displaced by Council action. This claim often reappears through domestic and regional adjudication pathways rather than through UN-centered review. The doctrinal move is not necessarily to "strike down" Council decisions; rather, it is to control *implementation* and thereby reshape the practical effects of Council measures. (Bianchi, 2006; Kokott & Sobotta, 2012).

4.2 Judicial and Quasi-Judicial Control

4.2.1 ICJ advisory role and the Namibia opinion

The International Court of Justice has addressed legal questions entangled with Council action in advisory proceedings, including the 1971 Namibia advisory

opinion concerning the legal consequences for states of South Africa's continued presence in Namibia notwithstanding a Security Council resolution (International Court of Justice, 1971). This type of advisory practice does not produce a general review jurisdiction over Council decisions, but it does demonstrate that Council-related questions can become judicially discussable under certain procedural routes, often indirectly, and with careful framing.

4.2.2 Regional courts and *Kadi*

In regional legal orders, *Kadi* illustrates a form of indirect review: not review of the Council as such, but review of implementing acts. This is sometimes criticized as fragmentation; still, it also functions as a pressure mechanism that encourages procedural upgrades at the UN level (including, in part, the Ombudsperson mechanism). (Kokott & Sobotta, 2012; United Nations Security Council).

4.3 Political Accountability and Procedural Innovations

4.3.1 General Assembly “veto initiative” (A/RES/76/262)

In April 2022, the United Nations General Assembly adopted Resolution 76/262, establishing a standing practice that the General Assembly will meet when a veto is cast in the Security Council. (United Nations General Assembly, 2022). This mechanism does not legally constrain the veto, but it increases political visibility and may raise the reputational costs of veto use, especially in contexts framed as mass-atrocity prevention.

4.3.2 Voluntary veto restraint and codes of conduct

Alongside formal procedures, states and groups have promoted voluntary restraint initiatives. These include proposals associated with the Accountability, Coherence and Transparency Group “Code of Conduct” and the France-Mexico political declaration on veto restraint in cases of mass atrocities. They are not legally binding, yet they represent a norm entrepreneurship strategy: if hard law reform is blocked, soft law may still reshape expectations of legitimate conduct. (Security Council Report, 2015).

5. Reform Options

5.1 Charter amendment and representativeness

Charter amendment remains the most direct route to structural reform (e.g., composition, veto), but it faces

predictable political barriers given amendment ratification requirements and permanent-member interests. In practical terms, this pushes reform discourse toward incremental measures rather than formal redesign. (Security Council Report, 2018).

5.2 Practice-oriented reforms: transparency, due process, reporting

A reform program can be defended even without Charter amendment: strengthen reasons-giving practices, improve listing/delisting safeguards, institutionalize periodic review of restrictive measures, and enhance reporting to the General Assembly consistent with the Charter's reporting logic. (United Nations Security Council; Security Council Report, 2018).

5.3 Normative re-articulation: Responsibility to Protect

The Responsibility to Protect is commonly anchored in the 2005 World Summit Outcome, which articulates state responsibilities and contemplates collective action through the Security Council on a case-by-case basis when national authorities fail to protect populations from mass atrocity crimes. (United Nations General Assembly, 2005). In a critical register, R2P also exposes the veto problem: the more the Council is framed as the necessary conduit for timely protection, the more veto paralysis looks like a design defect rather than a political accident.

6. Conclusion

The Council's legal authority is simultaneously a cornerstone and a stress point of the UN collective security system. The Charter confers primary responsibility and enables binding decisions, including enforcement-oriented measures; it also conditions those powers by the organization's foundational purposes and principles. Yet the system's internal controls remain thin in the face of expansive discretion, especially where Council practice resembles general regulation or where measures affect individuals through sanctions regimes. Contemporary accountability innovations, such as General Assembly debate following vetoes and procedural strengthening of delisting mechanisms, are meaningful but incomplete. The deeper challenge persists: to build a Security Council practice that is effective without becoming legally opaque, and authoritative without becoming unanswerable.

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