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Exploring the securitisation of climate change within the meaning of Article 39:
mapping the narratives of UN Security Council intervention

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For Katie, without whom this and nothing future would be possible.

On her, I wish the stars will always shine.

*But should they cloud, a reminder, that she has someone who will always be there for
her, no matter what.*

X

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Abstract

The IPCC is unequivocal that climate change is happening, and its consequences will continue to be devastating for the earth and humanity. The inadequacy of international climate law to mitigate the threat, makes it essential that we search for ways to galvanise the international community into action. The UN Security Council offers a way to inject some much-needed momentum into the international climate response. However, progress on this front has been limited. To address this problem and attempt to find a way to bring climate change within the meaning of Article 39, there is scope to employ the theory of securitisation to understand how the permanent members justify intervention. The narratives and underpinning thresholds and triggers that lead to the securitisation of a subject within the meaning of Article 39 must be understood. This knowledge can then be applied to climate change, creating a suitable frame to argue this contemporary peril as a Security Council matter that might better get the attention of the permanent members than past efforts at securitisation. Analysis reveals the Council could play a complementary function to support the climate framework, offering an option under explored, which may incite the international climate response to greater effectiveness.

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List of Abbreviated Sources

Terrorism

Resolution 1269	UNSC Res 1269 (19 th October 1999) UN Doc S/Res/1269
Verbatim Record 4053	UNSC Verbatim Record (19 th October 1999) UN Doc S/PV/4053
Resolution 1368	UNSC Res 1368 (12 th September 2001) UN Doc S/Res/1368
Verbatim Record 4370	UNSC Verbatim Record (12 th September 2001) UN Doc S/PV/4370
Resolution 1373	UNSC Res 1373 (28 th September 2001) UN Doc S/Res/1373

Non-Proliferation of Weapons of Mass Destruction

Resolution 1540	UNSC Res 1540 (28 th April 2004) UN Doc S/Res/1540
Verbatim Record 4956	UNSC Verbatim Record (28 th April 2004) UN Doc S/PV/4956

Ebola

Resolution 2176	UNSC Res 2176 (15 th September 2014) UN Doc S/Res/2176
Verbatim Record 7263	UNSC Verbatim Record (15 th September 2014) UN Doc S/PV/7263
Resolution 2177	UNSC Res 2177 (18 th September 2014) UN Doc S/Res/2177
Verbatim Record 7268	UNSC Verbatim Record (18 th September 2014) UN Doc S/PV/7268

Peace and Security

Resolution 54	UNSC Res 54 (15 th July 1948) UN Doc S/Res/54
Resolution 161	UNSC Res 161 (21 st February 1961) UN Doc S/Res/161
Resolution 113	UNSC Res 113 (4 th April 1956) UN Doc S/Res/113
Resolution 353	UNSC Res 353 (20 th July 1974) UN Doc S/Res/353
Resolution 713	UNSC Res 713 (25 th September 1991) UN Doc S/Res/713
Resolution 733	UNSC Res 733 (23 rd January 1992) UN Doc S/Res/733
Resolution 748	UNSC Res 748 (31 st March 1992) UN Doc S/Res/748

Resolution 770	UNSC Res 770 (13 th August 1992) UN Doc S/Res/770
Resolution 787	UNSC Res 787 (16 th November 1992) UN Doc S/Res/787
Resolution 917	UNSC Res 917 (6 th May 1994) UN Doc S/Res/917
Resolution 918	UNSC Res 918 (17 th May 1994) UN Doc S/Res/918
Resolution 929	UNSC Res 929 (22 nd June 1994) UN Doc S/Res/929

Introduction

*'If the appropriate steps are not taken now, the manifestly unsatisfactory situation we have will limp along toward crisis.'*¹

I. Thesis Context

Be under no illusion, the threat facing humanity from climate change surpasses any that has come before it. We stand on the brink of a catastrophe that has the potential to decimate not just the human world, but the entire global environment. Flora and fauna will be faced with conditions in which they are ill equipped to survive in. Eco-systems will begin to collapse, having far-reaching repercussions across the entire biosphere. The time to act was yesterday, but instead we let this threat intensify and now we are in the final years before we lose the ability to respond effectively. The general apathy that exists towards this threat will sleepwalk humanity over the climatic cliff edge. If we are to have any chance of altering our fate the next decade must become characterised by a focus on climate security. Ways must be found to achieve the securitisation of climate change before the earth is made inhospitable for all life.

Climate change is defined as alterations in the condition of the global climate that can be identified over an extended period of time.² Climatic alterations take the form of average temperature increases; rising or falling levels of precipitation; and rapidly fluctuating weather patterns. As the balance of the global climate alters, changes to regional climates have become increasingly visible. Where regions were once subject to fairly consistent levels of temperature, precipitation and weather across a seasonal cycle, they may now experience entirely new patterns that do not reflect

¹ G Palmer, 'New Ways to Make International Environmental Law' (1992) 86 (2) The American Journal of International Law 259, 259.

² IPCC, 'Special Report: Global Warming of 1.5 °C: Glossary' (IPCC, 2018) <<https://www.ipcc.ch/sr15/chapter/glossary/>> accessed 26th September 2019.

typical periodic variation. Climatic alterations are taking place around the world, connected invariably to changes taking place in the global climate.

Climate change is a natural process and history reveals the earth's atmosphere has been hotter and colder than its present condition.³ However, it is irrefutable that anthropogenic activities have caused alterations to the composition of the global atmosphere, creating an unnatural heating effect and triggering human-induced climate change.⁴ The introduction of greenhouse gases into the atmosphere was first understood to be causing a warming effect as early as 1896 when Svante Arrhenius first looked at the warming properties of carbon dioxide (CO₂).⁵ In 1960 Charles Keeling carried out empirical research into the concentration of CO₂ in the atmosphere, discovering that an increase was taking place.⁶ Later studies revealed that a number of other gases possess this warming capacity, many of which are subject to mass industrial usage, generating ever-increasing concentrations in the global atmosphere.⁷ Data from NASA displays the average earth temperature between 1880 and 2017 has increased by 0.9 degrees.⁸ There is no scientific doubt: the temperature of the earth's atmosphere is on the rise in response to escalating concentrations of greenhouse gases, the consequence of which is climate change.⁹

³ Anonymous, 'What is Climate Change?' (NASA, 7th August 2017) <<https://www.nasa.gov/audience/forstudents/k-4/stories/nasa-knows/what-is-climate-change-k4.html>> accessed 2nd September 2019.

⁴ UNEP, 'GEO6: Healthy Planet Healthy People' (2019).

⁵ S Arrhenius, 'On the Influence of Carbonic Acid in the Air Upon the Temperature of the Ground' (1896) 41 Philosophical Magazine and Journal of Science 237.

⁶ C Keeling, 'The Concentration and Isotopic Abundances of Carbon Dioxide in the Atmosphere' (1960) 12 (2) Tellus Series A 199.

⁷ V Ramanathan, 'Climate Change and Protection of the Habitat: Empirical Evidence for the Greenhouse Effect and Global Warming' (2014) 22 Complexity and Analogy in Science 230.

⁸ Anonymous, 'Global Temperature' (NASA, 13th February 2018) <<https://climate.nasa.gov/vital-signs/global-temperature/>> accessed 15th February 2018.

⁹ IPCC, 'Global Warming of 1.5°C: Summary for Policymakers' (2018).

This heating effect is triggering the global climate to undergo significant alterations that humanity is ill equipped to cope with. For instance, rising temperatures in the atmosphere cause icecaps to melt.¹⁰ As a result some regions of the world are beginning to experience unprecedented flooding and changes to their local hydro systems.¹¹ The melting of the polar icecaps triggers vast quantities of fresh water to be deposited into the oceans causing sea levels to rise, which produces greater levels of coastal erosion, but is also causing some states to be submerged one centimetre at a time.¹² The vast depositing of fresh water into the oceans also has an effect on thermohaline currents, causing shifts that may have colossal repercussions.¹³ Droughts and flooding cause food and water insecurity around the world, which has dramatic implications for the stability of entire regions.¹⁴ Extreme weather events like hurricanes are becoming more destructive and increasingly frequent as temperatures rise in both the atmosphere and oceans.¹⁵ Climate change is not simply a matter of increasing atmospheric temperatures. It instead comprises a number of climatic impacts that have devastating consequences for humanity and the wider ecology of flora and fauna around the world.

Despite now understanding this phenomenon and its central cause as being an increased concentration of greenhouse gases in the atmosphere, global heating and its anthropogenic triggers show no sign of deceleration. The continued emission of

¹⁰ B Wouters et al., 'Early 21st Century Mass Loss of the North-Atlantic Glaciers and Ice Caps' (2016) 18 *Geophysical Research* 1579.

¹¹ K Morton, 'Climate Change and Security at the Third Pole' (2011) 53 *Survival* 121.

¹² Tuvalu and Funafuti are experiencing sea-level rises at three times the pace of the global average, resulting in 2.8 to 3.6 millimetres a year. UNEP, 'GEO Small Island Developing States Outlook' (2014).

¹³ UNEP, 'GEO6: Healthy Planet Healthy People' (2019).

¹⁴ Anonymous, 'UN Warns Climate Change is Driving Global Hunger' (UN Climate Change, 12th September 2018) <<https://unfccc.int/news/un-warns-climate-change-is-driving-global-hunger>> accessed 15th October 2019.

¹⁵ UNEP, 'GEO 6: Healthy Planet Healthy People' (2019).

CO₂ equates to an atmospheric concentration consistently exceeding 400PPM.¹⁶ Looking at CO₂ another way, there is approximately 36,153 megatons currently in the atmosphere.¹⁷ Further exacerbating the problem, deforestation reduces natural CO₂ absorption and it is estimated that 15 billion trees are lost annually.¹⁸ The combination of these factors meant June 2017 was the fourth-warmest June on record with all those surpassing it coming after 1998.¹⁹ The last five years have been the hottest ever recorded, demonstrating the escalating intensity of global heating.²⁰ Its cause, through the emission of greenhouse gases, is intricately woven into the fabric of human existence, presenting acute challenges that demand equally acute responses through international governance.

Although scientific evidence began to appear as early as 1896, it was not until 1992 that the international community took the first steps towards addressing climate change. The United Nations Framework Convention on Climate Change (UNFCCC) and subsequent Kyoto Protocol and Paris Agreement represent the primary mechanisms designed to address the root causes of climate change, predominantly through the reduction of greenhouse gas emissions. However, these efforts have long been criticised for their lack of impression on the problem. Sunstein highlighted the Kyoto Protocol was a failure in part because of the prevailing self-interest of

¹⁶ National Oceanic and Atmospheric Administration, 'Global Monthly Mean CO₂' (Earth System Research Laboratory, 5th August 2019)

<<https://www.esrl.noaa.gov/gmd/ccgg/trends/>> accessed 2nd September 2019.

¹⁷ Global Carbon Atlas, 'CO₂ Emissions 2017' (Global Carbon Project, 2019)

<<http://www.globalcarbonatlas.org/en/CO2-emissions>> accessed 15th October 2019.

¹⁸ UNEP, 'Towards a Land Degradation Neutral World: A Sustainable Development Priority' (2015).

¹⁹ H Shaftel (ed), 'June 2017 was the fourth warmest June on record' (NASA Goddard Institute for Space Studies, 14th June 2017).

<<https://climate.nasa.gov/news/2607/june-2017-was-fourth-warmest-june-on-record/>> accessed 30th November 2017.

²⁰ A Borunda, 'The last five years were the hottest ever recorded' (National Geographic, 6th February 2019)

<<https://www.nationalgeographic.com/environment/2019/02/2018-fourth-warmest-year-ever-noaa-nasa-reports/>> accessed 18th November 2019.

states that did not comply with their obligations.²¹ Clemencon says the Paris Agreement may put us on the road to decarbonisation but it may also 'have been another missed opportunity where international leaders made vague promises they were in no position or unwilling to fulfil'.²² The Tyndall Centre for Climate Change reveals the extent that these legal efforts have failed, finding that emissions have consistently increased since 1992.²³ This has forced those with a mind to confront climate change to look towards additional response options, within which the United Nations Security Council (UNSC) has emerged as one avenue meriting exploration.

The UNSC has long been understood as the executive of the international community.²⁴ Compounded by its renaissance in the 1990s and early 2000s it became clear to some that the UNSC had the capacity to take climate governance in new directions.²⁵ The UNSC has advanced its role to the point of legislature, meaning

²¹ C Sunstein, 'Montreal Versus Kyoto: A Tale of Two Protocols' (2006) Harvard Environmental Law Review Working Paper 06-17, 1
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=913395 > accessed 4th July 2019.

²² R Clemencon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?' (2016) 25 Journal of Environment and Development 3, 20.

²³ Anonymous, 'Global Carbon Budget 2018' (Tyndall Centre for Climate Change Research, 2018) <<https://www.tyndall.ac.uk/carbonbudget2018>> accessed 18th November 2019.

²⁴ C Henderson, 'The Centrality of the United Nations Security Council in the Legal Regime Governing the Use of Force' in N White, C Henderson (eds), *Research Handbook on International Conflict and Security Law* (1st edition, Elgar Publishing 2013) 120; J Alvarez, 'Judging the Security Council' (1996) 90 The American Journal of International Law 1; B Fassbender, 'Quis Judicabit? The Security Council, its Powers and its Legal Control' (2000) 11 EJIL 219; D Lee, 'The Genesis of the Veto' (1947) 1 International Organization 33.

²⁵ C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 International Environmental Agreements 35; S Scott, 'Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate?' (2008) 9 Melbourne Journal of International Law 495.

it has the facility to introduce resolutions that have long-term, binding legal effect.²⁶ This and other qualities have attracted those who wish to see a more robust response to climate change. Arguments follow that a climate resolution with a binding character is precisely the type of action that is required, and the enforcement arm of the UNSC would provide a means to implement its mandate in a way that is precluded in the usual sovereignty-orientated forum of international climate law.²⁷

The UNSC has not embarked upon this course of action. Despite hosting a series of debates on climate change since 2007 there has yet to be any substantive progress made. This is partly a reflection of the general hesitance about bringing climate change onto the UNSC's agenda. Further obstructing this move, the permanent members are yet to find any unity on the subject. In all cases of UNSC intervention they must either agree or be indifferent and so withhold their veto. The expanding mandate of the UNSC into terrorism, weapons of mass destruction (WMDs) proliferation and health was rendered possible by agreement among the permanent members. Furthermore, in all three instances one or more of them adopted a leading role that proved crucial in the securitisation of those subjects.²⁸ The permanent members must be convinced of the necessity and benefit of introducing climate change within the scope of collective security. It is also important that those viewing

²⁶ P Szasz, 'The Security Council Starts Legislating' (2002) 96 (4) *The American Journal of International Law* 901; for an example see, UNSC Res 1540 (28th April 2004) UN Doc/S/Res/1540; E Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?' (2004) 28 *Fordham International Law Review* 542; S Talmon, 'The Security Council as World Legislature' (2005) 99 *The American Journal of International Law* 175.

²⁷ A Boyle, J Hartman, A Savaresi, 'The United Nations Security Council's Legislative and Enforcement Powers and Climate Change' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 101.

²⁸ The term *securitisation* will be explained fully in Chapter One.

such progression as problematic have their concerns assuaged if global momentum is to be cultivated.²⁹

II. Thesis Purpose and Structure

The purpose of this thesis is to explore a way to bring climate change onto the agenda of the UNSC, specifically, through the activation of Article 39 of the UN Charter. Past instances exist where the link between climate change and the UNSC has been made, but to date none of these arguments has seen the activation of Article 39.³⁰ It might be argued the security apparatus is inappropriate to deal with this threat because of the link to military solutions and the move away from multilateralism.³¹ In 1992 these assertions would have been more credible, but despite being aware of the danger we have continued to march towards it and now stand ten years from the point at which humanity will lose control of the situation and the ability to respond effectively to the cascading consequences.³² On this precipice the UNSC offers a last bastion of hope to generate an immediate response to climate change, and so it is imperative to explore a pathway towards the activation of Article 39.

To this end several arguments will be made. First, this thesis will introduce the theory of securitisation as a way to rethink how we interpret Article 39 of the UN Charter, moving the scope of analysis from what it might mean to how its activation is

²⁹ States like the G77 view climate change as a development issue, arguing the UNSC lacks the expertise to make a positive intervention, see UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663.

³⁰ S Scott, R Andrade, 'The Global Response to Climate Change: Can the Security Council Assume a Lead Role?' (2012) 18 (2) *Brown Journal of World Affairs* 215.

³¹ C Tinker, 'Environmental Security in the United Nations: Not a Matter for the Security Council' (1992) 59 *Tennessee Law Review* 787; C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 *International Environmental Agreements* 35.

³² This is the timeline set by the Intergovernmental Panel on Climate Change. IPCC, 'Special Report: Global Warming of 1.5°C: Glossary' (2018).

justified. Second, it will be argued that the primary mechanisms for tackling climate change are for the most part ineffective. Third, analysing the past practice of the UNSC this thesis will demonstrate that consistent narratives exist across different Article 39 activations, within which, thresholds and triggers are present that, when crossed, generate the requisite unity among the permanent members to take collective action. This understanding of how threats are framed, and the thresholds present will then be applied to climate change, with the intention of providing a novel argument for use by those seeking its securitisation before the UNSC. Additionally, the progression of climate change before the UNSC comes with practical problems and so any argument seeking its securitisation must take account of these. There must be clarity as to how the UNSC can be expected to intervene in a positive manner, something that is often lacking in the wider literature.³³

Concisely stated, this thesis intends to make six main arguments: securitisation theory provides a novel and useful lens of analysis; international climate law is failing; the UNSC's remit has evolved to now include international security threats; there are consistent narratives and underpinning thresholds and triggers that lead to the securitisation of international security threats; by centralising extreme weather events climate change can be framed according to the same narratives; the adoption of a complementary stance means the UNSC can be a positive force in the international climate framework.

Chapter One will begin by introducing the theoretical frame that has been employed to guide this thesis. The theory of securitisation will be explained, with emphasis on how it moves the lens of analysis from what Article 39 might constitute to how it is activated. The research methods employed will then be set out to inform the reader of the roadmap that was used to conduct this thesis. Finally, the sources selected for analysis and the mode of interpretation will be established.

³³ K Conca, J Thwaites, G Lee, 'Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?' (2017) 17 (2) Global Environmental Politics 1.

Chapter Two will analyse the traditional mechanisms of international law intended to tackle climate change. This examination will emphasise that we must move away from the position that some climate law is better than no climate law, and recognise the current mechanisms are failing catastrophically. Relying on these instruments will sleepwalk humanity into a disaster of our own making, thus providing justification for the securitisation of climate change away from these ordinary responses and onto the security agenda.

Chapter Three is concerned with identifying a referent object for the purposes of securitisation theory and narrowing down the subjects to be analysed. It begins by establishing how to interpret the term international peace and security. It then provides a brief history of this concept, through the evolution of threats engaged, showcasing that peace and security manifest as distinct issues. Centralising those threats with a security character provides a more precise referent object for the purposes of securitisation theory. The links between climate change and security will then be made, providing a rationale for the examination of these international security threats in the following chapter.

Chapter Four dissects how the international security subjects of terrorism, WMD proliferation and the 2014 Ebola crisis came to be recognised as threats to peace and security from the perspective of the permanent members. It explores the narratives consistently present and what tangible thresholds and triggers existed that, when crossed, generated the required political unity to allow the activation of Article 39. The chapter will analyse the narratives that were consistently prominent, including: magnitude; transnational scale; collective interest; insufficient response; and urgency. These narratives will be analysed to expose patterns of behaviour from the permanent members that could be applicable to other pending threats.

Chapter Five will take the findings from the previous chapter and apply them to climate change. It will be exhibited that climate change crosses all the required thresholds and triggers within the narratives identified to prompt the permanent members to unify their agenda in the pursuit of collective security and activate

Article 39. However, more than simply making this connection this chapter will seek out those climatic impacts that best fit the narratives used by the permanent members in past instances of securitisation. This will allow climate change to be framed in the way most likely to encourage the activation of Article 39, providing an element of practical value to the findings here that those in the climate security field may employ to argue for its securitisation.

Chapter Six proceeds by illustrating the main arguments against involving the UNSC, not with the intention of dispelling such positions, but to understand them. The perspectives of the permanent members will also be quantified at this point to comprehend their interpretation of climate change before the UNSC, and why they have not yet securitised it. The chapter will advocate for a complementary response to climate change, which takes account of the reasons for needing UNSC intervention, but also recognises that certain objections and obstacles have to be overcome. It will be argued a complementary response is within the UNSC's reach, as it is currently constituted, and could offer greater effectiveness than is currently exhibited by the climate regime.

III. Contribution to the Literature

There is little scientific doubt that climate change is a global threat.³⁴ The question is how do we handle it? Involving the UNSC in climate change has been discussed for approximately twelve years now,³⁵ although the link between environmental harm and the UNSC goes back to at least 1992.³⁶ The stimulus for greater legal discourse on the nexus between climate and security was the 2007 UNSC debate on climate

³⁴ IPCC, 'Global Warming of 1.5°C: Summary for Policymakers' (2018).

³⁵ F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

³⁶ C Tinker, 'Environmental Security in the United Nations: Not a Matter for the Security Council' (1992) 59 *Tennessee Law Review* 787; L Malone, 'Green Helmets: A Conceptual Framework for Security Council Authority in Environmental Emergencies' (1996) 17 *Michigan Journal of International Law* 515.

change.³⁷ The first of its kind, this debate was critical in beginning the movement of climate change onto the agenda of the UNSC and, despite some protestations, the discourse has steadily advanced both internal to the UNSC and within academic circles.³⁸

The 2007 debate sparked questions on whether or not there was a role for the UNSC on climate change. Taking a balanced approach, Sindico put forward the possibility that elevation of climate change to the level of the UNSC could generate global awareness that might help to encourage state engagement with the traditional conduits of international climate law.³⁹ This helped to create early momentum behind the climate and security nexus. Arguments quickly advanced to determine whether or not climate change was able to fall within the remit of Article 39.⁴⁰ Relying on the evolving scope of the UNSC through the widening of Article 39 Penny argued that climate change could fall within its mandate and be subjected to its enforcement capabilities. Penny qualified this with reference to the need for the UNSC members to support such a move. This created the first gap in the literature: even if arguments came to the conclusion that climate change was a threat to international peace and security, they were unable to get around the problem of state interest, specifically the interest of those veto-possessing members of the UNSC. Finding a way to reason through this problem is something this project will undertake.

³⁷ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663.

³⁸ See Chapter Five, where an analysis of those arguments for and against climate change before the UNSC is provided according to the statements of the permanent members.

³⁹ F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

⁴⁰ C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 *International Environmental Agreements* 35.

In 2008 Scott surveyed the competing arguments for and against UNSC intervention, finding momentum from the 2007 debate had slowed.⁴¹ Scott argued given the severity of the threat it was too early to discount a role for the UNSC that would see it support the international climate framework,⁴² which was experiencing compliance problems.⁴³ Scott and Andrade later discussed the possibility of a UNSC resolution containing hard obligations, concluding this prospect was unlikely because of the continued opposition from some corners.⁴⁴ They did point out the prominence of the permanent members, particularly the USA and China, and indicated their support for intervention may see a decisive role for the UNSC become more realistic.⁴⁵ Inadvertently this indicated the securitisation of climate change would be dependent on the perspective of the permanent members and their leadership capacity.⁴⁶ Another gap had appeared, and understanding how the permanent members securitise a matter is an area that could be explored to further advance the literature, something that this project will undertake through application of securitisation theory.⁴⁷

⁴¹ S Scott, 'Securitisating Climate Change: International Legal Implications and Obstacles' (2008) 21 *Cambridge Review of International Affairs* 603.

⁴² *Ibid.*

⁴³ L Susskind, 'Strengthening the Global Environmental Treaty System' (2008) 25 (1) *Issues in Science and Technology* 60; D Matisoff, 'Are international environmental agreements enforceable? Implications for institutional design' (2010) 10 (3) *International Environmental Agreements: Politics, Law and Economics* 165.

⁴⁴ S Scott, R Andrade, 'The Global Response to Climate Change: Can the Security Council Assume a Lead Role?' (2012) 18 (2) *Brown Journal of World Affairs* 215.

⁴⁵ *Ibid.*

⁴⁶ In 2018 Scott researched the history of the permanent members and climate change, detailing their individual stances from 2007 to 2018. This was something also carried out in this project with similar results albeit with the benefit of running to 2019. S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁴⁷ Ku in 2018 noted that there was not yet, but needed to be a consensus of the permanent members on the threat of climate change, which opens up the possibility that by understanding their securitisation motivations this project might help to generate some unity. C Ku, 'The UN Security Council's Role in Developing a

In the years since 2012 a number of questions have been discussed in the literature concerning what precisely the UNSC might be able to achieve in the climate change arena. Cousins discussed the possible roles that were available to the UNSC given the political constraints that it would have to operate under.⁴⁸ Accepting there was only so much manoeuvrability within the current character of the UNSC, Cousins concluded that any role would have to centre on early-warning systems and dispute resolution. Conca et al. took a similar line in 2017 by advocating for a number of adaptive roles for the UNSC.⁴⁹ Using empirical evidence from UN interviews they advanced various adaptive roles that might be within the UNSC's grasp and skill set.⁵⁰ In both these arguments the intent to find a way forward for the UNSC is promising, but they are limited in that adaptation and not mitigation becomes the central response of the UNSC.

The most recent collection of work includes discussion on what role the UNSC might be able to play to support the Paris Agreement.⁵¹ This is progress; however, these discussions continue to avoid asking how the UNSC could be involved in mitigation in a way that the permanent members can support. Other research details the perspective of the permanent members on climate change before the UNSC but this does not advance a route forward that might be able to subvert negative attitudes.⁵² Another gap in the literature had appeared because no one seemed to be searching

Responsibility to Respond to the Climate Change Challenge' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 162.

⁴⁸ S Cousins, 'UN Security Council: Playing a Role in the International Climate Change Regime' (2013) 25 *Global Change, Peace and Security* 191.

⁴⁹ K Conca, J Thwaites, G Lee, 'Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?' (2017) 17 (2) *Global Environmental Politics* 1.

⁵⁰ Ibid.

⁵¹ A Boyle, J Hartmann, A Savaresi, 'The United Nations Security Council's legislative and enforcement powers and climate change' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 101.

⁵² S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in Scott S, Ku C (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

for ways around the UNSC's problematic character in the context of a mitigation intervention.⁵³ This thesis will attempt to provide a response to this shortcoming by centralising mitigation before the UNSC.

To summarise, when this project began a number of avenues of exploration had appeared from within the literature. First, the UNSC might have the scope to engage climate change but this would remain irrelevant if its members did not support or drive securitisation. The hegemony of the permanent members and their dominant role in the securitisation of other subjects led the focus to them and the possibility that they would need to be examined in detail to understand the activation of Article 39. There was space for this project to expand the literature's understanding of how a threat to peace is argued from the perspective of the permanent members, and then determine if climate change could be framed within the same lines of reasoning. In addition to this, it was clear that mitigation responses had to be centralised, and a way found to sensibly advocate UNSC involvement that would be grounded in its working reality by acknowledging the perspectives of the permanent members. This thesis is seeking to plug these gaps and advance the pragmatic securitisation of climate change within the meaning of Article 39, in order to provide a complementary function to the inadequate climate framework.

⁵³ Scott in 2015 did discuss a number of options for the UNSC, some of which would fall under mitigation, but this was more a canvassing of the territory as opposed to arguing for a specific mitigation role. S Scott, 'Implications of Climate Change for the UN Security Council: Mapping the Range of Potential Policy Responses' (2015) 91 *International Affairs* 1317. Scott's 2015 argument is precisely what Conca, Thwaites and Lee were referring to when they said there is often a lack of clarity concerning a UNSC climate response. K Conca, J Thwaites, G Lee, 'Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?' (2017) 17 (2) *Global Environmental Politics* 1.

Chapter One

Theory, Method, Sources

‘Indeed, the Copenhagen School’s theory of securitisation provides a number of avenues for exploring aspects of the Council’s work that have historically been under-examined by international lawyers.’¹

I. Introduction

First, this chapter intends to explain the theoretical lens used to frame this research, with focus placed on the theory of securitisation. Second, the research methods employed will be outlined to exhibit how this thesis was constructed. Third, the selection of sources and the mode of interpretation will be set out. As a point of clarification,² the term theory is used to refer to an idea or set of ideas that have informed the research.³ The term methodology, on the other hand, refers to the set of methods used to collect and analyse data.

II. Theory of Securitisation

The main purpose of this thesis is to consider the extent to which climate change can be interpreted as a security object falling within the remit of the UNSC. As such, it is concerned with the so-called securitisation of climate change.⁴ Securitisation is a concept developed in the field of international relations to understand the process

¹ A Hood, ‘Ebola: A Threat to the Parameters of a Threat to the Peace?’ (2015) 16 (1) Melbourne Journal of International Law 29, 48.

² Flood argues that confusion exists in the legal research setting, highlighting terminology as a source of this problem, see: J A Flood, ‘Socio-Legal Ethnography’ in R Banakar, M Travers (eds), *Theory and Method in Socio-Legal Research* (1st edition, Hart Publishing 2005).

³ R Cryer, T Hervery, B Sokhi-Bulley, A Bohm, *Research Methodologies in EU and International Law* (1st edition, Hart Publishing 2013).

⁴ J Warner, I Boas, ‘Securitization of climate change: How invoking the global dangers for instrumental ends can backfire’ (2019) 37 (8) EPC Politics and Space 1471.

through which certain issues are constructed as security matters, enabling extraordinary means to be implemented to confront them. Securitisation challenges the traditional understandings of security in that it refutes the idea that security issues are naturally or objectively existential. Instead it claims that they are constituted as security matters by certain actors that have the power to move them from the normal realm of politics to the exceptional realm of security. In other words, issues do not intrinsically or essentially possess an identifiable security characteristic. It is by being referred to as 'security' matters that they become security problems, thus receiving disproportionate amounts of attention and resources compared to non-security matters. Securitisation theory offers no attempt to define security, instead shifting the focus to the process through which an issue becomes part of the security agenda and the motivations for constructing objects as threats to security.

According to its architects, the process of securitisation is comprised of two-stages.⁵ The first is termed the 'speech act' and involves the presentation of a referent object (something that has a legitimate right to survival) as at risk from an existential threat. A securitising actor carries out the speech act, typically through a statement.⁶ The second stage involves the acceptance of this speech act by an audience acknowledging that the referent object and or the threat to it should be moved from the ordinary realm of politics to the extraordinary realm of security. As part of this transfer, the usual rules of the political realm are set aside or expanded upon by the exceptional rules of the security agenda. Attention to the problem is heightened and additional resources are deployed against it. Once an audience has accepted a

⁵ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

⁶ President Bush's speech on the 'axis of evil' is an example of a speech act: see B Buzan, O Waever, 'Macrosecritisation and security constellations: reconsidering scale in securitisation theory' (2009) 35 *Review of International Studies* 253.

securitising act and transferred rule or policy making to the security agenda, the object in question is judged to be successfully securitised.⁷

This thesis has been constructed according to the view that the concept of international peace and security and threats to it under Article 39 of the UN Charter are flexible in nature, absent an objective meaning. There exists no strict definition that can be used to identify matters that have fallen or will fall within the meaning of Article 39. The UNSC activates this power according to the circumstances unique to each situation, thus allowing some matters to become part of its peace and security remit.⁸ The question of whether or not climate change can come within the meaning of Article 39 is therefore less about finding that it reflects some pre-established notion of international peace and security, but whether or not it can be securitised by the UNSC. In this thesis, focus is removed from defining Article 39 to understanding how those involved in its activation justified this course of action. The central object of inquiry is the discourses of the UNSC that surround the securitisation of threats, and specifically those speech acts that have been successful in conceiving certain issues as within the scope of Article 39. Securitisation theory will be utilised to generate knowledge to further understand how speech acts are constructed within the UNSC to justify the activation of Article 39.⁹

Defining the exact parameters of the speech act can pose difficulties. Bourbeau identified two logics within the wider literature, both of which consider securitisation through the speech act in different ways.¹⁰ The first is the logic of exception that designates the speech act as a singular event that takes place in response to an

⁷ All of the information within this section has been acquired from B Buzan, O Wæver, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

⁸ M Koskeniemi, 'The Police in the Temple Order, Justice and the UN: A Dialectical View' (1995) 6 EJIL 325.

⁹ A Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace?' (2015) 16 (1) Melbourne Journal of International Law 29.

¹⁰ P Bourbeau, 'Moving Forward Together: Logics of the Securitisation Process' (2014) 43 (1) Millennium Journal of International Studies 187.

existential threat.¹¹ This logic places emphasis on a single securitisation move, narrowing the scope of inquiry to a very limited set of circumstances. It fails to consider that there exist security institutions and mechanisms that do not cease to operate outside exceptional events and instead develop long-standing narratives on matters within their purview. Opposing this, the logic of routine proffers that context is vital, and the final speech act is simply the latest in a long-developed narrative.¹² This competing logic places greater focus on the established practices of securitising actors. Neither logic is more valid than the other, but their distinctions must be recognised in the application of securitisation theory. This is a point of great importance here, because the UNSC acts on both the logic of exception and the logic of routine, meaning it will have to be carefully addressed in the following section on research methods.

In terms of identifying a referent object, we know the UNSC is charged with maintaining or restoring international peace and security.¹³ However, the Charter contains no clear delineation of what this term means, nor is it made explicitly clear how it may be threatened.¹⁴ The justification for this is that the Charter was intended to act as a living treaty capable of interpretation according to changing global conditions.¹⁵ International peace and security as a referent object, then, is difficult to identify, because over time it has evolved according to the changing nature of threats. These evolutions vary noticeably, and not every aspect of international

¹¹ The Copenhagen School falls into this logic, alongside others works such as: T Balzacq, 'The Three Faces of Securitisation: Political Agency, Audience, and Context' (2005) 11 (2) *European Journal of International Relations* 176; L Hansen, 'Theorizing the Image for Security Studies: visual securitization and the Muhammed cartoon crisis' (2011) 17 *European Journal of International Relations* 51.

¹² For an example see: D Bigo, 'Security and Immigration: Towards a Critique of Governmentality of Unease' (2002) 27 *Alternatives* 63.

¹³ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 24(1).

¹⁴ M Selkirk, 'Judge, Jury and Executioner? Analysing the Nature of the Security Council's Authority Under Article 39 of the UN Charter' (2003) 9 *Auckland University Law Review* 1101.

¹⁵ At the San Francisco Conference President Truman of the USA argued in favour of making the Charter 'a living thing', UNCIO Volume One, p 683.

peace and security would be comparable or relevant to climate change and the purpose of this thesis to argue for its securitisation. Thus, although the referent object of this thesis could be identified as international peace and security, Chapter Three will provide a brief discussion of the evolution of this concept. By doing this a more precise referent object will be identified and a rationale for the examination of some threats and not others will be provided.

Lastly, it is important to establish what is meant here by ordinary and exceptional security rules. By reference to ordinary rules, attention is being directed to those mechanisms that already exist in relation to a given subject. For instance, the World Health Organisation and its International Health Regulations represent the ordinary means through which responses to health crises are coordinated.¹⁶ Transferring an issue from these established mechanisms means it is being removed from the ordinary sphere intended to combat it.¹⁷ Within this thesis, Article 39 will comprise the exceptional security rules. It is the pre-eminent power of the UNSC historically applied to exceptional peace and security threats. Once an issue has been cast within the meaning of Article 39, the transfer from the ordinary to the exceptional will have taken place. To exemplify this, the adoption of Resolution 2177 on the 2014 Ebola outbreak represents the creation of an exceptional security rule.¹⁸ This thesis will be focussing on the exceptional security rules and little attention will be paid to the ordinary rules that relate to those issues examined. Chapter Two offers the only exception to this, where the ordinary rules of international climate law will be examined to provide a justification for this thesis' search for a way to move climate change onto the security agenda.

¹⁶ C Enemark, 'Ebola, Disease-Control, and the Security Council: From Securitisation to Securing Circulation' (2017) 2 *Journal of Global Security Studies* 137.

¹⁷ C McInnes, S Rushton, 'HIV/AIDS and Securitisation theory' (2011) 19 (1) *European Journal of International Relations* 115.

¹⁸ UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177.

There are a number of critiques levelled at securitisation theory, with some suggesting that it focusses too heavily on specific actors,¹⁹ and fails to address the power imbalance they might have over the audience.²⁰ Moreover, some claim that it is too Eurocentric and struggles to find relevance in wider circumstances.²¹ However, these concerns are beyond the remit of this thesis. For the purposes here, the central premise of securitisation theory will be employed. Specifically, that security is not an objective entity that can be identified, but that actors with sufficient capacity can undertake to transfer objects from the ordinary realm of politics to the extraordinary apparatus of the security agenda. In the context of the UNSC, this is a particularly useful frame of reference because it will allow the discourse to move away from seeking to establish the objective meaning of Article 39, to instead looking at how its use is justified. From this angle of inquiry, we can learn how actors justify the securitisation of threats and then apply this knowledge to climate change.

III. Research Methods

Hood suggested in 2015 that securitisation theory ‘appears to go some way to explaining how and why some issues become threats to the peace’.²² Asking how an issue becomes a threat to peace allows the justifications and arguments of the actors involved to be examined. Once identified these justifications could be marshalled in the climate change context. Taking this approach has the advantage of flexibility and, by asking how an issue comes to be understood as a threat to peace, useful lines of understanding may be drawn that can be paralleled to climate change. This thesis

¹⁹ P Bourbeau, ‘Moving Forward Together: Logics of the Securitisation Process’ (2014) 43 (1) Millennium Journal of International Studies 187.

²⁰ T Balzacq, ‘The Three Faces of Securitisation: Political Agency, Audience, and Context’ (2005) 11 (2) European Journal of International Relations 176.

²¹ C Wilkinson, ‘The Copenhagen School on Tour in Kyrgyzstan: Is Securitisation Theory Useable Outside Europe?’ (2007) 38 (1) Security Dialogue 5.

²² A Hood, ‘Ebola: A Threat to the Parameters of a Threat to the Peace?’ (2015) 16 Melbourne Journal of International Law 29, 48.

intends to apply securitisation theory to the UNSC to better understand how certain threats were justified as within the remit of Article 39.²³

Hood identified two questions that securitisation theory could usefully answer: how are threats framed by states on the UNSC; and which narratives continually reappear? This thesis intends to spotlight these questions and cultivate knowledge on the narratives that continually reappear in the securitisation process of the UNSC, analysing them to identify broad patterns of justificatory arguments across a number of issues characterised as threats to peace.²⁴ If a consistent set of narratives can be identified it will further understanding of what drives securitisation on the UNSC. This will then help to predict whether climate change may constitute a threat to the peace, and whether or not it could be framed according to the same pattern of arguments. The following paragraphs will detail the research methods employed to construct this thesis, with the theory of securitisation in mind.

This thesis will divide the UNSC according to its institutional structure, examining the permanent members as the primary securitising actors. The authority granted to them through permanency and their veto power means they occupy a more influential role than their non-permanent counterparts.²⁵ This places the UNSC within the original dynamic identified by Buzan et al. in terms of examining those actors with substantial influence in a society.²⁶ It does invoke the concern of those that believe securitisation theory focusses too heavily on elite actors in positions of influence.²⁷ However, it is quite possible that it is precisely because of this imbalance of power that securitisation is able to take place. As Eroukhmanoff reminds us,

²³ The selection of threats for analysis will take place in Chapter Three.

²⁴ For reasons of feasibility not all of Hood's questions could be addressed here. But they could easily be used in future work to continue the expansion of knowledge in this area.

²⁵ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 23(1).

²⁶ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

²⁷ T Balzacq, 'The Three Faces of Securitisation: Political Agency, Audience, and Context' (2005) 11 (2) *European Journal of International Relations* 176.

securitisation is not a neutral act but a political one driven by particular interests.²⁸ Affording the permanent members exclusive powers will inevitably mean they utilise them according to their own political perspectives. As such, they are elite actors that occupy an influential role in the society of the UNSC, reflecting the original premise of securitisation theory.

Rychnovska disagrees with this, arguing that the UNSC is less akin to the typical actor-audience relationship because of the way in which different states can interact on the UNSC to find a shared narrative.²⁹ Even though a narrative may be shared the existence of the veto allows the permanent members to act as the gatekeepers of securitisation.³⁰ They can pick and choose what to securitise and so the narrative is only shared if they assent to it. Although resolutions represent the UNSC as a whole, they are overwhelmingly influenced, and sanctioned by the permanent members. Situating them as the main securitising actors therefore reflects their position of authority. Moreover, the rotating membership of the non-permanent members means that an examination of threats over a time period greater than two years would produce inconsistencies in the states examined.³¹ It is more coherent in terms of data collection to focus on the permanent members that are always present in the securitisation process.

²⁸ C Eroukhmanoff, 'Securitisation Theory' in S McGlinchey, R Walters, Scheinplflug C (eds), *International Relations Theory* (1st edition, E-International Relations Publishing 2019) 104.

²⁹ D Rychnovska, 'Securitisation and the Power of Threat Framing' (2014) 22 (2) Perspectives 9.

³⁰ This was evident in the adoption of Resolution 1540, which was negotiated by the permanent members and then presented to the non-permanent members for limited discussion: Burroughs J, 'The Role of the UN Security Council' in J Burroughs, et al., *Nuclear Disorder or Cooperative Security? The Weapons of Mass Destruction Commission* <<http://wmdreport.org/ndcs/online/NuclearDisorderPart1Section3.pdf>> accessed 24th April 2019.

³¹ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 23(2).

The next task is to decide how to interpret the speech act and determine if this project will view securitisation theory through the logic of exception or routine. The UNSC falls into both logics. On the one hand it could be viewed that resolutions passed at precise points in time are based on exceptional events, with the statements of the permanent members reflecting a speech act. An example of this would be Resolution 1368, which followed the exceptional events of September 11th 2001.³² On the other hand, the UNSC is a permanently sitting institution designed to address issues on a continuous basis. As the UNSC discusses threats these may form early iterations of the securitisation process, even if it takes many years to be considered successful via the activation of Article 39. For instance, the UNSC discussed the question of WMD proliferation as early as 1992,³³ and then again in Resolution 825,³⁴ before it recognised it as a potential Article 39 threat through Resolution 1441,³⁵ and a firm threat to peace through Resolution 1540.³⁶ In this illustration, the cumulative statements of the permanent members could constitute a developing narrative, with the final securitising move culminating in Resolution 1540.³⁷

Bourbeau argues that exception and routine are not mutually exclusive logics but are instead interrelated.³⁸ In the context of the UNSC the above does seem to reflect this, and it could be contended that both exception and routine form equally significant logics. However, it is important to understand that in the context of the UNSC the logic of exception takes on a more dominant role because, as its history

³² UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368.

³³ UNSC Verbatim Record (31st January 1992) UN Doc/S/PV/3046.

³⁴ UNSC Res 825 (11th May 1993) UN Doc/S/Res/825.

³⁵ UNSC Res 1441 (8th November 2002) UN Doc S/Res/1441.

³⁶ UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540.

³⁷ This type of argument can be found in the wider literature on securitisation, where it has been argued that it is best viewed as a continuum absent a binary nature. See: C McInnes, S Rushton, 'HIV/AIDS and Securitisation Theory' (2011) 19 (1) *European Journal of International Relations* 115.

³⁸ P Bourbeau, 'Moving Forward Together: Logics of the Securitisation Process' (2014) 43 (1) *Millennium Journal of International Studies* 187.

identifies, there are points when a situation becomes untenable for the permanent members.³⁹ Prior to this they may have been developing a narrative on a subject but were unconvinced of the need to activate Article 39. It is therefore the case that at the point of the Article 39 intervention something had occurred to alter their perspective on the matter. In the case of climate change, we can already see the semblance of a narrative developing but we must look for ways to predict, and therefore argue before the fact, when the permanent members may be convinced to intervene through Article 39.⁴⁰ For this reason, the logic of exception will be centralised here, although the context in which the UNSC intervenes will not be relegated to obscurity and may be included where relevant to demonstrate comparative changes in the UNSC's engagement with a threat.

This thesis is concerned with finding a way to argue the securitisation of climate change, which entails moving it from the ordinary realm of international law to the extraordinary apparatus of the UNSC. To do this an examination of why certain issues have been securitised within the meaning of Article 39 will take place, allowing the presentation of a comparative argument to be made in regard to climate change. The permanent members of the UNSC are going to be cast as the securitising actors because of their principal status, allowing them to dictate and control the UNSC's agenda. Their justifications for uniting behind the activation of Article 39 and the subsequent statements made in the UNSC reflect the process of an elite group of actors undertaking a speech act to achieve the securitisation of a threat. The logic of exception will be employed, and those statements made prior to the first activation of Article 39 on any given threat will feature as the primary sources selected for analysis.

IV. Sources and Interpretation

³⁹ This is particularly evident in regard to international terrorism and the 2014 Ebola outbreak.

⁴⁰ A number of debates have taken place on climate change, and some resolutions even include reference to it. See Chapter Five for a full discussion on this.

The last step is to outline the sources that will be used to collect data and the mode of interpretation employed to analyse them. Resolutions are the main legal output of the UNSC. They are expressions of its will, and in some instances may be considered examples of legislation.⁴¹ Even if not considered legislative in nature, the Charter finds they are binding on UN members,⁴² which has been confirmed by the ICJ.⁴³ It is to resolutions that some have turned to analyse the different situations that have been brought within the scope of Article 39.⁴⁴ However, resolutions only provide the end result of UNSC discussions. They do not deliver information on how individual members of the UNSC acted to support or oppose involvement. For this information, the verbatim records are of much greater use. Each formal meeting undertaken by the UNSC is recorded verbatim and archived by the UN. The acknowledgement at the start of each resolution as to the meeting where it was adopted and recorded, lends authority to these records, pointing the reader to an additional resource to help contextualise the intervention.⁴⁵ Verbatim records can be analysed to develop an understanding of how the activation of Article 39 has been justified. In other words, they contain the speech act of securitising actors, and so will feature as the primary materials of this thesis, with accompanying resolutions used in conjunction where relevant.

⁴¹ For instance: UNSC Res 1373 (28th September 2001) UN Doc S/Res/137; S Talmon, 'The Security Council as World Legislature' (2005) 99 *The American Journal of International Law* 175.

⁴² Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 25.

⁴³ The Namibia case finds the 'language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect', *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, paras 113–114.

⁴⁴ F Kirgis, 'The Security Council's First Fifty Years' (1995) 89 (3) *The American Journal of International Law* 506.

⁴⁵ This follows the advice of the ICJ where it was held the 'interpretation of Security Council resolutions also require that other factors be taken into account', *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 423 (2010), para 94.

Using verbatim records to identify and analyse a speech act is not out of line with other studies found in the broader securitisation literature. For instance, Bright applied securitisation theory to the UK's introduction of anti-terror control orders by looking at a range of textual resources to identify the arguments forwarded by the government.⁴⁶ Similarly, Jin and Karackattu examined the narratives put forward by the WHO in regard to the securitisation of infectious diseases, providing a precedent within the wider literature to treat the statements of an institution as evidence of a speech act.⁴⁷ The verbatim records will make up the primary resource used to identify and analyse the speech acts of the permanent members. They will be examined to determine the lines of reasoning and thematic narratives continually used across all relevant issues to justify the activation of Article 39. Resolutions may also be considered where relevant. Presidential statements of the UNSC may feature in the discussion to showcase the UNSC's position on a subject, but they are far less prevalent than resolutions and this is reflected in their limited presence here.

The question now becomes which verbatim records and resolutions should be examined. Given the quantity in existence, which currently numbers 2540, it would be impractical to work through each pair.⁴⁸ Moreover, not all of these texts would be relevant to what this thesis seeks to discover. Many of these resolutions do not include Article 39. The Repertoire of the UNSC generates periodic reports that spotlight Article 39 resolutions, and so it can be used to narrow down relevant materials.⁴⁹ Within this reduced number there still exist resolutions that would have

⁴⁶ J Bright, 'Securitisation, Terror, and Control: Towards a Theory of the Breaking Point' (2012) 38 *Review of International Studies* 861.

⁴⁷ J Jin, T Karackattu, 'Infectious Diseases and Securitization: WHO's Dilemma' (2011) 9 (2) *Biosecurity and Bioterrorism* 181.

⁴⁸ Anon, 'Resolutions Adopted by the Security Council in 2020' *United Nations Security Council* (15th July 2020) <<https://www.un.org/securitycouncil/content/resolutions-adopted-security-council-2020>> accessed 15th July 2020.

⁴⁹ Anon, 'Repertoire of the Practice of the Security Council' *United Nations Security Council* (14th August 2020) <<https://www.un.org/securitycouncil/content/repertoire/structure>> accessed 14th

no relevant connection to climate change. To solve this problem, it was decided to examine interventions that focus more clearly on the provision of security as opposed to the restoration of peace.⁵⁰ The rationale behind this narrowing process is that climate change reflects most clearly a security threat, and its links to peace remain a point of debate.⁵¹ Making this distinction means those threats that share a security characteristic can be examined, providing a suitable link between comparable securitisation arguments and climate change. The threats that prioritise security include terrorism, the proliferation of WMDs and the 2014 Ebola outbreak. Chapter Three will justify in much greater detail the selection of these threats based on their security characteristics.

The purpose of this thesis is to provide understanding of how the activation of Article 39 is justified and then apply this to climate change. To do this, specific instances of when Article 39 has been activated are going to be examined to determine if consistencies of reasoning exist across them. This reflects an inductive reasoning exercise,⁵² analysing specific examples of Article 39's activation to develop a general understanding of its use.⁵³ Taking this inductive approach will help to identify the presence of narrative structures and patterns of justification.⁵⁴ This will allow a

August 2020; however, the findings from the Repertoire should be handled carefully because some resolutions identified as new Article 39 interventions may in fact be continuing ones which fall outside the exceptional lens applied here, see for example: Resolutions 1037 (situation in Croatia), 1137 (situation between Iraq and Kuwait) and 1305 (situation in Bosnia and Herzegovina).

⁵⁰ The beginning of Chapter Three will make it clear how this was achieved, through an examination of the history of Article 39.

⁵¹ J Selby et al., 'Climate Change and the Syrian Civil War Revisited' (2017) *Political Geography* 232; K Conca, 'Is There a Role for the UN Security Council on Climate Change' (2019) 61 *Environment: Science and Policy for Sustainable Development* 4.

⁵² D Hunter, 'No Wilderness of Single Instances: Inductive Inference in Law' (1998) 48 (3) *Journal of Legal Education* 365.

⁵³ P Chynoweth, 'Legal Research' in A Knight, L Ruddock (eds), *Advanced Research Methods in the Built Environment* (1st edition, Blackwell Publishing LTD 2008) 28.

⁵⁴ T Hutchinson, N Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 *Deakin Law Review* 83.

determination of whether climate change can reasonably be matched against the justifications that lead to Article 39's activation. This thesis will only present in Chapter Four those narratives that can be consistently identified across each threat subject examined. It will be 'pragmatic, fact-bound, and past-orientated', meaning the inclusion of some narratives and not others is rooted in the past practice of the UNSC and the sources available to evidence this.⁵⁵ These texts will be interpreted according to the ordinary meaning of the language used.⁵⁶ As Hunter argues, inductive reasoning 'is the most useful model of legal learning we have', lending credibility to its use here as a means to learn how the activation of Article 39 is justified.⁵⁷

In terms of how this inductive method links to securitisation theory, it allows what Buzan et al. call the grammar of security to be identified.⁵⁸ The grammar of security relates to how threats are constructed, effectively creating a logic that is used by securitising actors to frame a threat. The inductive reasoning method allows the identification of consistently present logics across a number of different threats that have been securitised by the UNSC.⁵⁹ Trombetta says securitisation is open to a 'process of social construction', which implies that across a number of different

⁵⁵ M Siems, 'A World without Law Professors' in M Van Hoecke (ed) *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline* (1st edition, Hart Publishing 2011) 71.

⁵⁶ Wood suggests Articles 31–33 of the Vienna Convention on the Law of Treaties provides the basis for interpreting UNSC texts in the absence of clear rules from the UN Charter, M Wood, 'The Interpretation of Security Council Resolutions' (1998) 2 Max Planck Yearbook of United Nations Law 73. Not all agree with this position, see E Papastavridis, 'Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraqi Crisis' (2007) 56 (1) The International and Comparative Law Quarterly 83.

⁵⁷ D Hunter, 'No Wilderness of Single Instances: Inductive Inference in Law' (1998) 48 (3) Journal of Legal Education 365, 401.

⁵⁸ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

⁵⁹ Studies in securitisation theory have looked at how threats are framed over a period of time, see for example: J Jin, T Karackattu, 'Infectious Diseases and Securitization: WHO's Dilemma' (2011) 9 (2) Biosecurity and Bioterrorism 181.

threats the logics employed might vary.⁶⁰ Taking an inductive approach factors in this variation and allows for the identification of consistently present narratives.⁶¹

Corry argues that taking this constructivist approach still relies on some abstract notion of security in order to identify the subjects for consideration.⁶² This is true to an extent, and in Chapter Three a discussion will take place on the historical identification of threats by the UNSC in order to narrow down those subjects for examination. Nonetheless, simply because it is possible to identify the issues that fall within the broad remit of security does not reduce the value of employing an inductive reasoning method to identify the narratives consistently used by the permanent members to justify securitisation. While those threats brought within the scope of Article 39 will be considered part of the security agenda broadly, the inductive method will allow an original contribution to be made in terms of providing a detailed understanding of how securitisation and the construction of threats takes place on the UNSC. The acquisition of this knowledge may then be used to argue for the securitisation of climate change.

V. Concluding Remarks

This thesis is seeking to test the argument that climate change can be brought within the scope of the UNSC, and specifically within the meaning of Article 39. Employing the theory of securitisation as a frame, this research is premised on the idea that security is less an identifiable object and more a process in which certain actors transfer an issue from the ordinary realm of politics to the extraordinary realm of security. Analysis is not centred on developing a stable and objective definition of security, but on understanding the process of an object coming to be understood as

⁶⁰ M J Trombetta, 'Environmental Security and Climate Change: Analysing the Discourse' (2008) 21 (4) Cambridge Review of International Affairs 585.

⁶¹ F Ciuta, 'Security and the Problem of Context: A Hermeneutical Critique of Securitisation Theory' (2009) 35 Review of International Studies 301.

⁶² O Corry, 'Securitisation and Riskification: Second-order Security and the Politics of Climate Change' (2012) 40 (2) Millennium: Journal of International Relations 235.

part of the security agenda. Applying this here, Article 39 is not interpreted as having a clearly identifiable meaning. Instead, it is understood as being applicable to ranging situations, dependent on the ability of the UNSC to agree on its activation.

The permanent members are going to be cast as securitising actors because of their position of authority, and the power they have to control the agenda of the UNSC. Their speech acts found within the verbatim records preceding the adoption of a resolution will be the primary materials analysed. The logic of exception is employed here in order to understand what prompted the permanent members to activate Article 39 on a subject. Using an inductive reasoning mode of analysis, the primary materials will be examined to identify consistently present narratives that show how the permanent members justify the securitisation of threats.

Once knowledge on how threats are framed as within the remit of Article 39 is acquired, climate change will be compared against this to determine if it can plausibly be securitised, providing a novel argument for those who wish to pursue this objective. In short, this thesis is concerned with three research questions: what narratives continually manifest within the speech acts of the permanent members; within these narratives can thresholds and triggers be identified; can climate change be framed according to these same justifications? Chapter Two will provide justification for needing to securitise climate change. Chapter Three will identify a referent object for the purposes of securitisation theory. Chapter Four will analyse the primary materials of the UNSC that relate to the securitisation of international security threats. Chapter Five will compare the findings from the preceding chapter to climate change to find a way to argue it is in fact capable of being framed as within the remit of Article 39. Chapter Six will argue for a particular response from the UNSC on the threat of climate change.

Chapter Two

International Climate Law

‘Further critiques of the Paris Agreement include the catastrophic gap between its objectives and the actual commitment that countries articulated in their nationally determined contributions.’¹

I. Introduction

The central focus of this chapter is the existing international law on climate change. It will be shown that this framework is fundamentally ineffective. It suffers systemic failings that have persistently inhibited its ability to grasp the problem and there is no sign that this will or can change within the ten-year timeframe set by the IPCC.² As such, the ordinary rules intended to address climate change are proving vastly inadequate, justifying its securitisation. To make this argument the chapter will consider: what is international climate law? How should international climate law be evaluated? And is international climate law failing? Following these questions, it will be introduced that we must move beyond international climate law to consider a more exceptional response to this problem through securitisation.

II. Identifying International Climate Law

International climate law (ICL) is the system of state obligations designed to tackle climate change.³ This definition is broad enough to include all the traditional sources of international law under Article 38(1) of the International Court of Justice Statute,

¹ J Dehm, ‘Post Paris Reflections: Fossil Fuels, Human Rights and the Need to Excavate New Ideas for Climate Justice’ (2017) 8 Journal of Human Rights and the Environment 280, 283.

² IPCC Report, ‘Global Warming of 1.5°C: Summary for Policy Makers’ (IPCC, 6th October 2018).

³ B Mayer, *The International Law on Climate Change* (1st edition, Cambridge University Press 2018).

including: customary law; conventions; and general principles.⁴ However, while general principles and customary laws do exist implicitly in regard to climate change, they have been relegated to a secondary role, largely because of the specificity required to tackle the problem that these sources cannot provide.⁵ It is also the case that despite the existence of broadly related norms, such as the no-harm principle, the focus of the climate agenda rests nearly exclusively on conventions.⁶

Bodansky asserts that 'the growing importance of treaties suggests a diminished role for customary international environmental law'.⁷ Time has proven this point accurate, and where ICL is concerned conventions are the principal manner in which states seek to develop international frameworks.⁸ The United Nations Framework Convention on Climate Change (UNFCCC) 1992 was the first platform to situate climate change at its centre. It remains today, underpinning the agreements and protocols intended to address climate change.⁹ The objective of the UNFCCC and subsequent instruments is to achieve the 'stabilisation of greenhouse gas

⁴ United Nations, Statute of the International Court of Justice, (24th October 1945 entered into force 18th April 1946) 33 UNTS 993, Article 38(1).

⁵ Aureescu and Zaharia assert that international environmental law 'cannot be conceived outside scientific concepts' rendering the practice-based and often generic customary law unsuitable in the development of environmental principles. B Aureescu, F Zaharia, 'Science, Technology and International Environmental Law' (2011) 3 Acta Universitatis Lucian Blaga 203. See also: J Rawls, *The Law of Peoples* (1st edition, Harvard University Press 2001) for a discussion on how the general principles of law have lost further relevance because of their out-dated focus.

⁶ For a detailed discussion on the wider principles that may relate to climate change see: B Mayer, *The International Law on Climate Change* (1st edition, Cambridge University Press 2018) Ch.5.

⁷ D Bodansky, 'Customary (And Not so Customary) International Environmental Law' (1995) 3 (1) Indiana Journal of Global Legal Studies 105.

⁸ R Keohane, D Victor, 'The Regime Complex for Climate Change' (2010) 10 (33) The Harvard Project on International Climate Agreements 1.

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

concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.¹⁰

The UNFCCC was not intended to be the definitive framework in which climate change would be tackled. It was expected to provide a platform that would facilitate more in-depth responses as 'scientific understanding of the problem' evolved.¹¹ Through Article 7 the Conference of the Parties (COP) was established as the supreme body of the convention with a range of powers and responsibilities designed to 'promote the effective implementation of the Convention'.¹² One of the COP's functions is to act as a forum for the creation of further ICL.¹³ The Kyoto Protocol 1997 and the Paris Agreement 2015 represent the two instances of international law created by the COP and within the jurisdiction of the UNFCCC.¹⁴ Together these three conventions embody the principal iterations of international law intended to address climate change. Within them are housed the primary norms of international climate law that are failing to mitigate rising emissions. For this reason these conventions will be centralised later in this chapter and throughout this thesis.

III. Measuring the Effectiveness of International Climate Law

¹⁰ Ibid., Article 2.

¹¹ P-M Dupuy, J Vinuales, *International Environmental Law* (2nd edition, Cambridge University Press 2018) 177.

¹² United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 7(2).

¹³ Ibid., Article 17.

¹⁴ Kyoto Protocol to The United Nations Framework Convention on Climate Change (adopted 11th December 1997, entered into force 16th February 2005) UN Doc FCCC/CP/1997/7/Add 1; Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12th December 2015, entered into force 4th November 2016) UN Doc FCCC/CP/2015/L.9/Rev.1.

The question of effectiveness exists beyond a binary paradigm, conceived in a range of modes each capable of exhibiting different results using the same data set.¹⁵ The typical standards of evaluating effectiveness identified by Oran Young include: legal; behavioural; and problem-solving,¹⁶ sometimes referred to as: output; outcome; and impact.¹⁷ These standards are granted a level of continuity throughout the literature that indicates their importance.¹⁸ Moreover, some actors deliberately rely on certain standards to validate their own actions on climate change, allowing the dangerous claim that ICL is effective.¹⁹ It is therefore important to understand these three standards and how they allow the effectiveness of ICL to be misrepresented.

Legal effectiveness refers to the extent that a problem can be transferred into a legal regime with normative character. Adoption of the legal standard implies an element of belief that the law matters. As noted in the literature the law does matter, but not necessarily in the sense that its creation invokes immediate results.²⁰ Assuming the creation of a legal regime guarantees the achievement of the purpose for which that regime was intended is short sighted. This is supported by compliance rates that in the environmental context do not always reflect this assumption.²¹ Also, where compliance rates are high this can reflect low levels of legal obligation that states

¹⁵ A Underdal, 'The Concept of Regime Effectiveness' (1992) 27 (3) *Cooperation and Conflict* 227.

¹⁶ Young actually identifies six standards but it is these three that have been utilised in the literature. O Young, *'International Governance: Protecting the Environment in a Stateless Society'* (1st edition, Cornell University Press, 1994) Ch.6.

¹⁷ H Breitmeier, A Underdal, O Young, 'The Effectiveness of International Environmental Regimes: Comparing and Contrasting Findings from Quantitative Research' (2011) 13 *International Studies Review* 579.

¹⁸ D Bodansky, *The Art and Craft of International Environmental Law* (1st edition, Harvard University Press 2011).

¹⁹ Evidence of this will be provided in the next section.

²⁰ Some argue that law matters because of its influence on regime evolution, as opposed solely to its legal nature. J Brunnee, S Toope, 'The Changing Nile Basin Regime: Does Law Matter?' (2002) 43 (1) *Harvard International Law Journal* 105.

²¹ J Brunnee, 'Multilateral Environmental Agreements and the Compliance Continuum' in G Winter (ed), *Multilevel Governance of Global Environmental Change* (1st edition, Cambridge University Press 2006) 387.

deliberately negotiated knowing they could easily achieve the regime's intended outcome.²²

Judging the effectiveness of ICL by its existence in a convention would allow the conclusion that it is a success due to the current number of signatories to the Paris Agreement and UNFCCC.²³ Identifying the effectiveness of a regime by the creation of a convention and the number of signatures it can acquire is a limitation endemic to the legal standard. In addition, reputational theory suggests that states may engage with a convention to be seen in a positive light.²⁴ They might attend conferences and sign agreements but have little intention to allow intrusive obligations to be negotiated. In such cases they may simply wish to be seen to have participated,²⁵ allowing for the later claim that they are taking the necessary steps to solve the problem.²⁶ In such cases a convention's substance is often reduced to shallow levels of cooperation. Therefore, when assessing the effectiveness of ICL it is restrictive to adopt a purely legal standard of evaluation because it may misrepresent the character of climate regulation.

²² D Victor, K Raustiala, E Skolnikoff, *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (1st edition, MIT Press 1998).

²³ French opens with the point that if we look only to international law's existence the environment appears secure. H French, 'Making Environmental Treaties Work' (1994) 271 (6) *Scientific American* 94.

²⁴ A Guzman, 'A Compliance Based Theory of International Law' (2002) 90 (6) *California Law Review* 1823.

²⁵ UK Prime Minister Boris Johnson uses the UK's participation in the Paris Agreement as a point to accentuate the state's green credentials but his record shows that he has very little interest in pursuing robust climate policy. N Gronewold, 'Boris Johnson's Stance on Climate Change has Flip-flopped' (*Science*, 25th July 2019) <<https://www.sciencemag.org/news/2019/07/boris-johnson-s-stance-climate-change-has-flip-flopped>> accessed 1st November 2019.

²⁶ The Paris Agreement reflects this problem precisely and many states were keen to be involved. R Falkner, 'The Paris Agreement and the new logic of international climate politics' (2016) 92 *International Affairs* 1107.

The behavioural standard examines the ability of a regime to alter the behaviour of those subjected to it, in the context of achieving its stated objective. It looks to identify behavioural alterations that are taken to meet the regime's intended outcome. This provides a more comprehensive measure than the legal standard because it focusses on a deeper level of influence beyond simple legal recognition.²⁷ It is premised on the notion that the behaviour mandated by the regime is significant in its connection to the regime's objective, which is not a consistent reality. For instance, under the Kyoto Protocol Russia agreed a 5% reduction in its emissions by 2015, but this was not based on a motivation to alter behaviour towards this target but on the presence of an industrial decline that produced the reduction incidentally.²⁸ States may agree to apparent behavioural alterations but this does not necessarily mean they are legitimately motivated or linked to the regime's objective.

In the context of ICL this is a significant concern because states often refuse to agree to intrusive obligations that will demand significant behavioural alterations, as was the case with the Paris Agreement.²⁹ Even international environmental law success models like the Montreal Protocol are criticised because the behavioural obligations were already attainable by the parties and demanded little actual alteration.³⁰ Using the behavioural standard to determine the effectiveness of ICL will provide answers only to the extent that states were prepared to obligate themselves during

²⁷ For a study focussing on the behavioural standard, see J Wettstad, 'Designing Effective Environmental Regimes: The Conditional Keys' (2001) 7 (3) Global Governance 371.

²⁸ B Chambers, 'Towards an Improved Understanding of Legal Effectiveness of International Environmental Treaties' (2004) 16 (1) The George Town International Environmental Law Review 501.

²⁹ A-M Slaughter, 'The Paris Approach to Global Governance' (Project Syndicate, 28th December 2015) <<https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12>> accessed 13th September 2016.

³⁰ J Murdoch, T Sandler, 'The Voluntary Provision of a Pure Public Good: The Case of Reduced CFC Emissions and the Montreal Protocol' (1997) 63 Journal of Public Economics 331.

negotiations, which may be a reflection of already attainable behaviour and/or a lack of ambition.³¹

The problem-solving standard scrutinises the extent to 'to which regimes contribute to solving or mitigating the problems that motivated those people who create the regimes'.³² This standard situates the problem as the central object and asks whether or not it has been mitigated by the regime enacted in response to it. It is the most comprehensive measure of effectiveness as it sidesteps the limitations noted with the legal and behavioural standards by precluding misleading arguments based on the creation of law or the adoption of limited action plans. Adopting the problem-solving standard shows the inadequacy of ICL in the context of actual emissions reduction and global warming, both of which have exacerbated despite the existence of ICL. Taking this problem-centric approach has become the predominant standard of evaluation in recent studies because it offers the most accurate reflection of the climate catastrophe now facing humanity.³³

This standard is open to criticism in terms of how a problem is identified, which may be very narrow and not reflective of the true extent of the harm, allowing results to be manipulated. Instead of looking for the overall motivations of a regime, studies can look to the stated objectives as identification of the problem, which may not directly link to the harm and can be a reflection of recalcitrant attitudes at the

³¹ Raustiala makes this point in regard to international whaling conventions that have achieved high compliance rates but little in terms of behavioural effectiveness. K Raustiala, 'Compliance and Effectiveness in International Regulatory Cooperation' (2000) 32 (3) Case Western Reserve Journal of International Law 387.

³² O Young, 'Effectiveness of International Environmental Regimes: Existing Knowledge, Cutting Edge Themes, and Research Strategies' (2011) 108 (50) PNAS 19853, 19854.

³³ Ibid. See also D Bodansky, *The Art and Craft of International Environmental Law* (1st edition, Harvard University Press 2011).

political level.³⁴ A regime may reflect the lowest common denominator that could be agreed by participants, which might differ from the full extent of the problem acknowledged by scientists.³⁵ A comprehensive problem-solving standard will seek to identify the motivations underpinning the creation of the entire regime, connecting directly to the actual problem and not necessarily to the stated objectives within conventions.³⁶ Using this method would create a strong comparison between the problem and the response of a regime, but it has been criticised on the grounds of relying on imprecise notions of harm as opposed to precisely identified objectives.³⁷

This thesis will apply all three standards to the Paris Agreement, showing how they reflect varying levels of effectiveness, but the problem-solving standard will lead the conclusion that the current framework is fundamentally ineffective. To operationalize this standard two methods are found in the literature. The first revolves around comparisons between the impact the regime has had compared with the inexistence of the regime.³⁸ A criticism of this method is generating reliable models of the no regime variable and collective optimum.³⁹ This has led to refinement through the Oslo-Potsdam Solution that seeks to create a scale from zero to one with the collective optimum representing one and the no regime representing

³⁴ B Chambers, 'Towards an Improved Understanding of Legal Effectiveness of International Environmental Treaties' (2004) 16 (1) *The George Town International Environmental Law Review* 501.

³⁵ Dupuy and Vinuales talk about the two pillars of science and policy which may not always reflect one another, P-M Dupuy, J Vinuales, *International Environmental Law* (2nd edition, Cambridge University Press 2018).

³⁶ T Bernauer, 'The Effect of International Environmental Institutions: How We Might Learn More' (1995) 49 (2) *International Organisation* 351.

³⁷ C Helm, D Sprinz, 'Measuring the Effectiveness of International Environmental Regimes' (2000) 44 (5) *Journal of Conflict Resolution* 630.

³⁸ D Sprinz, C Helm, 'The Effect of Global Environmental Regimes: A Measurement Concept' (1999) 20 (4) *International Political Science Review* 359.

³⁹ Sprinz and Helm generate the no-regime parameter by collecting expert opinions and then drawing a consensus by removing the extreme views. The potential variation in such views is huge and makes it difficult to produce results that exhibit any consistency across different studies.

zero.⁴⁰ Using the Oslo-Potsdam scale investigators are able to consider what a regime has accomplished, often termed the actual performance.⁴¹ This is a very technical means of applying the problem-solving standard. It has great utility to the specific literature on effectiveness, but its value to this work is limited by the technical application required and the need for a broad understanding of the effectiveness of ICL as opposed to a very discrete one.⁴²

The second approach is less prevalent in the effectiveness literature and more suited to general and doctrinal critiques of ICL. It focusses on the condition of the climate and links deteriorating global circumstances to the ineptitude of ICL.⁴³ This method sidesteps the technical problems of outlining and employing measurement tools, instead providing an actual account of the situation. If the problem persists and/or worsens the value of the regime designed to combat it must be questioned, irrespective of whether it has a positive score based on counterfactual reasoning. Focussing on the essence of the problem and not the objectives of ICL, the findings will not be skewed by the potentially limited ambition of negotiations. This method provides a suitably reflective and critical lens for arguing that stronger responses are needed. It fits well with the problem-solving standard of effectiveness, and critiques

⁴⁰ D Sprinz, C Helm, 'The Effect of Global Environmental Regimes: A Measurement Concept' (1999) 20 (4) *International Political Science Review* 359; J Hovi, D Sprinz, A Underdal, 'The Oslo-Potsdam Solution to Measuring Regime Effectiveness: Critique, Response and the Road Ahead' (2003) 3 (3) *Global Environmental Politics* 74.

⁴¹ Helm and Sprinz are able to attribute scores between 0 and 1 for two regimes in Europe. One that targeted sulphur, which scored 0.39, and one that targeted nitrogen, which scored 0.31. C Helm, D Sprinz, 'Measuring the Effectiveness of International Environmental Regimes' (2000) 44 (5) *Journal of Conflict Resolution* 630.

⁴² O Young, 'Determining Regime Effectiveness: A Commentary on the Oslo-Potsdam Solution' (2003) 3 (3) *Global Environmental Politics* 97.

⁴³ For a discussion exemplifying the significance of the problem-solving standard and the ineptitude of the regime in light of the continuing climate problem, see S Scott, 'Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate?' (2008) 9 *Melbourne Journal of International Law* 495.

of environmental law often tread this path by beginning with reference to the exacerbation of harm.⁴⁴

To recap, the object of study here is ICL. Focus will centre on the UNFCCC, Kyoto Protocol and Paris Agreement as the principle iterations of international law intended to reduce emissions. In order to determine the utility of ICL it will be measured against the three standards of effectiveness, but the problem-solving gauge will be centralised to draw accurate conclusions on the utility of the climate framework. To operationalize this standard the continued existence of emissions and the exacerbation of global warming will be used to highlight that ICL is failing. By the end of the following section it will be clear that we must look for ways to improve the international response to climate change.

IV. Analysing International Climate Law

This section will provide a two-part analysis of ICL. The first part will begin with a brief introduction to the UNFCCC and COP system, showcasing how the foundations of the climate framework inhibit its effectiveness. The Kyoto Protocol and Paris Agreement will be analysed, looking at their design and content to show how this translates to poor levels of effectiveness. Secondly, given that the Paris Agreement is the current and primary response to climate change, attention will turn to its system of Intended Nationally Determined Contributions (INDCs). Looking at several states through the effectiveness lens identified in the previous section, it will be revealed that the INDC system is failing to mitigate climate change.

A. The UNFCCC, COPs, Kyoto and Paris

⁴⁴ For example: 'Anthropogenic climate change is heating up the atmosphere, raising sea levels, increasing ocean acidification, increasing the frequency and intensity of storms and other extreme weather events that will make life seriously endangered'. G Palmer, 'New Zealand's Defective Law on Climate Change' (2015) 12 New Zealand Journal of Public International Law 115, 115.

The creation of the UNFCCC appeared to represent a new enthusiasm for climate regulation at the international level. An unprecedented 143 state parties participated in the final negotiations in 1992,⁴⁵ and 166 signatures were received by 19th June 1993.⁴⁶ This visage of enthusiasm was quickly revealed to be misleading.⁴⁷ The broad objective of the convention is to stabilise 'greenhouse gas concentrations in the atmosphere'.⁴⁸ An inherently vague provision, it is hard to say precisely what should be achieved, and more so, it is difficult to quantify a connection between steps taken and the achievement of this objective. Adding further ambiguity, a timeline to achieve this vague objective was absent. Bodansky submits that this inability to set 'strict targets and timetables was, for many, the greatest disappointment' of the conference.⁴⁹ Others point out that the UNFCCC was a starting point, seeking to balance the interests of many parties and as such its content reflects a reasonable compromise.⁵⁰ However, this focus on compromise, although perhaps necessary to encourage participation, meant that the climate response was from the very beginning restricted to the lowest common denominator, an attribute that has been maintained right up to the present day, engulfing all climate agreements despite the ever growing presence of climatic harm.

The content of the convention leans too much towards ambiguity and non-obligation. The word 'should' appears often, as opposed to more commanding

⁴⁵ P Sands, J Peel, A Fabra, R MacKenzie, *Principles of International Environmental Law* (3rd edition, Cambridge University Press 2012).

⁴⁶ Anonymous, 'Status of Ratification of the Convention' (UN Climate Change, 2019) <<https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/status-of-ratification-of-the-convention>> accessed 1st December 2019.

⁴⁷ D Bodansky, 'The United Nations Framework Convention on Climate Change: A Commentary' (1993) 18 Yale Journal of International Law 451.

⁴⁸ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 3(1).

⁴⁹ D Bodansky, 'The United Nations Framework Convention on Climate Change: A Commentary' (1993) 18 Yale Journal of International Law 451, 558.

⁵⁰ P-M Dupuy, J Vinuales, *International Environmental Law* (2nd edition, Cambridge University Press 2018).

directives like ‘must’.⁵¹ The commitments found within Article 4(2)(a) are the most ambitious, asking developed states to limit their emissions and protect carbon sinks.⁵² The language, ambiguity and confusing content of this provision does ‘not reflect a clear commitment to stabilise carbon dioxide and other greenhouse gas emissions’.⁵³ Article 4 offers enough scope for states to avoid taking action, for instance, by referring to ‘strong and sustainable economic growth’ and ‘equitable and appropriate contributions’, allowing them to defend their weak efforts at mitigation with reference to UNFCCC caveats.⁵⁴ This continues throughout the UNFCCC and states are not obligated to take concrete steps towards the reduction of emissions and are instead provided a wide scope in which to avoid taking direct action. However, some leeway might be warranted because the UNFCCC was intended to be the beginning of the process. It provided for the future creation of protocols, and the COP system in which to carry out this function.⁵⁵

Since the UNFCCC entered into force there have been 25 COPs.⁵⁶ The COP is responsible for the general governance of the framework, monitoring state compliance and taking decisions to further climate action.⁵⁷ This section is not concerned with the day-to-day operation of the COP and its monitoring and support functions; focus instead rests on the manner in which climate law is developed through the adoption of protocols. For a decision to be taken the rules of procedure

⁵¹ For example: United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 3(1)(3).

⁵² Ibid., Article 4(2)(a).

⁵³ P Sands, J Peel, A Fabra, R MacKenzie, *Principles of International Environmental Law* (3rd edition, Cambridge University Press 2012) 304.

⁵⁴ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 4(2)(a).

⁵⁵ Ibid., Article 17.

[illegible]

⁵⁷ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 7.

dictate that consensus is preferable, but failing this a two-thirds majority of those in attendance will suffice.⁵⁸ Where the adoption of protocols is concerned a consensus is again preferable, but failing this a three-quarters majority of those attending is sufficient.⁵⁹ It is here that the real limit of the COP is exposed. While the intention behind this large majority is to reflect equality among nations, the reality is that this threshold of support might be hard to come by. If a protocol were proposed with significant climate provisions its chance of reaching the three-quarters threshold would be slim. Further, recalcitrant states turn up to negotiate and negatively influence proceedings to ensure that no obligations are agreed in their absence.⁶⁰ As a result, the COP process is nearly always limited to lowest common denominator agreements,⁶¹ or worse the entire process can become gridlocked, as was the case at the 15th COP in Copenhagen.⁶²

The COP system is not immune from the power relations that engulf the international scene. States with influence may attempt to cajole other states to follow their lead in the negotiations.⁶³ Backdoor discussions often take place and can transfer into more formal diplomatic settings, where small pockets of unity can

⁵⁸ United Nations Framework Convention on Climate Change, 'Organisational Matters: Adoption of the Rules of Procedure' (22nd May 1996) FCCC/CP/1996/2, Rule 31.

⁵⁹ Ibid., Rule 42(1)(b).

⁶⁰ Australia has been accused of this as recently as COP 25 in 2019. A Morton, 'UN Climate Talks: Australia Accused of "Cheating" and Thwarting Global Deal' *The Guardian* (15th December 2019).

<<https://www.theguardian.com/environment/2019/dec/16/un-climate-talks-australia-accused-of-cheating-and-thwarting-global-deal>> accessed 1st January 2020

⁶¹ G Palmer, 'New Zealand's Defective Law on Climate Change' (2015) 12 New Zealand Journal of Public International Law 115.

⁶² E Lovbrand, M Hjerpe, B Linner, 'Making Climate Governance Global: How UN Climate Summitry Comes to Matter in a Complex Climate Regime' (2017) 26 Environmental Politics 580.

⁶³ F Weiler, 'Determinants of Bargaining Success in the Climate Change Negotiations' (2012) 12 Climate Policy 552.

manifest.⁶⁴ Like-minded states with similar priorities band together in an effort to generate momentum behind a shared position.⁶⁵ States do not necessarily sit down with the good of the global commons as their central priority. This makes it hard for the COP system to operate for the protection of the climate and has reinforced the supremacy of the lowest common denominator, which is arguably why the Kyoto Protocol and Paris Agreement lacked the character required to halt emissions. Employing the standards of effectiveness above, this means that the output from COPs is often restricted to achieving a level of legal effectiveness and unable to provide behavioural or problem-solving successes.⁶⁶ Norms originating from this atmosphere of recalcitrant compromise have rarely been able to produce positive results.

The Kyoto Protocol 1997 attempted to introduce hard law to the climate problem.⁶⁷ The states listed in Annex I were required to individually or jointly reduce their emissions by 5% below 1990 levels.⁶⁸ The Protocol also made it law that by 2005 each Annex I state was to have made 'demonstrable progress in achieving its commitments'.⁶⁹ It provided that these states must introduce monitoring systems and communicate their results periodically.⁷⁰ It even specified the methodologies to

⁶⁴ E Lovbrand, M Hjerpe, B Linner, 'Making Climate Governance Global: How UN Climate Summitry Comes to Matter in a Complex Climate Regime' (2017) 26 *Environmental Politics* 580.

⁶⁵ T Long, 'Small States, Great Power? Gaining Influence Through Intrinsic, Derivative, and Collective Power' (2017) 19 *International Studies Review* 185.

⁶⁶ This is precisely what happened at COP 25 in 2019: some states argued to avoid tougher obligations by debating the meaning behind the word *ambitious*. Anonymous, 'COP25: Key outcomes agreed at the UN climate talks in Madrid' (Carbon Brief, 1st December 2019) <<https://www.carbonbrief.org/cop25-key-outcomes-agreed-at-the-un-climate-talks-in-madrid>> accessed 10th December 2019.

⁶⁷ Hereinafter 'the Protocol'; Kyoto Protocol to The United Nations Framework Convention on Climate Change (adopted 11th December 1997, entered into force 16th February 2005) UN Doc FCCC/CP/ 1997/7/ Add 1.

⁶⁸ *Ibid.*, Article 3(1).

⁶⁹ *Ibid.*, Article 3(2).

⁷⁰ *Ibid.*, Article 5.

be used to calculate emissions.⁷¹ There remains some doubt over the consistency and accuracy of recording methods, but this was a step in the right direction to ensure action was taken.⁷² These commitments were far more specific than those found in the UNFCCC and acted to further the climate response agenda by creating targets and conditions for Annex I states. The Kyoto Protocol at first glance appears comprehensive in its intent to address the problem.

The Protocol attempted to tackle the problem of global heating by reducing greenhouse gas emissions. The gap between this objective and the 5% reduction target is problematic. Early scientific analysis indicated that the Protocol's commitments were likely to generate a reduction in global heating between 0.08°C and 0.28°C.⁷³ If the Protocol generated results closer to the top end of this spectrum it was still unlikely to reduce global heating by the levels required to stop climate change.⁷⁴ Others examined the Protocol from the perspective of global CO₂ concentrations and found that an increase to 382 PPM would still occur by 2010, of which Annex I states would contribute 43%.⁷⁵ Even if Annex I states fulfilled their commitments they would still be responsible for nearly half of the increase in CO₂ concentration, seriously bringing the 5% target into question. While some consider that the benefits of Kyoto reside in its foundation and symbolic attempt to address the problem,⁷⁶ the fact remains that from the beginning it was relatively unambitious, unable to inspire confidence that the necessary level of reductions

⁷¹ Ibid., Article 5(2).

⁷² J Gupta, X Olsthoorn, E Rotenberg, 'The Role of Scientific Uncertainty in Compliance with the Kyoto Protocol to the Climate Change Convention' (2003) 6 *Environmental Science and Policy* 475.

⁷³ T Wigley, 'The Kyoto Protocol: CO₂, CH₄, and Climate Implications' (1998) 25 *Geophysical Research Letters* 2285.

⁷⁴ Ibid.

⁷⁵ B Bolin, 'The Kyoto Negotiations on Climate Change: A Science Perspective' (1998) 279 *Science* 330.

⁷⁶ C Bohringer, 'The Kyoto Protocol: A Review and Perspectives' (2003) 19 *Oxford Review of Economic Policy* 451.

would take place. As Wigley said, the 'Protocol, therefore...can be considered as only a first and relatively small step towards stabilizing the climate'.⁷⁷

A second problem related to the ambition of the Kyoto Protocol was the inclusion of Article 17 that allowed emissions trading to take place.⁷⁸ The purpose behind this norm is to allow states with spare emissions units to swap these with states that have exceeded their allocation.⁷⁹ This creates a system whereby the actual reductions a state makes might be significantly less than their posted results. It allows states with the capacity to respond to climate change to take less actual action and use emissions trading to meet their targets.⁸⁰ Some suggest that the trading mechanism is useful,⁸¹ and perhaps it might be if used properly and in conjunction with capacity-building initiatives.⁸² Still, its inclusion was too vague to prevent use by those states that should make tangible reductions. Global emissions would likely have decreased by a much greater margin if this facility had not been available to all Annex I states.

Moving to specific objectives, Annex I states were able to set a reduction target applicable to their individual circumstances.⁸³ In some cases states were able to

⁷⁷ T Wigley, 'The Kyoto Protocol: CO₂, CH₄, and Climate Implications' (1998) 25 *Geophysical Research Letters* 2285, 2288.

⁷⁸ Kyoto Protocol to The United Nations Framework Convention on Climate Change (adopted 11th December 1997, entered into force 16th February 2005) UN Doc FCCC/CP/ 1997/7/ Add 1, Article 17.

⁷⁹ P-M Dupuy, J Vinuales, *International Environmental Law* (2nd edition, Cambridge University Press 2018).

⁸⁰ Canada represents a developed state that could take greater action to reduce its emissions, but may continue to rely on carbon trading, Canada's INDC Submission to the UNFCCC (May 2015), Clarifying Information Table.

⁸¹ P Christoff, 'Post-Kyoto? Post-Bush? Towards an Effective Climate Coalition of the Willing' (2006) 82 *International Affairs* 831.

⁸² M Trexler, L Kosloff, 'The 1997 Kyoto Protocol: What Does It Mean for Project-Based Climate Change Mitigation?' (1998) 3 *Mitigation and Adaptation Strategies for Global Change* 1.

⁸³ Anonymous, 'Kyoto Protocol – Targets for the first commitment period' (UN Climate Change, 2019) <<https://unfccc.int/process-and-meetings/the-kyoto->

negotiate a capped increase in their emissions, which was deemed to be better than if they were going to proceed without joining the Protocol. Australia, for instance, was able to negotiate an emissions target of 108% of pre-1990 levels,⁸⁴ and Iceland agreed an increase to 110%.⁸⁵ The utility in allowing developed states like Australia and Iceland to negotiate an increase is highly problematic, but these compromises did bring emitters to the Protocol and under Article 3 still meant the 5% target was achievable jointly. The Protocol appears to represent a positive compromise that was able to demand actual action on the part of Annex I states, while providing the flexibility to recognise their individual circumstances. Yet, it was unsustainable for highly developed economies to increase their emissions, seriously limiting the Protocol's effectiveness and enabling the obstructive attitude of some states to prevail.

The success of the Protocol was further undermined by the reception from the wider international community. Many developing nations declined to sign up to binding targets because of perceived interference with their economic advancement (non-Annex I states).⁸⁶ This created a significant detraction because some of the greatest emitters of CO₂ came from the developing world, including, for example, India and

protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period> accessed 19th December 2019.

⁸⁴ M Roarty, 'The Kyoto Protocol Issues and Developments Through to Conference of the Parties (COP7)' (Parliament of Australia, 13th September 2002) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/kyoto> accessed 15th August 2019.

⁸⁵ Anonymous, 'Kyoto Protocol – Targets for the first commitment period' (UN Climate Change, 2019) <<https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>> accessed 19th December 2019.

⁸⁶ C Sunstein, 'Montreal versus Kyoto: A Tale of Two Protocols' (2006) Harvard Environmental Law Review Working Paper 06-17, 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=913395> accessed 4th July 2019.

China.⁸⁷ As a consequence, those that had signed up to set reduction targets began to question the utility of the agreement, as well as its fairness. The USA signed the Protocol as an Annex I state but did not ratify it, arguing observed inequity when compared to its global counterparts.⁸⁸ With the utility of the Protocol in question other states lost faith and did not sign up for a second round of commitments.⁸⁹ For example, Canada left the Protocol on 15th December 2012,⁹⁰ claiming that its inability to regulate the USA and China undermined its chance of success, and that it would save \$14 billion dollars a year in fines by leaving.⁹¹ The second round of commitments was only able to attract 37 parties.⁹²

Although the Protocol was able to attribute greater responsibility for climate change with the developed world, this created contemporary disagreement that frustrated its chance of success. The limited ambition attached to the Protocol was still too high in comparison to the muted level of commitment states were prepared to provide. By taking this hard and targeted approach towards solving the problem the Protocol

⁸⁷ At the time of the Protocol's introduction India emitted 2.1 gigatonnes of CO₂ annually, and China released 8.2 gigatonnes annually. Climate Watch, 'Historical GHG Emissions' (World Research Institute, 2018) <<https://www.climatewatchdata.org/ghg-emissions?breakBy=location&filter=G77%2CIND&source=31&version=1>> accessed 10th October 2018.

⁸⁸ G Bush, (White House Archives, 16th April 2008) <<https://georgewbush-whitehouse.archives.gov/news/releases/2008/04/20080416-6.html>> accessed 10th October 2018.

⁸⁹ New Zealand, for example, did not sign up for a second round of commitments. G Palmer, 'New Zealand's Defective Law on Climate Change' (2015) 12 New Zealand Journal of Public International Law 115.

⁹⁰ Kyoto Compliance Committee, 'Canada's Withdrawal from the Kyoto Protocol and its Effects on Canada's Reporting Obligations Under the Protocol' (20th August 2014) CC/EB/25/2014/2.

⁹¹ Anonymous, 'Canada pulls out of Kyoto Protocol' *The Guardian* (13th December 2011) <<https://www.theguardian.com/environment/2011/dec/13/canada-pulls-out-kyoto-protocol>> accessed 1st November 2019.

⁹² Anonymous, 'The Doha Amendment' (UN Climate Change, 2019) <<https://unfccc.int/process/the-kyoto-protocol/the-doha-amendment>> accessed 13th November 2019.

inadvertently precluded any significant measure of success, creating an atmosphere of disagreement and defeat, leading Dupuy and Vinuales to describe it as 'largely obsolete'.⁹³ This diminished the level of problem-solving effectiveness accorded to the Protocol but also damaged the extent that it could be considered legally effective because of the relatively small number of states in Annex I and the reduction of this figure further still at the second round of commitments. The hard law of Kyoto failed to generate a global consensus at creation stage, and this fractured its foundations beyond repair.⁹⁴

These problems, combined with the lack of ambition, are part of the reason that the Protocol has failed to have any real impact on the problem of emissions. Within the period 1990 to 2013 global output of CO₂ rose by 60%, seriously undermining any level of effectiveness that might be attributed to the Protocol.⁹⁵ Looking at greenhouse gases more broadly, between 1990 and 2014 the world's total emissions have increased by 31%.⁹⁶ Data from NASA indicates that global mean temperatures continued to rise in the period 1997 to 2012.⁹⁷ The Kyoto Protocol cannot be considered an effective response to rising emissions or global heating.

⁹³ P-M Dupuy, J Vinuales, *International Environmental Law* (2nd edition, Cambridge University Press 2018) 181.

⁹⁴ Bohringer disagrees with this, finding that the Protocol was a valuable starting point. C Bohringer, 'The Kyoto Protocol: A Review and Perspectives' (2003) 19 *Oxford Review of Economic Policy* 451.

⁹⁵ T Khokhar, 'Chart: Global CO₂ Emissions Rose 60% between 1990 and 2013' (The World Bank, 21st April 2017) <<http://blogs.worldbank.org/opendata/chart-global-co2-emissions-rose-60-between-1990-and-2013>> accessed 1st November 2019.

⁹⁶ K Lebling, M Ge, J Friedrich, '5 Charts Show How Global Emissions Have Changed Since 1850' (World Resources Institute, 2nd April 2018) <<https://www.wri.org/blog/2018/04/5-charts-show-how-global-emissions-have-changed-1850>> accessed 1st November 2019.

⁹⁷ Anonymous, 'GISS Surface Temperature Analysis' (NASA, 2019) <<https://data.giss.nasa.gov/gistemp/history/>> accessed 18th December 2019.

This claim contrasts some of the achievements posted by Annex I states that have recorded various reductions.⁹⁸ Yet, the targets achieved by these states are misleading. The economic crash in 2008 meant many states and industries went into decline, lowering their emissions inadvertently.⁹⁹ Whether or not this should be used as a means to critique the Protocol is debatable, but it should be clear that many reductions recorded were not necessarily the result of deliberate state action in response to legal commitments. A significant portion of reductions were also attributed to emissions trading schemes and do not reflect true cuts.¹⁰⁰ Taking a discrete view of certain aspects of the Kyoto Protocol might reveal some level of success, but compared to the continual rise in greenhouse gases these successes are negligible and so it must be characterised as largely ineffective.

Learning from the Kyoto Protocol, the Paris Agreement was premised on the avoidance of the same inherent defects. The Paris Climate Conference 2015 was one of the most publicised conferences to date, with unrivalled participation and 197 signatories.¹⁰¹ Many state officials made public overtures of international cooperation towards meeting the threat of climate change.¹⁰² Great emphasis was

⁹⁸ Anonymous, 'Process and Meetings' (UN Climate Change, 2019) <<https://unfccc.int/process-and-meetings#:0c4d2d14-7742-48fd-982e-d52b41b85bb0:e9afd34c-be95-4144-b35c-a2cbc9477048:ed910dd0-b46e-4f37-b4a5-c77768b89b26>> accessed 1st November 2019.

⁹⁹ M Le Page, 'Was Kyoto Climate Deal a Success? Figures reveal mixed results' *New Scientist* (14th June 2016) <<https://www.newscientist.com/article/2093579-was-kyoto-climate-deal-a-success-figures-reveal-mixed-results/>> accessed 10th November 2019.

¹⁰⁰ Ibid.

¹⁰¹ Anonymous, 'Paris Agreement – Status of Ratification' (United Nations Climate Change, 2019) <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed 26th September 2018.

¹⁰² A Vaughan, E Howard, A Holpuch, 'World Leaders Call for Action at Paris Climate Talks' *The Guardian* (30th November 2015) <www.theguardian.com/environment/blog/live/2015/nov/30/paris-climate-summit-world-leaders-meet-for-opening-day-live last accessed> last accessed 30th November 2019.

placed on participation, but the subsequent content of the Paris Agreement fails to reflect the commitment and hype espoused publicly by political leaders.¹⁰³

If the Kyoto Protocol is to be considered hard law then the Paris Agreement must be considered soft law by comparison. That is not to say that the instrument is soft because as a convention it is hard law. However, its content is soft. The language is very much advisory as opposed to authoritative, a response to the failings of the Kyoto Protocol and a desire to keep state parties in the negotiations.¹⁰⁴ The priority was to generate a high level of legal effectiveness. Article 2 of the Agreement sets out the broad objective to prevent a temperature increase of 2°C, yet Article 3 provides only reference to ambitious Nationally Determined Contributions to achieve this.¹⁰⁵ The word ambitious is highly subjective and inherently ambiguous and so immediately the aspiration and subsequent actions that will underpin the Paris Agreement are cast into doubt.

The provisions of the Paris Agreement make no mention of specific reduction targets. It is unclear from the convention if the Nationally Determined Contributions will when considered cumulatively be able to give effect to the 2°C objective of the agreement.¹⁰⁶ Additionally, the text of the Agreement fails to include any reference to fossil fuels, a core source of the emissions problem, highlighting a further deficiency and a likely indication that its overall objective will not be achieved.¹⁰⁷ It appears there was no appreciation of solving the problem in the minds of those

¹⁰³ P Huang, 'International Environmental Law and Emotional Rational Choice' (2002) 31 (1) *The Journal of Legal Studies* 237.

¹⁰⁴ The word 'should' appears throughout the agreement as opposed to the word 'shall', for example, Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12th December 2015, entered into force 4th November 2016) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 4(4).

¹⁰⁵ *Ibid.*, Article 3.

¹⁰⁶ *Ibid.*

¹⁰⁷ J Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2016) 33 *Windsor Yearbook of Access to Justice* 129.

negotiating the agreement, but instead they were intent on avoiding a culture of division and frustration. Hence there is no link between the already questionable ambition of the Agreement and the means to achieve its objectives.

Taking a look at the 2°C objective in more detail, it will be unable to have a globally positive impact and will instead result in serious climatic changes. Under this ambition, by 2100: sea levels will rise by 56CM; there will be 23 times the number of annual ocean heat waves causing drastic consequences for marine life; there is an 80% chance of the Arctic becoming ice free in at least one summer; a 37% increase in severe heat waves will occur; 388 million people will be exposed to water scarcity; and the average global crop yield will decrease by 9%.¹⁰⁸ These impacts undermine how much hope we should place in the achievement of the 2°C objective and devalue the vigour that can be attached to the Paris Agreement's ambition. Furthermore, many of these impacts will be felt to varying degrees but will likely be much worse in the developing world.¹⁰⁹ It could be argued that the Paris Agreement reflects an attempt to safeguard some and not others.

The hype of political leaders when the cameras were rolling far exceeded their enthusiasm for binding provisions and the legality of the agreement has been questioned with some labelling it 'voluntary'.¹¹⁰ Bodansky challenges this, asserting a distinction between legality and enforcement, finding an absence of the latter does not affect the former.¹¹¹ This position is a pillar of international law, but it does

¹⁰⁸ Anonymous, 'The Impacts of Climate Change at 1.5C, 2C and Beyond' (Carbon Brief, 2019) <<https://www.carbonbrief.org/the-impacts-of-climate-change-at-1-point-5-2c-and-beyond>> accessed 1st December 2019.

¹⁰⁹ S Seneviratne et al., 'The Many Possible Climates from the Paris Agreement's Aim of 1.5°C Warming' (2018) 558 Nature 41.

¹¹⁰ R Falk, "'Voluntary' International Law and the Paris Agreement' (Global Justice in the 21st Century, 16th January 2016) <<https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/>> accessed 10th October 2018.

¹¹¹ D Bodansky, 'The Legal Character of the Paris Agreement' (2016) Review of European, Comparative and International Environmental Law 1.

nothing to address the reality that the Paris Agreement is voluntary in nature, albeit legally voluntary, and likely to encourage only minimal input from many states. The bottom-up approach that was deemed necessary to stimulate a high participation rate has created a system where states have too much control over their own commitments to tackle climate change. This high participation rate is precisely why the previous section detailed the different modes of effectiveness. Some will argue using the legal standard of effectiveness that the Paris Agreement is successful,¹¹² which of course is factually correct but completely ignores the reality that the agreement cannot grasp the scale of the problem. As George Monbiot commented, 'By comparison to what it could have been, it's a miracle. By comparison to what it should have been, it's a disaster.'¹¹³

The discretionary nature of the Paris Agreement means it is better viewed as soft and not hard law. Some may disagree with this, arguing that a convention is hard by definition and soft law is something else entirely.¹¹⁴ Others contend the provisions within a convention must be analysed to determine its overall character.¹¹⁵ In either case, there can be little dispute that the Paris Agreement does not place significant obligations upon its signatories, instead situating them in a position of discretion that

¹¹² F Harvey, 'Paris Climate Change Agreement: the World's Greatest Diplomatic Success' *The Guardian* (14th December 2015) <<https://www.theguardian.com/environment/2015/dec/13/paris-climate-deal-cop-diplomacy-developing-united-nations>> accessed 16th August 2019.

¹¹³ G Monbiot, 'Grand Promises of Paris Climate Deal Undermined by Squalid Retrenchments' *The Guardian* (12th December 2015) <<https://www.theguardian.com/environment/georgemonbiot/2015/dec/12/paris-climate-deal-governments-fossil-fuels>> accessed 10th November 2019.

¹¹⁴ C Ingelse, 'Soft Law?' (1993) 20 *Polish Yearbook of International Law* 75.

¹¹⁵ D Bodansky, 'Rules VS. Standards in International Environmental Law' (2004) 98 *American Society of International Law* 275; D Bodansky, 'Legally Binding Versus Non-legally Binding Instruments' in S Barrett, C Carraro, J de Melo (eds) *Towards a Workable and Effective Climate Regime* (1st edition, CEPR Press 2015) 155.

reflects more closely the vague or fragile nature of soft law.¹¹⁶ This character underpins the INDC system, attracting criticism here for being ineffective when measured against the problem.¹¹⁷

Despite this, it is possible to argue that there exist justifications for a soft approach. Abbott and Snidal make the case that there is a continuum of trade-offs that states will balance when deciding whether to join a treaty.¹¹⁸ The 'sovereignty costs' attached to a convention will be determinative of whether or not a state signs up to it.¹¹⁹ This is precisely the considerations contemplated by states when setting out their stance at the Paris Conference, perhaps explaining why the subsequent Agreement is constituted on discretion, which was successful in facilitating participation, but unable to generate sovereignty-impacting provisions.

Abbott and Snidal argue softer forms of law attracting greater participation allow for individual and collective learning which may encourage states to 'work out problems over time through negotiations shaped by normative guidelines'.¹²⁰ This might be a further rationale underpinning the Agreement, and the ongoing COP system does allow for renewed negotiation and improvement. Nonetheless, how long can this supposedly progressive approach to climate regulation be sustained given the pending escalation of harm and loss of control predicted by the IPCC?¹²¹ How long can states keep delaying more robust arrangements until the next COP?¹²² While this

¹¹⁶ P Weil, 'Towards Relative Normativity in International Law?' (1983) 77 (3) *The American Journal of International Law* 413; R Falkner, 'The Paris Agreement and the New Logic of International Climate Politics' (2016) 92 *International Affairs* 1107.

¹¹⁷ See section IV for an analysis on the effectiveness of the INDC system.

¹¹⁸ K Abbott, D Snidal, 'Hard and Soft Law in International Governance' (2000) 54 (3) *International Organization* 421.

¹¹⁹ *Ibid.*, 436.

¹²⁰ *Ibid.*, 443.

¹²¹ IPCC, 'Global Warming of 1.5°C: Summary for Policymakers' (2018).

¹²² A Chandrasekhar, 'The UN Climate Talks Ended in Deadlock. Is This Really The Best the World Can Manage?' *The Guardian* (21st December 2019).

<<https://www.theguardian.com/commentisfree/2019/dec/21/un-climate-talks-deadlock-cop25>> accessed 30th December 2019.

thesis broadly agrees with the utility of soft law as a means to evolve regimes and facilitate participation, its use as a way to argue the positive character of international climate law is severely limited by the intensity and pending nature of the threat.

Another argument suggests that the creation of soft norms may help to pressurise those states lagging behind where environmental protection is concerned.¹²³ This is not occurring in the context of the Paris Agreement. States continue to make reference to their economic competitiveness and CO₂ contributions as a means to justify taking less action on the problem.¹²⁴ While the work of Skjaerseth et al. on the pressurising effect of soft norms has broad utility, in the context of climate change it is not having the same effect and states, although masquerading behind arguments of intention and effort, are prepared to justify not taking greater action.¹²⁵ Bearing this in mind, the only rational conclusion is that international climate law in its current form is unable to pressurise states to greater action, limiting severely the argument that the soft nature of the Paris Agreement will have a positive impact on the attitude of states, at least not in the timeframe necessitated.

In the context of ICL, the assertion that ‘what we call soft today, will be called hard tomorrow’ is inaccurate, and rather, what was hard law yesterday through the Kyoto Protocol is now soft law through the Paris Agreement.¹²⁶ The typical relationship between hard and soft norms seems to be operating in reverse. There might be good

¹²³ J Skjaerseth, O Stokke, J Wettstad, ‘Soft Law, Hard Law and Effective Implementation of International Environmental Norms’ (2006) 6 (3) *Global Environmental Politics* 104.

¹²⁴ See the Section IV Subsection B of this chapter for a thorough explanation of this point.

¹²⁵ For instance, Canada references in its INDC that it is only responsible for 1.5% of global emissions, using this as a means to imply it is not a major cause of the problem.

¹²⁶ C Castaneda, ‘A Call for Rethinking the Sources of International Law: Soft Law and the Other Side of the Coin’ (2013) 13 *Anuario Mexicano de Derecho Internacional* 355, 396.

reasons for this based on the failings of the Kyoto Protocol, but it is now proving clear that the regression to a softer approach has not been successful on the grounds that the problem is still exacerbating. The debate surrounding soft and hard norms although valid in the wider context of international law loses significance here. We have continually witnessed the inability of states to negotiate and tackle the climate crisis effectively.¹²⁷

Although we can only learn from our past mistakes, in this instance the failings of the Kyoto Protocol influenced too deeply the Paris Agreement negotiations. The premise appears to be that Kyoto was hard and failed and therefore Paris must be soft to succeed. While this has proved to attract a greater global consensus the substance of the agreement will prove to be ineffective. As the last round of conference negotiations approached, the 2°C limit set in Paris was subject to criticism, with the USA making public overtures of its intent to leave the convention.¹²⁸ The Paris Agreement may have a high rate of legal effectiveness but this means that it is significantly held back according to varying political interests, and the complete autonomy afforded states does not paint a positive picture of global climate action.¹²⁹ Pulling back the curtain on the Intended Nationally Determined Contribution documents will prove they lack the requisite ambition to match the scale of the problem and the already questionable aspiration to prevent a 2°C temperature increase.

¹²⁷ A Chandrasekhar, 'The UN Climate Talks Ended in Deadlock. Is This Really The Best the World Can Manage?' *The Guardian* (21st December 2019) <<https://www.theguardian.com/commentisfree/2019/dec/21/un-climate-talks-deadlock-cop25>> accessed 30th December 2019.

¹²⁸ R Harrabin, 'Paris Agreement: Trump Confirms US Will Leave Climate Accord' (BBC, 24th October 2019) <<https://www.bbc.co.uk/news/world-us-canada-50165596>> accessed 29th October 2019; E Hunt, 'Where Next for the US and the Paris Deal?' *The Guardian* (2nd June 2017) <<https://www.theguardian.com/environment/live/2017/jun/01/donald-trump-paris-climate-agreement-live-news>> accessed 11th October 2018.

¹²⁹ D Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 *Review of European, Comparative and International Environmental Law* 1.

B. Intended Nationally Determined Contributions

This subsection will reveal that the discretion-based model of the Paris Agreement implemented through the Intended Nationally Determined Contributions (INDC) system offers differing levels of effectiveness depending on the standard applied (legal, behaviour, problem-solving). The frame for interpreting effectiveness set earlier in this chapter will be applied here.¹³⁰ A number of Paris signatories and their INDCs will comprise the objects of study. These include: Australia; Canada; the European Union (EU);¹³¹ Russia; Brazil; and Mexico. These signatories have been selected because they represent states at varying levels of development and with ranging perspectives.¹³² Australia, Canada and the EU embody developed states; Russia, Brazil and Mexico exemplify developing states. It will be shown that across the development spectrum, the common but differentiated responsibility model is undermined by the overwhelming discretion of the Paris Agreement, reflected through INDCs that are totally out of sync with the 2°C ambition.

These six states have signed the Paris Agreement and undertaken ratification steps.¹³³ Each one has submitted an INDC document and so met their obligations.¹³⁴ Absent any analysis of these documents the Agreement is a legal success. Using this

¹³⁰ Young's three standards of effectiveness applied here include: legal, behavioural and problem solving. O Young, *'International Governance: Protecting the Environment in a Stateless Society'* (1st edition, Cornell University Press 1994).

¹³¹ The EU is referred to as a state because it acts like a state in terms of its participation in the Paris Agreement.

¹³² Anonymous, 'Country Classification: Data sources, country classifications and aggregation methodology' (UN, World Economic Situation and Prospects, 2014) ST/ESA/STAT/SER.M49/Rev.

¹³³ Anonymous, 'Depository' (UNTS, 2019)

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXVII-7-d&chapter=27&lang=_en&clang=_en> accessed 27th November 2019.

¹³⁴ Anonymous, 'INDC's Communicated by Parties' (UNFCCC, 2019)

<<https://www4.unfccc.int/sites/submissions/indc/Submission%20Pages/submissions.aspx>> accessed 21st November 2019.

standard creates a superficial confidence in the current mechanisms designed to mitigate climate change. Across the UNFCCC membership state engagement with the Agreement is high and the submission of INDCs helps to generate the misleading appearance of effectiveness. At this point the legal standard could be set aside, yet to preclude analysis of the INDCs might invite the argument that the targets within these documents represent a positive expression of legal will by states, the illustration of which might be used to argue that INDCs represent a positive representation of climate law. To combat this, the targets found within the INDCs of these six states will be examined to determine if their existence in a legal document can be afforded any degree of effectiveness.

Looking at the targets of developed states first, the impression is not one of ambition. Australia commits to ‘reduce greenhouse gas emissions by 26–28 per cent’.¹³⁵ The EU aims for ‘an at least 40% domestic reduction in greenhouse gas emissions’,¹³⁶ and Canada offers to cut ‘emissions by 30%’.¹³⁷ Australia and Canada are highly developed economies with the capacity for greater ambition than these targets reflect. Moreover, they both use 2005 as the base level to reduce emissions by, lessening further still the aspiration attached. The EU’s target appears more determined and does set 1990 as its base year to measure reductions against, but considering its own recognition that global emissions must be halved by 2050 it is perplexing why its ambition does not reflect this need more accurately.¹³⁸ The 40% target is not based on each EU member making an equivalent reduction but on the overall EU emissions decreasing by this much. Some states within the EU will be able to take relatively little or no action, denting the intention behind common

¹³⁵ Australia’s Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 3.

¹³⁶ Intended Nationally Determined Contribution of the EU and its Members States (March 2015), Article 3.

¹³⁷ Canada’s INDC Submission to the UNFCCC (May 2015), para 3.

¹³⁸ Intended Nationally Determined Contribution of the EU and its Member States (March 2015).

responsibilities. With this in mind, these three states have not offered targets that take account of their increased capacities as highly developed economies.

Russia pledged to limit ‘anthropogenic greenhouse gases...to 70–75%’.¹³⁹ This language is misleading and Russia is committing only to a 25% to 30% reduction, which is not justifiable given its place as the world’s fourth biggest emitter and status as a nation of increasing economic capacity.¹⁴⁰ Brazil intends to reduce its emissions by 37% before 2025 and 43% by 2030.¹⁴¹ This appears at first glance to be quite ambitious, but it is softened by the inclusion that these targets ‘might be adjusted, as appropriate’, and use of 2005 as the base level to make reductions against further dents these objectives.¹⁴² Mexico sets an unconditional reduction of 25% and a conditional reduction of up to 40% if international support is provided.¹⁴³ Assuming international efforts will not be forthcoming, at least to the required level, Mexico will make a 25% reduction at most. The dual-target approach of Brazil and Mexico provides a misleading account of what action these states are going to take, and the range provided allows a significant amount of ambiguity as to the ambition present. The lower end targets are not ambitious, but they are more justifiable given the developing status of these states. The ambiguity created by various targets and the potential lack of capacity to monitor whether or not they are achieved poses feasibility questions that further undermine their vigour.

¹³⁹ The Russian Federation, Intended Nationally Determined Contribution (March 2015), Table 1.

¹⁴⁰ M Elzen et al., ‘Are G20 economies making enough progress to meet their NDC targets’ (2019) 126 *Energy policy* 238; Anonymous, ‘Russia’ (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/eu/>> accessed 15th August 2019; Anonymous, ‘On Russia’s Participation in BRICS’ (Russia in BRICS, 2019) <https://brics.mid.ru/en_GB/rossia-v-briks> accessed 10th December 2019.

¹⁴¹ Federative Republic of Brazil: Intended Nationally Determined Contribution (September 2015), para 5.

¹⁴² *Ibid.*, para 2.

¹⁴³ Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015).

Across the development spectrum the low level of ambition attached to reduction targets indicates that states are not willing to obligate themselves beyond a certain threshold. The relative similarity of all six targets may suggest that states are not acting according to their respective capacities but instead intend to reflect some idea of global parity. Nonetheless, these states can show that they have met their legal obligations and politicians can make statements to this affect, pointing to specific Paris commitments. Application of the legal standard alone allows a total misrepresentation of the situation.

Moving onto the behavioural standard of effectiveness, the next question is whether or not these INDC documents are able to establish an action plan in which these targets will be met. If they are able to achieve this, the behaviour of each state might alter in pursuit of the Paris Agreement's objectives. However, it is also possible that despite behavioural alterations the problem of emissions will persist, and climate change may continue to go unanswered.

Australia attempts to signpost a route to its target. Paragraph two talks about a 'direct action policy' and how it supports businesses and communities to 'reduce emissions', but no explanation is provided on how this policy operates.¹⁴⁴ The INDC later points to 'additional policy measures in place to promote the deployment of renewable energy'.¹⁴⁵ No details as to what these measures are and how they will be supporting the renewable energy sector are provided; instead this point masks the fact that 84% of Australia's electricity comes from coal burning.¹⁴⁶ However, Australia does point out that only 23% of its energy will come from renewable sources by

¹⁴⁴ Australia's Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 2.

¹⁴⁵ Ibid., para 8.

¹⁴⁶ P Wolfram, T Wiedmann, M Diesendorf, 'Carbon Footprint Scenarios for Renewable Electricity in Australia' (2016) 124 Journal of Cleaner Production 236

2020,¹⁴⁷ highlighting the low level of action that will be taken on energy provision in the immediate future.

The INDC claims to place 'Australia on a stable pathway towards longer term emissions reductions', which is problematic due to the lack of clarity on how this will be achieved.¹⁴⁸ Considering the wider economic policies in operation it seems unlikely this is factually accurate.¹⁴⁹ Australia relies on, and exports, a vast amount of fossil fuels,¹⁵⁰ and even in the INDC restates its role as a 'leading global resources provider'.¹⁵¹ It is reliant on trading in the very thing that is causing the problem, and so the extent to which Australia is willing to introduce workable alterations to its behaviour is suspicious at best, likely the reason for its vague action plan that will be difficult to monitor.¹⁵²

The EU's 40% ambition is to be 'fulfilled jointly',¹⁵³ and so its ability to alter the behaviour of all 28 Member States is limited, albeit this is subject to internal negotiations. The EU carbon trading scheme will further encourage free riding and allow some states to avoid behavioural alterations altogether.¹⁵⁴ The INDC points to the Land Use, Land Use Change and Forestry (LULUCF) sector to achieve its reduction

¹⁴⁷ Australia's Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 8.

¹⁴⁸ Ibid., para 7.

¹⁴⁹ Ibid.

¹⁵⁰ M McDonald, 'Fair Weather Friend? Ethics and Australia's Approach to Global Climate Change' (2005) 51 Australian Journal of Politics and History 216.

¹⁵¹ Australia's Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 7.

¹⁵² S Vorrath, 'Coalition CO₂ target: scientists, analysts, financiers, islands unimpressed' (Renew Economy, 11th August 2015) <<https://reneweconomy.com.au/coalition-co2-target-scientists-analysts-financiers-islands-unimpressed-65282/>> accessed 16th August 2019.

¹⁵³ Intended Nationally Determined Contribution of the EU and its Member States (March 2015), Article 3.

¹⁵⁴ S Schleicher, A Koppl, M Schratzenstaller, 'Deciphering the Paris Agreement on Climate Policy: What Might Be the Implications for the EU' (OGFE Policy Brief, Vienna, September 2016).

targets.¹⁵⁵ A framework to monitor the impact of LULUCF will be established ‘as soon as technical conditions allow’.¹⁵⁶ The EU’s lack of preparedness to provide details as to the LULUCF sector is either an astonishing oversight or deliberately intended to create flexibility.¹⁵⁷ This sector can make a significant contribution to overall emissions, allowing the level of mitigation efforts that take place across the wider economy to be reduced.¹⁵⁸ If the EU finds itself in a position to offer significant LULUCF reductions this may preclude states taking further action to alter their individual behaviour in terms of CO₂ output. The EU’s plan lacks the specificity that should be demanded from some of the most developed states in the world and again creates ambiguity as to what action can be expected.

Canada reveals its intention to rely on international mechanisms to achieve its target, which implies the use of carbon-trading schemes.¹⁵⁹ As such, a state capable of making actual reductions to its emissions and adopting green technologies may well continue without making behavioural alterations.¹⁶⁰ Carbon trading does offer a way for cooperation among states, but in this instance it will allow Canada to avoid taking specific action.¹⁶¹ This lack of intent to take action is reflected in the vague plans to

¹⁵⁵ LULUCF relates to the preservation of natural land and forests to encourage CO₂ absorption.

¹⁵⁶ Intended Nationally Determined Contribution of the EU and its Member States (March 2015), Annex, p 2.

¹⁵⁷ Oberthur points out that the bureaucracy of the EU system might have precluded some of the detail being included in this initial INDC, but this may be rectified through its final submission. S Oberthur, ‘Perspectives on EU Implementation of the Paris Outcome’ (2016) 1 Carbon and Climate Law Review 34.

¹⁵⁸ Ibid.

¹⁵⁹ Canada’s INDC Submission to the UNFCCC (May 2015).

¹⁶⁰ S Jordaan et al., ‘The role of energy technology innovation in reducing greenhouse gas emissions: A Case Study of Canada’ (2017) 78 Renewable and Sustainable Energy Reviews 1397; it should be noted that Canada claims to have invested ‘\$10 billion in green infrastructure’, Canada’s INDC Submission to the UNFCCC, para 8.

¹⁶¹ M Carr, ‘Canada Plans First Carbon Trades Under Paris Climate Change Agreement’ *Financial Post* (16th August 2018)

<<https://business.financialpost.com/commodities/energy/canada-plans-first-carbon-trades-under-paris-climate-change-agreement>> accessed 14th August 2019.

‘accelerate the phase-out of existing coal fire electricity generation units’.¹⁶² There is no detail as to how this might be achieved or in what timeframe. Canada should have made quantifiable commitments to reduce its own emissions, after which it could have made further promises to cooperate through the carbon trading initiatives. Instead the INDC alludes to a limited response from Canada that is unable to signpost a credible action plan.

The INDCs submitted from these developed states are designed to avoid detailed commitments that might be used as a measure of scrutiny. There is an absence of rigorously set-out intentions to meet the already unambitious targets that have been set. This lack of precision will preclude critics from definitively arguing these states have not met their own INDC behavioural obligations. More concerning is that these developed states will be able to claim they have a target and a broad plan of action to achieve it. They will be able to avoid taking a leading role and easily defend their actions when questioned, undermining the front-runner role envisaged for them at the founding of the UNFCCC.

Russia’s INDC reveals a distinct lack of detail. It pledges to make economy-wide efforts at emissions reduction and lists a number of prominent sectors this applies to, but does not provide any details as to how these sectors will be expected to take action.¹⁶³ It seeks to support the renewable energy sector, but the mechanisms and the percentage of energy this sector is expected to provide across the economy are absent. With regard to the LULUCF sector, the preservation of the Boreal Forests is mentioned in connection to mitigation efforts. No measure of detail as to what actions will be taken to achieve their protection and restoration is provided. Aside from pointing vaguely to ‘forest management’ it is not clear what Russia intends to do that will ensure the Boreal Forests are able to help mitigate emissions.¹⁶⁴ This lack of detail suggests that behavioural changes were not planned when the INDC was

¹⁶² Canada’s INDC Submission to the UNFCCC (May 2015), para 6.

¹⁶³ The Russian Federation, Intended Nationally Determined Contribution (March 2015).

¹⁶⁴ Ibid., Table 1.

drafted, and it is likely that such alterations are not built into the internal policy responses of Russia.

Brazil intends to achieve its reduction targets through LULUCF preservation policies.¹⁶⁵ It aims to purge all illegal deforestation by 2030 and introduce forestry management projects to help curb illegal and unsustainable practices.¹⁶⁶ These are positive ideas but introducing them will be challenging, and it will be difficult to quantify impact in terms of reducing emissions.¹⁶⁷ By placing a lot of emphasis on these strategies Brazil is traversing unsteady ground.¹⁶⁸ Instead of having more tangible policies at the level of, for instance energy production, it is targeting the social level. It will be hard to monitor and persuade people of the need to cease activities they are reliant on for their livelihoods.¹⁶⁹ The lack of precision in this area also suggests that actual behavioural changes were not planned at the time of drafting, perhaps a consequence of the difficulty of implementing such proposals.

Mexico sets out to ‘give priority to the least costly mitigation actions’, which clouds its INDC in a shroud of negligible action.¹⁷⁰ Its INDC claims to be ‘consistent with Mexico’s pathway to reduce 50% of emissions by the year 2050’, which leads to the possibility it did not introduce anything new and simply became a copy and paste

¹⁶⁵ A Gurgel et al., ‘The Impacts of the Brazilian NDC and Their Contribution to the Paris Agreement on Climate Change’ (2019) 24 (4) Environment and Development Economics 1.

¹⁶⁶ Federative Republic of Brazil: Additional Information on the INDC for Clarification Purposes Only (September 2015), para 14.

¹⁶⁷ T Solinge, ‘Researching Illegal Logging and Deforestation’ (2014) 3 International Journal for Crime, Justice and Social Democracy 35.

¹⁶⁸ A Gurgel et al., ‘The Impacts of the Brazilian NDC and Their Contribution to the Paris Agreement on Climate Change’ (2019) 24 (4) Environment and Development Economics 1.

¹⁶⁹ L Barbosa, ‘Save the Rainforest! NGOs and Grassroots Organisations in the Dialectics of Brazilian Amazonia’ (2003) 55 International Social Science Journal 583.

¹⁷⁰ Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015), para 5.

exercise for the Mexican Government.¹⁷¹ It lists a number of prominent greenhouse gases but these are not given reduction targets or linked to action that will see their declining use. This is followed by a section within the document titled 'Planning Process', which acts as a list of instruments that exist in relation to climate change.¹⁷² There is no further detail within this document as to how these instruments will alter or prompt behavioural changes to meet the problem.

Moreover, the dates attached to these instruments demonstrate that they were not newly adopted but are instead part of an already existing climate policy, which is ineffective.¹⁷³ It has been argued that a developing state taking any action on climate change is positive,¹⁷⁴ but the implementation of these legislative actions has been difficult because of the internal infrastructure of Mexico.¹⁷⁵ The Mexican economy remains highly dependent on fossil fuels with 89% of its energy coming from their use.¹⁷⁶ There is a lack of intended action within the INDC that would reduce this figure and the climate legislation highlighted has so far been unable to reduce Mexico's reliance on fossil fuels. By transplanting these laws into Mexico's INDC no significant behavioural alterations will be forthcoming.

Across the development spectrum states are unprepared to establish a clear set of actions that will lead to the achievement of their targets. The level of development does not determine the level of commitment a state will make. If this were the case

¹⁷¹ Ibid., para 10.

¹⁷² Ibid., p 3.

¹⁷³ Anonymous, 'Mexico' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/russian-federation/fair-share/>> accessed 16th August 2019.

¹⁷⁴ E Vance, 'Mexico sets climate targets' (2012) 484 Nature <<https://www.nature.com/news/mexico-sets-climate-targets-1.10503>> accessed 22nd November 2019.

¹⁷⁵ J Valanzuela, 'Climate Change Agenda at the Subnational Level in Mexico: Policy Consideration or policy competition?' (2014) 24 Environmental Policy and Governance 188.

¹⁷⁶ A Diaz, E Gutierrez, 'Competing Actors in the Climate Change Arena in Mexico: A Network Analysis' (2018) 215 Journal of Environmental Management 239.

developed states would be committing to significantly more obligations through behavioural alterations. There is something other than capacity and level of development that prevents states from adopting robust action plans. Nonetheless, although these plans are vague, they still allow the claim that states are taking steps to alter their behaviour towards the achievement of the Paris Agreement. If questioned any one of these states will be able to point without hesitation to behavioural policies that it has legally introduced to meet the climate threat. Applying the behavioural standard of effectiveness misrepresents the situation, furthering the false confidence we should place in the Paris Agreement.

The analysis above shows that despite achieving legal and behavioural effectiveness there are considerable problems with the adoption of these standards. Applying them will generate the false impression that the Paris Agreement is effective. Utilising the problem-solving standard the INDCs will now be identified as completely unable to mitigate climate change, in large part because of the obstructive attitudes prevailing.

Australia only intends to implement the upper end of its 26–28% target ‘should circumstances allow’.¹⁷⁷ This provision permits Australia a way to avoid making more stringent commitments. The marginal 2% range also implies that if circumstances do not allow the 26% target might become flexible. Australia argues its efforts are reflective of other comparable states, setting out its intention to avoid leading against the problem. Instead it is willing to partake in a race to the bottom, which is reinforced when it ‘reserves the right to adjust our target’.¹⁷⁸ The extent to which Australia is prepared to tackle the problem is virtually non-existent. This claim can be evidenced with reference to the Climate Action Tracker (CAT), which finds the overall policies and subsequent actions of Australia when matched against the need to

¹⁷⁷ Australia’s Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 4.

¹⁷⁸ Ibid.

prevent a 2°C temperature increase are seriously inept.¹⁷⁹ Its commitments would contribute to a temperature increase between 2°C and 3°C, and its current policies are working to counteract the global momentum towards emission reductions, prompting its efforts to be labelled ‘insufficient’.¹⁸⁰

The attitude of the EU is not so readily present within its INDC and unlike Australia it does seem to set out with the right intention. However, its 40% target is compared to its previous 20% target, appearing to use this as a means to accentuate its improved effort.¹⁸¹ This masks that the EU is still not doing enough considering its developed status and although improvements are important they do not necessarily reflect enough effort to solve the problem. The CAT finds that if the actions of the EU are replicated around the world there would be a 2°C to 3°C increase in global temperatures.¹⁸² The EU’s INDC repeats its historic stance in that it has the appearance of a positive approach but this is not reflected through its ambition or implementation when compared to the extent of the problem. The CAT classifies the current approach of the EU as ‘insufficient’.¹⁸³

Canada highlights its contribution to global warming that ‘represents only 1.6% of the world’s greenhouse gas emissions’.¹⁸⁴ There is no point of authority to authenticate where this figure comes from, but if accurate 1.6% in a collection of 193 states still represents a significant share. While the figure might be comparably low

¹⁷⁹ Anonymous, ‘Australia’ (Climate Action Tracker, June 2019)
<<https://climateactiontracker.org/countries/australia/current-policy-projections/>>
accessed 15th August 2019.

¹⁸⁰ Ibid.

¹⁸¹ Intended Nationally Determined Contribution of the EU and its Member States (March 2015), Annex, p 3.

¹⁸² Anonymous, ‘EU’ (Climate Action Tracker, June 2019)
<<https://climateactiontracker.org/countries/eu/>> accessed 15th August 2019.

¹⁸³ S Schleicher, A Koppl, M Schratzenstaller, ‘Deciphering the Paris Agreement on Climate Policy: What Might Be the Implications for the EU’ (OGFE Policy Brief, Vienna, September 2016).

¹⁸⁴ Canada’s INDC Submission to the UNFCCC (May 2015), para 3.

to other big emitters it is not low enough to justify Canada taking a nonchalant approach. Its inclusion signifies a perception on the part of Canada that there are those with responsibility and those without it. This is reinforced when Canada says it is 'committed to doing more in concert with all major emitters', which might be read to mean that it will take further action only in conjunction with other comparable states.¹⁸⁵ The INDC also points out the approach of Canada is designed to ensure that its 'economic competitiveness is protected.'¹⁸⁶ Canada is only prepared to obligate itself to the extent reflecting the actions of other states, and is within its competitive reach, signifying a similar approach to Australia.

The CAT finds the efforts of Canada are comparable to other developed states, which if reflected around the world would force temperatures to rise between 2°C and 3°C.¹⁸⁷ The efforts of Canada are not able to solve the problem or meet the Paris Agreement's objective. The parting statement from Canada that 'every country must do its part' is contrary to its own level of engagement, reflecting the hidden assertion that Canada will not take a leading role on this challenge.¹⁸⁸ Studies provide further validation for this claim by indicating that Canada is not even going to achieve its own INDC commitments by some margin,¹⁸⁹ adding justification to the characterisation of Canada's efforts as 'insufficient' to meet the problem.¹⁹⁰

The message from developed states is very negative. They are not prepared to utilise their advanced capacities to implement internal change to cut emissions. They are more content to ensure their actions are comparable to other similarly developed

¹⁸⁵ Ibid., para 4.

¹⁸⁶ Ibid., para 7.

¹⁸⁷ Anonymous, 'Canada' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/canada/>> last accessed 17th August 2019.

¹⁸⁸ Canada's INDC Submission to the UNFCCC (May 2015), para 11.

¹⁸⁹ M Elzen et al., 'Are G20 Economies Making Enough Progress to Meet Their NDC Targets' (2019) 126 Energy Policy 238.

¹⁹⁰ Anonymous, 'Canada' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/canada/>> accessed 17th August 2019.

states, which has created a race to the bottom scenario. The positions of these three states are not unreflective of the wider international community. The developed world has the capacity but not the attitude to respond effectively to climate change. The developed states should be leading, but they are instead obfuscating and inadvertently transferring the Kyoto Protocol's problem of *perceived inequity* into the Paris Agreement, completely undermining the purpose of total discretion.

Switching to developing states, the CAT takes a scathing view of the Russian INDC, finding that its efforts would lead to a global heating of plus 4°C.¹⁹¹ Russia's target will not require it to take any serious action that is not already built into its infrastructure. This target allows Russia to mislead through reference to its commitment to avoid using global mechanisms to achieve its intended objectives.¹⁹² Its target is so weak it will not require access to carbon-sharing schemes. The entire INDC of Russia is lip service to the Paris Agreement absent any real intent on the part of the Government to enact changes to its infrastructure that will tackle the problem. Russia claims to prioritise long-term commitments, using this as a justification for its weak INDC promises that deal with the present. This is nothing more than a smoke screen to justify the avoidance of taking action now.¹⁹³ The CAT classifies the actions of Russia as 'highly insufficient', which will not see it solve the problem but make it much worse.¹⁹⁴

¹⁹¹ Anonymous, 'Russian Federation' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/russian-federation/fair-share/>> accessed 16th August 2019.

¹⁹² The Russian Federation, Intended Nationally Determined Contribution (March 2015) Scope and Coverage Section, 1.

¹⁹³ Anonymous, 'Russian Federation' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/russian-federation/fair-share/>> accessed 16th August 2019.

¹⁹⁴ Ibid.

Brazil holds that '12 million hectares of forest by 2030' will be restored and reforested, intending to rely on this to meet its targets.¹⁹⁵ This positive commitment has been undermined by internal political change. In 2018, now President Jair Bolsonaro campaigned on a manifesto to increase deforestation irrespective of global commitments.¹⁹⁶ The intention of Bolsonaro is to allow logging companies into the Amazon Rainforest at a rate that is totally unsustainable and will mean the 12 million hectares even if restored will be a small figure compared to the amount of deforestation that will take place. The ability of Brazil to ensure that its INDC commitments are fulfilled has been significantly undercut by a change in government.¹⁹⁷ The CAT rates the actions of Brazil as 'insufficient', finding that current efforts will see a 32% reduction by 2030.¹⁹⁸ This shows the fragility of the discretion-based model. It is also likely that come 2030 the mitigation efforts of Brazil will be very far from its stated INDC targets, which will, it is predicted here, continue to evaporate under the current administration.

The intent of Mexico to solve the problem of emissions is curbed by its interpretation of the situation as someone else's problem. Mexico, like Canada, points out that it is only responsible for 1.4% of global emissions.¹⁹⁹ The CAT finds its reduction target 'is

¹⁹⁵ Federative Republic of Brazil: Additional Information on the INDC for Clarification Purposes Only (September 2015), para 14.

¹⁹⁶ A Murphy, 'Jair Bolsonaro Wants to Deforest the Amazon – What Powers Does the UN Have to Stop him?' *The Conversation* (12th July 2019) <<https://theconversation.com/jair-bolsonaro-wants-to-deforest-the-amazon-what-powers-does-the-un-have-to-stop-him-120154>> accessed 16th August 2019.

¹⁹⁷ P Rochedo et al., 'The Threat of Political Bargaining to Climate Mitigation in Brazil' *Nature* (July 2018) <<https://www.nature.com/articles/s41558-018-0213-y>> accessed 16th August 2019.

¹⁹⁸ Anonymous, 'Brazil' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/brazil/current-policy-projections/>> accessed 16th August 2019.

¹⁹⁹ Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015).

at the least stringent end of what would be a fair share',²⁰⁰ indicating that the rubric of a 'highly ambitious' target linked to Mexico's share of emissions is deceptive.²⁰¹ Mexico as the least developed state examined here could argue its actions are more defensible. Yet, it has not pledged robust steps to solve this problem in reflection of its capacity, and its contribution will see an average temperature increase of between 2°C and 3°C.²⁰² The CAT further reveals that as time elapses the actions of Mexico are becoming more unsustainable and its current description of insufficient will be upgraded to highly insufficient.²⁰³ Mexico is not taking responsible or proportionate action towards the advancement of a green economy, but instead reflects a developing state embarking upon a journey that will see the problem intensify. This is particularly worrying given that Mexico admits its susceptibility to climatic impact, and even in the face of harm continues to prioritise ruthless economic development over sustainable practices.

The restricted capacity of developing states to provide robust problem-solving INDCs might have been an argument capable of justifying reduced action. However, not unlike the developed states, it is more about the attitude of those drafting the INDCs as opposed to their capacity. The common but differentiated responsibility model is meant to create a system where each state takes action proportionate to their infrastructure and resources, but this has not materialised. Instead states are avoiding the required action irrespective of their capacity. They are taking steps to increase economic development regardless of the impact this will have on the climate or wider environment. The total discretion found in the INDC system has

²⁰⁰ Anonymous, 'Mexico: Fair Share' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/mexico/fair-share/>> accessed 16th August 2019.

²⁰¹ Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015), 4.

²⁰² Anonymous, 'Mexico: Fair Share' (Climate Action Tracker, June 2019) <<https://climateactiontracker.org/countries/mexico/fair-share/>> accessed 16th August 2019.

²⁰³ Ibid.

allowed states to avoid taking proportionate action on the climate threat, inadvertently undermining the common but differentiated responsibility norm.

Across the development spectrum states have proven untrustworthy to create robust problem-solving INDCs. In no example looked at here has a state provided an action plan that will see the objectives of the Paris Agreement achieved. Instead it is much more likely that global temperatures will continue to rise, and so by the problem-solving standard of effectiveness the INDC system and wider Paris Agreement must be rendered fundamentally and totally ineffective.

V. Beyond International Climate Law

Despite the existence of international climate law since 1992, greenhouse gas emissions have continued to increase. Between 2000 and 2010 the increase in output grew by 2.2% compared with an average growth figure of 1.3% between 1970 and 2000.²⁰⁴ In 2010 over 49 gigatonnes of greenhouse gas emissions were released into the atmosphere.²⁰⁵ In both 2010 and 2011 the rate of output increased by 3.5% before slowing slightly in 2012 and 2013 to a 1.8% increase.²⁰⁶ September 2016 saw the Mauna Loa Observatory report for the first time in recorded history the breaching of 400 parts per million of CO₂ concentration in the atmosphere.²⁰⁷ In May 2019 this concentration increased to the highest value recorded at 415 parts per million.²⁰⁸

²⁰⁴ UNEP, 'The Emissions Gap Report 2016' (2016).

²⁰⁵ IPCC, 'Climate Change 2014 Synthesis Report Summary for Policymakers' (2014).

²⁰⁶ UNEP, 'The Emissions Gap Report 2016' (2016).

²⁰⁷ B Kahn, 'The World Passes 400 PPM Threshold. Permanently' (27th September 2016) <<http://www.climatecentral.org/news/world-passes-400-ppm-threshold-permanently-20738>> accessed 7th November 2016.

²⁰⁸ Anonymous, 'Daily CO₂' (CO₂ Earth, Mauna Loa Observatory, August 2019) <<https://www.co2.earth/daily-co2>> accessed 16th August 2019.

It is undeniable that greenhouse gas emissions are increasing and in direct correlation to this the global temperature is rising. If we carry on at the current rate the earth's atmospheric temperature will warm between 3°C and 5°C by 2100,²⁰⁹ causing devastation for billions around the globe.²¹⁰ With this in mind, the objective of the UNFCCC to stabilise the concentration of greenhouse gases in the atmosphere at a level to prevent dangerous anthropogenic climate change has not been met. Instead the framework has been able to achieve hesitance, delay, argument and two subsequent Protocols unable to offer any measure of effectiveness when compared with the problem.

It is the argument here that the Kyoto Protocol failed and the Paris Agreement will not succeed in stemming climate breakdown. The systemic problems inherent within these models of international legal response preclude effective agreements. States do not align behind a central position and the objectives set and means of achieving them are not robustly matched to the scale of the threat. Despite having a global span and impacting severely upon the entire international community climate change still does not generate a level of unity among states that will see them cooperate to take the necessary individual and collective action. The norms of international climate law reflect too closely the lowest common denominator. This problem reached its peak through the Paris Agreement, which was unable to include an ambitious temperature cap or even move beyond merely asking states to set and implement their own action plans. The gap between the Paris Agreement's objectives and its means of achieving them is titanic.

²⁰⁹ Anonymous, '2019 Set to Be the 2nd or 3rd Warmest Year on Record' (WMO, 20th December 2019) <<https://public.wmo.int/en/media/news/2019-set-be-2nd-or-3rd-warmest-year-record>> accessed 20th December 2019.

²¹⁰ S Leahy, 'Climate Change Impacts Worse than Expected, Global Report Warns' *National Geographic* (7th October 2018) <<https://www.nationalgeographic.com/environment/2018/10/ipcc-report-climate-change-impacts-forests-emissions/>> accessed 1st December 2019; IPCC, 'Impacts of 1.5°C of Global Warming on Natural and Human Systems' (2018); IPCC, 'Global Warming of 1.5 C: An IPCC Special Report on the Impacts of Global Warming' (October 2018).

This is reflected in the INDCs examined, which show that states are intentionally avoiding ambitious steps. Some states are even doing virtually nothing despite fulfilling their legal obligations under the Paris Agreement. We cannot wait for further proof that the current system will not result in a less than 2°C temperature increase; instead we must search for alternative ways to bolster the climate response. Or to borrow from Sir Geoffrey Palmer we must find new ways to stimulate greater international climate action if we are to stave off the advance of this certain threat.²¹¹

Prior to the beginning of this thesis the researcher had already identified that there was scope to examine the nexus between climate change and the UNSC through an LLM dissertation. The relationship between the two is somewhat under explored and, moreover, as identified in the introduction, there existed a number of gaps in the literature that could be reasonably addressed through a PhD. The focus of this work was therefore justifiable based on the researcher's interests and the corresponding knowledge gap. Nevertheless, this route may appear somewhat exceptional and the question arises, why not try a more sedate pathway that seeks to improve the climate framework internally?

In response to this, it can be argued the history of ICL presents evidence that the regime cannot be improved, at least not in the timeframe necessitated.²¹² There have been three climate conventions brought into existence, with each one aspiring to provide a more effective approach than its predecessor. Yet, despite the evolving nature of ICL it has been unable to respond to climate change effectively. The Kyoto Protocol was unable to meet its own objectives and the emission of CO₂ continued to rise. The Paris Agreement sought to change tactic from hard targets to soft aspirations, yet the impact this has had on the problem is negligible and CO₂

²¹¹ G Palmer, 'New Ways to Make International Environmental Law' (1992) 86 (2) The American Journal of International Law 259.

²¹² IPCC, 'Global Warming of 1.5°C: Summary for Policymakers' (2018).

emissions continue to escalate. Trying to find ways to evolve ICL through the usual forum of international law has been an unproductive exercise so far, at least when compared against the problem.

Even if we were to adopt the approach of comparing some positive examples of international environmental law against the climate regime, with the hope of transplanting some of their principles and mechanisms, we run up against the obstacle of incomparable circumstances. For instance, the Montreal Protocol on ozone protection from chlorofluorocarbons (CFCs) is acknowledged to be one of the most successful environmental conventions.²¹³ However, its triumph may not be based on the desire of states to force a solution to the problem, but on the fact that one was readily available. The technology to replace CFCs was accessible and so states, particularly those influential ones like the USA, were open to create a treaty that had behavioural impacts.²¹⁴ In reality the solution may have preceded the Protocol, raising questions over its actual value in terms of impact on the problem, and preventing a simple transfer of useful principles to the climate regime.

Furthermore, the nature of climate change and ozone depletion and the means of addressing them varies vastly. Ozone depletion required the phasing out of specific chemicals, facilitated largely through an equivalent replacement. The problem of CO₂ emissions is much more expansive, reaching into every aspect of society and while solutions are being presented, there is no single change that can be implemented to

²¹³ E DeSombre, 'The Experience of the Montreal Protocol: Particularly Remarkable and Remarkably Particular' (2000) 19 *Journal of Environmental Law* 49; C Sunstein, 'Montreal Versus Kyoto: A Tale of Two Protocols' (2006) *Harvard Environmental Law Review Working Paper* 06-17, 1
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=913395> accessed 4th July 2019.

²¹⁴ J Murdoch, T Sandler, 'The Voluntary Provision of a Pure Public Good: The Case of Reduced CFC Emissions and the Montreal Protocol' (1997) 63 *Journal of Public Economics* 331.

solve this dilemma.²¹⁵ The Montreal Protocol was able to adopt a narrow focus in terms of its scope, whereas the climate regime requires a much more intricate approach. Moreover, the ozone problem has an entirely different temporal nature than climate change and although the Protocol is having a positive impact the problem still persists thirty-four years on.²¹⁶ It is also likely that it will not be solved until sometime between 2045 and 2060.²¹⁷ In regard to climate change we cannot wait decades for a convention to slowly impact the problem. Also along these lines, the negotiation and creation of treaties like the Montreal Protocol take time, and again it is not possible to wait while amendments to the Paris Agreement, or even a new treaty, are drafted.²¹⁸ Comparing the ozone and climate conventions, or that of any other subject, offers little realistic chance of challenging the status quo in a meaningful way.²¹⁹

Another option is to argue that the common but differentiated responsibility principle could be transformed. If this were possible, why was it not done so at the last major renegotiation that took place in 2015? Perhaps part of the problem is that

²¹⁵ A Busch, 'Technologies to Manage Climate Change Already Exist – but the UK Needs to Scale up Efforts Urgently' *The Conversation* (29th November 2019) <<https://theconversation.com/technologies-to-manage-climate-change-already-exist-but-uk-needs-to-scale-up-efforts-urgently-127150>> accessed 7th September 2020.

²¹⁶ Anonymous, 'NASA Ozone Watch' (NASA, Goddard Space Flight Centre, 5th September 2020) <<https://ozonewatch.gsfc.nasa.gov>> accessed 7th September 2020.

²¹⁷ I Rae, 'Saving the ozone layer: why the Montreal Protocol Worked' (9th September 2012) <<https://theconversation.com/saving-the-ozone-layer-why-the-montreal-protocol-worked-9249>> accessed 7th September 2020.

²¹⁸ E B Weiss, 'Vienna Convention for the Protection of the Ozone Layer' (Audio Visual Library of International Law, 22nd March 1985) <<https://legal.un.org/avl/ha/vcpol/vcpol.html>> accessed 7th September 2020.

²¹⁹ C Sunstein, 'Montreal Versus Kyoto: A Tale of Two Protocols' (2006) Harvard Environmental Law Review Working Paper 06-17, 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=913395> accessed 4th July 2019.

the potential alternative of shared responsibility is too contentious,²²⁰ drawing lines of division between the international community.²²¹ However, we can see an evolution to the implementation of this principle between Kyoto and Paris. The former tried to take an equitable stance and charge those most developed with greater commitments, but this was met with obstinance and disagreement.²²² The Paris Agreement responded by removing any differentiation among states through the provision of discretion. Yet, this is not solving the problem and so we are left with the resounding reality that there is little hope of evolving the responsibility principle in time to avert a climate catastrophe. Or at least this thesis does not have the scope to examine this argument in any further depth.

The time has come where we must look for more disruptive responses that might galvanise the international community into action. For this the UNSC offers a potential reply that might facilitate the type of changes required. This is required based on the escalation of the threat. With intensifying levels of harm to the environment and humanity, there can be little disagreement that climate change poses extreme danger. Elevating it to the exceptional level of the UNSC, designed to maintain international peace and security, is therefore entirely defensible at this point.²²³

²²⁰ D Cole, 'The Problem of Shared Irresponsibility in International Climate Law' in A Nollkaemper, D Jacobs (eds), *Distribution of Responsibilities in International Law* (1st edition, CUP 2015) 290.

²²¹ A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations' (2011) 23 *Global Change, Peace and Security* 315; A Lang, 'Shared Political Responsibility' in A Nollkaemper, D Jacobs (eds), *Distribution of Responsibilities in International Law* (1st edition, CUP 2015) 62.

²²² G Bush, (White House Archives, 16th April 2008) <<https://georgewbush-whitehouse.archives.gov/news/releases/2008/04/20080416-6.html>> accessed 10th October 2018.

²²³ Chapter Six will engage with the arguments against involving the UNSC in the climate change response. The reason for these critiques appearing later in this thesis is that they will be used to help inform the argument concerning the type of intervention that might be sought from the UNSC.

The UNSC can pass binding mandates on all 193 UN members absent protracted negotiations;²²⁴ it has access to a range of tools under Chapter VII to encourage the uptake of its mandate;²²⁵ it also has access to capacity building apparatus that have in the past proved useful;²²⁶ and if able to agree, the UNSC can elevate concerns from the ordinary political agenda to the extraordinary security agenda.²²⁷ The activation of Article 39 comes with a gravitas that appears to generate a requisite response from states.²²⁸ In short, the UNSC could take the problem of climate change and remove it from the political sphere of legal stagnation and place it in the security sphere, which is characterised by greater haste and more intention to tackle threats. The remainder of this thesis will embark upon a journey to find a way to securitise climate change within the scope of Article 39, in order to promote a more effective response to this already present catastrophe that is certain to exacerbate exponentially at the expense of all life on earth.

²²⁴ P Hulsroj, 'The Legal Function of the Security Council' (2002) 1 (1) *Chinese Journal of International Law* 59; A Boyle, J Hartman, A Savaresi, 'The United Nations Security Council's Legislative and Enforcement Powers and Climate Change' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 101.

²²⁵ S Cousins, 'UN Security Council: Playing a Role in the International Climate Change Regime' (2013) 25 (2) *Global Change, Peace and Security* 191.

²²⁶ J Dhanapala, 'The United Nations Response to 9/11' (2007) 17 (1) *Terrorism and Political Violence* 17.

²²⁷ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

²²⁸ C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 *International Environmental Agreements* 35.

Chapter Three

International Security as a Referent Object

*'Climate change poses a long-term global threat, with significant human, national, and international security implications.'*¹

I. Introduction

In Chapter One the theory of securitisation was established as the frame through which this research would be conducted. Within this theory, a referent object must be identified. In other words, an object that must be protected. This chapter intends to identify a referent object through examination of the concept of international peace and security, looking at how its interpretation has evolved over time. Thus, providing a more precise referent object for the purposes of this project and narrowing down those threats for examination in the following chapter. First, this chapter will set out how to interpret the term international peace and security. Second, a historical analysis of the UNSC's activation of Article 39 will take place to demonstrate how international security has become a referent object in its own right. Third, it will be shown that climate change is an international security threat, justifying the selection and analysis of those threats with security at their centre in the next chapter.

II. Interpreting International Peace and Security

The UNSC is charged with maintaining and/or restoring international peace and security, making this a viable referent object for the purposes of securitisation theory.² But there is no precise meaning attached to this concept, making it hard to pinpoint with any certainty what is or should be protected. Identifying international

¹ C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 International Environmental Agreements 35, 37.

² Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 24(1).

peace and security as a referent object is further complicated by the evolution of subjects that constitute threats to it. The evolution of what constitutes a threat to the peace has accordingly developed the meaning behind international peace and security. By tracing the history of threats that have come within the meaning of Article 39 it will be shown that international peace and security can be interpreted to mean a number of different things. Not all of these are comparable or relevant to climate change and the purpose of this thesis is to argue for its securitisation. However, before that can begin it must be determined how the term international peace and security should be read.

Within the Charter of the UN there exists no instruction as to how the term international peace and security should be interpreted. It even provides for an element of inconsistency when in Article 39 it switches from the dual designation of peace and security provided in Article 1, to referring singularly to a threat to peace. Kelsen advocated that it was to be interpreted in the singular on the basis that 'International security is guaranteed if international peace is maintained'.³ Relying on this link would mean the absence of war equates to the provision of security.⁴ If we consider the different forms of security – state; human; environmental; food and water security – this becomes problematic. In many of these instances the absence of warfare has not resulted in the absence of insecurity.⁵ Kelsen's claim that 'security is rather superfluous' sits in direct contradiction with the reality of developing international concerns that may fall more appropriately under the heading of

³ H Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (3rd edition, London, Steven and Sons Limited 1954) 13.

⁴ This is supported by McDonald and Brollowski who find peace is often the lead concept for security. A McDonald, H Brollowski, 'Security' (May 2011) Max Planck Encyclopedia of Public International Law.

⁵ The Rhodesia situation was not centred on interstate warfare, or even obvious armed conflict, but security even in the most rigid form of state security was absent. The situation concerning the repression of Iraqi civilians again presents a scenario where warfare was absent but insecurity, and particularly human insecurity remained.

security.⁶ The more viable approach is to recognise a distinction between peace and security.

This distinction is not intended to divide the term, rather it is a way to recognise an expansion of the understanding that has been afforded to it by drawing on the discrete meaning of each word. Galtung delineated the distinct notions of negative and positive peace.⁷ Negative peace is defined as an absence of aggression and or war. Positive peace reflects an absence of structural violence (that is to mean indirect harm resulting from societal circumstances).⁸ Structural violence has no relation to the usual connotations attached to the word violence, but instead references societal circumstances that give rise to discontent and ultimately a sense of harm.⁹ This project will proceed with negative peace as an absence of immediate violence and positive peace as an absence of harm from the structures of society.

Moving to security, a singular interpretation is unavailable, with McDonald and Brollowski stating it is 'elastic, fluid and elusive in character'.¹⁰ Baldwin did attempt to address this elasticity through the identification of an undercurrent of consistency, and concluded that security is a policy objective attached to the state.¹¹ This is a very narrow explanation of the term, which is unreflective of the emergent forms of security that do not necessarily attach themselves to the state.¹² The Copenhagen

⁶ H Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (3rd edition, London, Steven and Sons Limited 1954) 13.

⁷ J Galtung, 'An Editorial: What is Peace Research?' (1964) 1 (1) *Journal of Peace Research* 1.

⁸ *Ibid.*, 167.

⁹ Gleditsch et al. use the example of hunger to exemplify positive peace saying that if there was enough food to meet population demand but people still starved this was a defect in the structure of society. N Gleditsch, et al. 'Peace Research – Just the Study of War?' (2014) 51 (2) *Journal of Peace Research* 145.

¹⁰ A McDonald, H Brollowski, 'Security' (May 2011) *Max Planck Encyclopedia of Public International Law*.

¹¹ D Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5.

¹² UN Development Programme, 'Human Development Report' (1994); K Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All* (United

School defines security as an absence of threats to individuals, peoples and states.¹³ One qualification to accepting this broad approach is that it does not mention international security explicitly and, as Hood points out, the UNSC does in fact deal with the security of the international community.¹⁴ However, Wolfrum indicates that state and international security have become interrelated,¹⁵ and Hood suggests that they have as a common aim the protection of states.¹⁶ Therefore, although the Copenhagen School's approach omits international security, it is reasonable to infer that the recognition of state security by extension can mean the collective security of the international community.¹⁷ Security here means an absence of threats to individuals, peoples, states and the international community. With this understanding set, it is time to consider how peace and security as distinct ideas have manifested within the meaning of international peace and security. To do this a historical examination of the UNSC's activation of Article 39 will follow.

III. The Historical Evolution of Article 39 Threats

Beginning with the period 1946–1990, the Repertoire of the UNSC identifies thirteen different situations addressed under Article 39. Yet two of these situations, the Portuguese Territory question (Resolution 218) and the dispute between the USA and Iran (Resolution 461), are in fact not Article 39 determinations. Resolution 218

Nations, 2005) 78; H Nasu, 'The Place of Human Security in Collective Security' (2013) 18 (1) *Journal of Conflict and Security Law* 95.

¹³ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

¹⁴ A Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace?' (2015) 16 *Melbourne Journal of International Law* 29.

¹⁵ R Wolfrum, 'Article 1' in B Simma, D E Khan, G Nolte, A Paulus, (eds), *The Charter of the United Nations: A Commentary* (3rd edition, Oxford University Press 2012) 108.

¹⁶ A Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace?' (2015) 16 *Melbourne Journal of International Law* 29.

¹⁷ Thakur points out the 'definition of any concept involves a trade-off between precision and inclusiveness'. R Thakur, *The United Nations, Peace and Security* (1st edition, CUP 2008) 82.

finds the situation only ‘seriously disturbs international peace and security’,¹⁸ and Resolution 461 only vaguely points to the situation as a threat without actually activating Article 39.¹⁹ Thus according to the research methods of this thesis, they have been removed from examination.

Within the remaining situations engaged there is a clear link to infractions on negative peace. In most instances this is explicit, and words like ‘hostilities’,²⁰ ‘military action’,²¹ ‘civil war’,²² and ‘continuing bloodshed’,²³ denote clear incursions. Resolution 113 is the exception and the UNSC points only to ‘tensions’ and the ‘withdrawal of forces’, yet while this is less obvious it is also not beyond the spectrum of negative peace because the word ‘forces’ links to conflict.²⁴ Although the language used is not identical to that which appeared in the *Travaux*, it is synonymous, indicating a link between the drafting of the Charter and the UNSC’s early functioning, lending support to the claim by Kirgis that ‘the Security Council in the early years, had the San Francisco proceedings clearly in mind’.²⁵

Only the Southern Rhodesia and South Africa situations do not clearly fall within the spectrum of negative peace. However, in both cases there is a lack of consensus as to why the UNSC intervened. In the Southern Rhodesia situation some identify the possible occurrence of violence as the rationale for intervention,²⁶ while others focus

¹⁸ UNSC Res 218 (23rd November 1965) UN Doc S/Res/218, Operative para 1.

¹⁹ UNSC Res 461 (31st December 1979) UN Doc S/Res/461.

²⁰ UNSC Res 54 (15th July 1948) UN Doc S/Res/54, Preamble para 1.

²¹ *Ibid.*, Operative para 2.

²² UNSC Res 161 (21st February 1961) UN Doc S/Res/161.

²³ UNSC Res 353 (20th July 1974) UN Doc S/Res/353, Preamble para 4.

²⁴ UNSC Res 113 (4th April 1956) UN Doc S/Res/113, Operative paras 3a and 3b.

²⁵ F Kirgis, ‘The Security Council’s First Fifty Years’ (1995) 89 (3) *The American Journal of International Law* 506.

²⁶ J Nkala, ‘The United Nations, International Law and the Rhodesian Independence Crisis’ (1986) 35 *International and Comparative Law Quarterly* 480; L Cefkin, ‘The Rhodesian Question at the United Nations’ (1968) 22 (3) *International Organization* 649; W Chip, ‘A United Nations Role in Ending Civil Wars’ (1981) 19 *Columbia Journal of Transnational Law* 15.

on the internal oppression as justification alone.²⁷ The South Africa situation raises similar questions.²⁸ Resolution 418 references the ‘killings of African people, including school children and students and others opposing racial discrimination’.²⁹ Yamashita uses this to suggest that the purpose of the resolution was to engage human rights abuses resulting from the Apartheid policy.³⁰ Gill also points out that the racial policies internal to South Africa were after ‘hesitation and resistance’ considered as threats to peace.³¹ These claims both ignore the presence within the resolution of a link to aggression against neighbouring states.³² It is therefore difficult to divest these interventions from negative peace.

Within the period 1946–1990 international peace and security should for the most part be considered as an absence of immediate violence. The UNSC was primarily concerned with instances that fall somewhere on the continuum of armed conflict. If the peace was disturbed, then international peace and security was threatened. The *Travaux* and to a lesser extent the Charter support the UNSC’s early focus on the avoidance of such situations.³³ The referent object found within international peace and security at this time is negative peace. Consequently, the issue of climate change would not have been able to come before the UNSC, at least not without a

²⁷ C Fenwick, ‘When is there a Threat to Peace? – Rhodesia’ (1967) 61 (3) The American Journal of International Law 753; C Le Mon, R Taylor, ‘Security Council Action in the Name of Human Rights: From Rhodesia to the Congo’ (2004) 10 (2) U.C. Davis Journal of International Law and Policy 197.

²⁸ C Ferguson, W Cotter, ‘South Africa: What Is To Be Done?’ (1978) 56 Foreign Affairs 253.

²⁹ UNSC Res 418 (4th November 1977) UN Doc S/Res/418, Preamble para 1.

³⁰ H Yamashita, ‘Reading “Threats to International Peace and Security” 1946–2005’ (2007) 18 Diplomacy and Statecraft 551

³¹ T D Gill, ‘Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers Under Chapter VII of the Charter’ (1995) 26 Netherlands Yearbook of International Law 33.

³² UNSC Res 418 (4th November 1977) UN Doc S/Res/418, Preamble para 2.

³³ See for example: The Atlantic Charter (USA and UK) (14th August 1941) 17 U.S.C. 105, Principle 8; G Berridge, A Jennings, *‘Diplomacy at the UN’* (1st edition, MacMillan 1985).

substantial link to a situation of immediate violence, and even quite recently there remains debate surrounding such a connection.³⁴

Moving to the period 1990–2001, there is little doubt that just before, and in the years, following, the 1992 statement on the expanded challenges linked to international peace and security, the UNSC began to include within its remit considerations that were once unfamiliar to it. Resolution 688 expressed the UNSC was ‘Gravely concerned by the repression of the Iraqi civilian population’.³⁵ Resolution 770 said the ‘humanitarian assistance in Bosnia and Herzegovina is an important element in the Council’s effort to restore international peace and security’;³⁶ and Resolution 917 focussed on efforts to bring about the ‘full restoration of democracy in Haiti’.³⁷ These examples exhibit a new confidence of the UNSC to consider international peace and security as more than just the absence of immediate violence. Their inclusion suggests that to fulfil its role the UNSC was aware that it had to look beyond conflict, leading to the possibility that international peace and security had evolved in meaning to include aspects of positive peace and security.

Despite these additional considerations, it is nearly always the case that the UNSC provided a further line of justification through the inclusion of a link to negative peace. In Resolution 713 the UNSC said it was ‘Deeply alarmed by the fighting in Yugoslavia’.³⁸ Resolution 787 on Bosnia and Herzegovina reaffirmed ‘the taking of territory by force’ was unacceptable.³⁹ Resolution 733 concerning Somalia urged ‘all parties to the conflict immediately to cease hostilities’.⁴⁰ In regard to Rwanda the

³⁴ K Conca, ‘Is There a Role for the UN Security Council on Climate Change’ (2019) 61 *Environment: Science and Policy for Sustainable Development* 4.

³⁵ UNSC Res 688 (5th April 1991) UN Doc S/Res/688, Preamble para 3.

³⁶ UNSC Res 770 (13th August 1992) UN Doc S/Res/770, Preamble para 5.

³⁷ UNSC Res 917 (6th May 1994) UN Doc S/Res/917, Preamble para 7.

³⁸ UNSC Res 713 (25th September 1991) UN Doc S/Res/713, Preamble para 3.

³⁹ UNSC Res 787 (16th November 1992) UN Doc S/Res/787, Operative para 2.

⁴⁰ UNSC Res 733 (23rd January 1992) UN Doc S/Res/733, Operative para 4.

‘ongoing violence’ was condemned,⁴¹ and later Resolution 929 referenced ‘parties to the conflict’.⁴² The precise basis on which the UNSC was relying for intervention in these cases is unclear. Was it expanding its authority into new facets of international peace and security, or was it recalling the traditional rationale of immediate violence as an intrusion on negative peace? The mood of this era is certainly one of expansion in terms of the meaning attached to international peace and security. The cooperative attitude of the permanent members meant that situations once outside the UNSC’s remit were able to find their way to Article 39. Considerations such as humanitarian abuse and non-compliance with UNSC resolutions show that elements of positive peace and security were beginning to feature in the meaning of international peace and security.⁴³

However, it is unlikely that without the already evident beginnings of negative peace intrusions the UNSC would have been able to intervene in positive peace or security concerns. The interpretative radius may have been too far removed for the permanent members to agree and avoid a veto vote.⁴⁴ Even in the Rwanda situation that was unanimously categorised as a humanitarian catastrophe, the permanent members identified the nature of the situation as linked to immediate violence. Thus, within the period 1990–2001 the UNSC was able to adopt an interpretation of international peace and security that encompassed aspects of positive peace and security but only alongside negative peace intrusions. The likelihood of climate change falling within the remit of peace and security at this time is improbable. The permanent members would have been unable to agree that a threat of a nature most clearly related to security was within the remit of Article 39.

⁴¹ UNSC Res 918 (17th May 1994) UN Doc S/Res/918, Preamble para 5.

⁴² UNSC Res 929 (22nd June 1994) UN Doc S/Res/929, Operative para 9.

⁴³ See Resolution 748 for a situation of non-compliance with a UNSC mandate as rationale for intervention: UNSC Res 748 (31st March 1992) UN Doc S/Res/748.

⁴⁴ A Tzanakopoulos, *Disobeying the Security Council: Countermeasures Against Wrongful Sanctions* (1st edition, OUP 2011).

Moving to the period 2001–2016, certain threat recognitions are considerably different in character from all those that preceded them. International terrorism, WMD proliferation, the 2014 Ebola outbreak and drug trafficking all exhibit an emphasis on security. The first three of these were housed in resolutions and there is no doubt that they were brought within the meaning of Article 39. Drug trafficking was addressed in Presidential Statement 2009/32 and the Repertoire records it as a new Article 39 intervention.⁴⁵ The language of this presidential statement does not explicitly declare drug trafficking as a threat to peace, the linguistics carefully avoided this. Nonetheless, this statement evidences a further move of the UNSC into the realm of security, and some permanent members were prepared to find drug trafficking a threat to international peace and security in their submissions.⁴⁶ Its inclusion here is useful, but it will take a secondary role in comparison to terrorism, WMD proliferation and the 2014 Ebola outbreak.

A distinction can be identified in how the content of these resolutions is framed, which encourages a shift away from situational threats. In Resolution 1368 the UNSC 'Calls [also] on the international community to redouble their efforts to prevent and suppress terrorist acts'.⁴⁷ Resolution 1540 determined to 'facilitate henceforth an effective response to global threats in the area of non-proliferation'.⁴⁸ Resolution 2177 held 'the control of outbreaks of major infectious diseases requires urgent action and greater national, regional and international collaboration'.⁴⁹ Presidential Statement 2009/32 references the 'serious threats posed in some cases by drug

⁴⁵ UNSC Presidential Statement 2009/32 (8th December 2009) UN Doc S/PRST/2009/32; Repertoire of Security Council Practise, 'Actions with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression (2008-2009)' (UN Repertoire 2019) <<https://www.un.org/securitycouncil/content/repertoire/actions>> accessed 1st December 2019.

⁴⁶ The UK held, mimicking the language of Article 39, 'drug trafficking constitutes a threat to international peace and security'. UNSC Verbatim Record (8th December 2009) UN Doc S/PV/6233, 9.

⁴⁷ UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368, Operative para 4.

⁴⁸ UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540, Preamble para 15.

⁴⁹ UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble para 13.

trafficking and related international organized crime'.⁵⁰ In each of these instances the UNSC was moving to a thematically framed interpretation of the threats. Even in regard to the Ebola outbreak, which was to some extent situational because of its concentration in West Africa, the UNSC touched upon the problem of infectious diseases more broadly. The indication is that each of these threats exists or could exist beyond single incidents and so must be addressed accordingly. This evidences a significant departure of the UNSC from its traditional mode of responding to situational conflict.

Even in the wake of September 11th the language is directed towards security, with China calling terrorism a 'serious potential danger',⁵¹ suggesting the attacks exemplified the danger emanating from terrorism, provoking support not based on this negative peace intrusion but on the need to increase security to prevent further attacks. On proliferation, France pointed to the 'security of all States', identifying with clarity the policy goal of Resolution 1540.⁵² On Ebola, France spoke about an 'economic and social crisis that could generate a political crisis',⁵³ and Russia referenced a 'threat to food security'.⁵⁴ On drug trafficking the USA argued it has 'very serious consequences for the security and development of society'.⁵⁵ These submissions evidence a move to contemplate factors unrelated to negative peace, instead centralising aspects of positive peace and security. The inclusion of wider considerations is not original to this period and compares to the expansions of the 1990s, but where they are distinct is that they are not always reliant on a clear link to negative peace.

⁵⁰ UNSC Presidential Statement 2009/32 (8th December 2009) UN Doc S/PRST/2009/32, 1.

⁵¹ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5.

⁵² UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

⁵³ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 10.

⁵⁴ Ibid., 13.

⁵⁵ UNSC Verbatim Record (8th December 2009) UN Doc S/PV/6233, 7.

This highlights that the UNSC had switched from an approach of reaction to one of prevention. Where it originally sought to restore international peace, it now seeks to maintain international security. A likely motivation for this evolution is linked to the contemporary character of threats that has somewhat evolved from those historic conflicts that were predominantly confined to geographical circumstances. The events of September 11th highlighted the need to place security as the first line of defence because the consequences of not doing so had become critical.⁵⁶ The nature of terrorism and proliferation as able to cause massive spontaneous devastation meant that continuing to prioritise negative peace would not halt these threats. The same rationale appears true in the context of Ebola, where prevention of further spread, which could be interpreted as the provision of security, was present in the minds of the permanent members.⁵⁷

In some of these instances there is no doubt a link between the need for security and the ambition to avoid negative peace infractions.⁵⁸ An absence of security leading to peace concerns does not mean that the former loses merit and actually shows for the second time in the UNSC's history that peace and security do have a connection.⁵⁹ The important finding here is that security is no longer reliant on negative peace intrusions, but instead the maintenance of peace in some instances became reliant on the provision of security. This might be a contestable point in regard to Resolution 1368 because of the violence of the attack that preceded its

⁵⁶ F Galloway, 'Anti-Terrorism Resolutions: The Security Council's Threat to the UN System' (2011) 2 *Journal of Terrorism Research* 105.

⁵⁷ For example, the USA pointed out the 'need to contain the further spread' of the outbreak: UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 7.

⁵⁸ This link is clear in regard to terrorism and proliferation, but even in the context of the Ebola outbreak there was some consideration on the need to avoid post-conflict peace reversals: France said the outbreak 'threatened to erase peace dividends and to reignite chaos in those countries' and the UK thought the outbreak could 'neutralize the post-conflict gains of recent years', UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 10, 17.

⁵⁹ The first time was in the period 1990–2001, when security was reliant on peace for recognition.

adoption, but the introduction of Resolutions 1540 and 2177 showcases that the provision of security is intended as a means to preserve peace. Diehl found the factors that led to peace were not the reverse of factors that led to conflict.⁶⁰ The UNSC appears to understand this and in order to achieve peace it has refocussed its agenda to centralise security, hence the evolution of what international peace and security means seems to be a response to changing global conditions. Security in this period became a central aspect of international peace and security, and a referent object in its own right.

To conclude, an examination of the UNSC's activation of Article 39 has indicated that throughout its history the type of situations that fall within its remit has evolved. At one-point international peace and security centralised negative peace as the only consideration. As time passed and the Cold War ended, this was expanded to include more varied factors, like humanitarian protection and non-compliance. But these considerations were always linked to negative peace and without it they were incapable of becoming threats in their own right. The post-September 11th atmosphere has seen the removal of the need for negative peace to be present within a threat, and international security concerns have been identified in their own right, possibly due to the need to prevent infractions on negative peace. In any case the threat posed by contemporary issues such as terrorism, proliferation and health crises were such that the provision of security was prioritised in order to maintain international peace and security and not just to restore it. In short, international security became a referent object of the UNSC.

IV. Climate Change as an International Security Threat

Analysis of the UNSC's engagement with the term international peace and security has revealed two important points. First, the term has undergone distinct evolutions and having never been rigidly defined in the Charter this was plausible and perhaps

⁶⁰ P Diehl, 'Exploring Peace: Looking Beyond War and Negative Peace' (2016) 60 International Studies Quarterly 1.

expected.⁶¹ By applying a definition to the words *peace* and *security* it became clear the interventions of the UNSC progressed from being focussed on negative peace to eventually coming to include standalone security concerns. This leads to the second finding, that international security can now take a central role in the meaning of international peace and security, becoming a referent object in its own right. This is important in the context of climate change because of its contemporary security character, which largely differentiates it from peace intrusions that were once central to the characterisation of international peace and security.⁶² It will now be outlined that climate change reflects an international security threat.

International security threats were shown to have progressed away from situational circumstances to become thematic in nature. There can be little doubt that climate change manifests thematically. The emissions problem is caused by all states and the global heating effect is something that states cannot escape.⁶³ Climate change is therefore not isolated to a single discrete circumstance but comprises many varied and connected iterations across the globe. Furthermore, the consequences that stem from this heating effect exist at the international level. Since the advent of increased global temperatures there has been a rise in the number of droughts, floods and extreme weather events around the globe.⁶⁴ Climatic harms resulting from climate change are not discretely isolated threats and are instead thematically linked. The global ubiquity of these harms mirrors the way in which the UNSC rationalised its characterisation of terrorism as a thematic security problem, allowing the same line of reasoning to be used to characterise climate change as within the meaning of an international security concern.

⁶¹ N Susani, 'United Nations, Purposes and Principles' (2009) Max Planck Encyclopedia of Public International Law.

⁶² It is arguable that climate and conflict have a link, but a direct handling of climate change will have to look beyond this, see S Scott, 'Implications of Climate Change for the UN Security Council: Mapping the Range of Potential Policy Responses' (2015) 91 International Affairs 1317.

⁶³ UNEP, 'The Emissions Gap Report 2016' (2016).

⁶⁴ UNEP, 'UNEP Yearbook: Emerging Issues in our Global Environment' (2014).

A second line of reasoning to characterise climate change as an international security threat follows the repercussions that stem from climate change. Climatic impacts such as rising temperatures, increasing precipitation and food and water shortages might be more closely akin to human security problems that on their own are not yet within the meaning of international peace and security.⁶⁵ Such impacts might also appear at first glance to be domestic problems. Nevertheless, these climate-change-induced insecurities cause problems at the level of the international community because of their impacts on regional and international stability.⁶⁶ As climatic harm manifests, migration becomes a more frequent response.⁶⁷ Internal territories and neighbouring states may start to experience pressures, which could cause an increase in regional tension.⁶⁸ Human security issues may advance through the implementation of measures to stop mass migration.⁶⁹ This might manifest through the possibility of immediate violence at international frontiers. It is also possible that states may begin to initiate aggressive policies to secure greater access to essential natural resources in order to protect their own populations.⁷⁰ Thus, although at first glance climatic implications appear to be human-security-centric or domestic in nature they may rapidly link to state and international security. With these consequences in mind it is impossible to argue that climate change will not have international security repercussions and it might also impact on international peace.

⁶⁵ Food and Agricultural Organisation, 'The State of Food Security and Nutrition in the World' (2018); IPCC Report, 'Global Warming of 1.5°C: Summary for Policy Makers' (2018).

⁶⁶ IPCC, 'Climate Change and Land: Summary for Policy Makers' (2019).

⁶⁷ C Farbotko, H Lazrus, 'The first climate refugees? Contesting Global Narratives of Climate Change in Tuvalu' (2012) 22 *Global Environmental Change* 382.

⁶⁸ Ibid.

⁶⁹ O Brown, R McLeman, 'A Recurring Anarchy? The Emergence of Climate Change as a Threat to International Peace and Security' (2009) 9 *Conflict, Security and Development* 289.

⁷⁰ P H Gleick, 'Water and Conflict: Fresh Water Resources and International Security' (1993) 18 *International Security* 79; UNEP, 'GEO 6: Healthy Planet Healthy People' (2019).

Some of these arguments are reflected in past interventions of the UNSC. In regard to the Ebola outbreak the impact on stability locally and regionally was noted throughout discussions.⁷¹ There is little doubt that climate change is able to cause instability wherever it occurs. A lack of food and water security alone will induce mass migration that will have state and/or international level repercussions. It is also possible that an extreme weather event may destabilise states causing mass human harm and generating economic instability, facilitating a descent into chaos that could force further migration and regional challenges. Thus, the nature of climate change can be paralleled to the international security implications of other recently securitised threats.⁷²

Penny suggests the motivation behind the evolution of what constitutes a threat to international peace and security was the 'cross-border or international consequences bringing them closer to traditional interstate security concerns'.⁷³ In regard to the expansions that have taken place since 2001 this appears only half correct. The meaning of international peace and security does rest on international consequences but not necessarily on a link to interstate conflict. The Ebola outbreak, drug trafficking, proliferation and terrorism all have international consequences but only the latter two might be linked to contemporary conflict.⁷⁴ The practice of the UNSC has removed the need for a clear link to interstate conflict. Other international security consequences have taken a more central role, providing another parallel to the impacts of climate change.

⁷¹ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268.

⁷² This is something that will be taken forward in much greater detail in Chapter Four.

⁷³ C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 *International Environmental Agreements* 35, 57.

⁷⁴ White felt that terrorism might be a contemporary form of conflict, and by the same argument proliferation might also be classified in this way. N White, *The United Nations System: Toward International Justice* (1st edition, Lynne Rienner 2002).

The progression away from situational circumstances meant the UNSC was also able to advance from the express identification of negative peace intrusions. In the context of climate change its consequential harms may manifest without leading to conflict and so this move to other thematic implications is again useful.⁷⁵ In some cases there might be a connection between conflict and climate change but this should not mean that all instances of climate change require such a finding.⁷⁶ In the case of proliferation and drug trafficking there was no circumstantial evidence of a conflict to lead the UNSC to securitise these subjects.⁷⁷ This is important because it shows that climate change coming within the meaning of international security will not have to be preceded by a negative peace infraction or perhaps even any instance of harm, though this latter possibility is unlikely and will be explored much more rigorously in Chapter Four.

Moving on, in all instances of international security there was a focus on pre-emption. Even in regard to Resolutions 1368 and 2177 that were linked to factual events, the UNSC showed its intent to prevent future or further harm. The UNSC moved from restoring international peace and security to maintaining it. This is something that must take place in regard to climate change. If the UNSC embarks upon a practice of engaging climatic impacts as they arise it will forever be responding to already manifesting harm as opposed to preventing it in the first place. This is totally unsustainable given the extreme and exacerbating impacts stemming from climate change around the globe, which was an underlying motivation in the securitisation of terrorism and proliferation. There is a strong parallel between climate change and the reason for contemporary threats being handled pre-emptively, adding further arguments that it is also an international security concern.

⁷⁵ J Barnett, W N Adger, 'Climate Change, Human Security and Violent Conflict' (2007) 26 Political Geography 639.

⁷⁶ J Selby et al., 'Climate Change and the Syrian Civil War Revisited' (2017) Political Geography 232.

⁷⁷ At least no evidence was used to justify intervention in the verbatim records: UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956; UNSC Verbatim Record (8th December 2009) UN Doc S/PV/6233.

If climate change is to fall within the meaning of international peace and security, it will do so at the latter end of the evolutionary continuum where international security and pre-emption have been centralised. Infractions on negative peace were not required in this latest era as the intention was to pre-empt harm that could have ramifications at the international level. As Kendall put it, 'state borders have disintegrated' and with this comes a 'revised understanding of what constitutes a threat to international peace and security'.⁷⁸ Climate change erodes state borders completely, in terms of causes and impacts, adding further weight to the argument that it is in fact an international security threat.

However, this does not necessarily mean the UNSC will find international peace and security is now linked to climate change. There are international security consequences stemming from climate change, but the normative evolution of the meaning attached to international peace and security has been inconsistent. Mahapatra analysed the UNSC's engagement with two similar situations of intrastate conflict, Mali and Syria, identifying that although there were factual comparisons only one was brought successfully within the meaning of Article 39.⁷⁹ This signals the inconsistency with which international peace and security exists, and as Hehir argues, this is unlikely to change unless there becomes a way in which to limit the decision making of the permanent members to a factual interpretation of the situation devoid of all improper considerations.⁸⁰ This is an unlikely prospect at least in terms of formal amendment to the UN Charter because the permanent members have a deciding vote on reform options, courtesy of Article 108.⁸¹

⁷⁸ R Kendall, 'Climate Change as a Security Threat to the Pacific Islands' (2012) 16 New Zealand Journal of Environmental Law 83, 94.

⁷⁹ D A Mahapatra, 'The Mandate and the (In)Effectiveness of the United Nations Security Council and International Peace and Security: The Contexts of Syria and Mali' (2016) 21 Geopolitics 43.

⁸⁰ A Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect' (2013) 38 International Security 137.

⁸¹ Charter of the United Nations (24th October 1945), 1 UNTS XVI, Article 108.

This inconsistency problem is likely to become even more pronounced in regard to climate change. The prospect of arguing a link between climate change and conflict is one thing, but to argue that climate change should be addressed pre-emptively as an international security threat is quite another. Even through a comparison of the UNSC's recent anticipatory approach that prioritises security and the precautionary and preventative action principles of environmental law, it is challenging to see past the unpredictability of when a situation will be classified as a threat to peace. Although Trina Ng is correct in her assertion that the visibility of climate change consequences should 'compel the SC to embrace climate change as a "threat to peace"', this is unlikely to get much traction simply by finding that it is an international security threat.⁸² Finding that international peace and security now means the provision of international security is only part way to bringing climate change before the UNSC.

V. Concluding Remarks

Within the concept of international peace and security it is now possible to claim that international security has become a referent object in its own right. Since the early millennium the UNSC has on several occasions been able to prioritise the provision of international security as a way to maintain international peace and security. This is an extremely helpful finding because climate change fits much more easily within the understanding of what constitutes a threat to international security. Thus, providing a justification for focus to be placed on these threats in the construction of a comparative argument that follows in the next two chapters.

Moving forward with the rest of this thesis, attention must now turn to the securitisation arguments put forward by the permanent members in regard to the international security threats. The intention is to find out how they argued for their

⁸² T Ng, 'Safeguarding Peace and Security in our Warming World: A Role for the Security Council' (2010) 15 *Journal of Conflict and Security Law* 275, 288.

securitisation. The following chapter will examine the speech acts of the permanent members in regard to terrorism, proliferation and the Ebola outbreak of 2014, using the relevant verbatim records and resolutions as primary sources to identify the consistently employed narratives and the underpinning thresholds and triggers present within them.

Chapter Four

Narratives, Thresholds and Triggers

*'The Council appears to be adopting a practise whereby it is questionable whether its declarations of threats to the peace accord with any settled substantive criteria.'*¹

I. Introduction

This chapter will examine the speech acts of the permanent members when securitising the subjects of terrorism, proliferation and the 2014 Ebola outbreak. It is at this point that securitisation theory has most utility, because through examination of these speech acts it will be possible to identify how the permanent members have constructed arguments to transfer objects to the security agenda. The following section will provide some additional clarity on the purpose and presentation of this chapter. Following this, those narratives that consistently appeared across the speech acts of the threats noted above will be analysed in the following order: magnitude; transnational scale; collective interest; insufficient response; and urgency.

II. Purpose and Presentation of Data

If climate change is to be brought within the umbrella of Chapter VII, the UNSC must find that it constitutes a threat to international peace and security under Article 39.² The connection between climate change and Article 39 has been analysed in the literature, with arguments based on harm, security and human wellbeing.³ These

¹ A Hood, 'Ebola: A Threat to the Parameters of a Threat to the Peace?' (2015) 16 Melbourne Journal of International Law 29, 47.

² Chapter VII reflects the far-reaching powers of the UNSC that must be operationalised in the fight against climate change as per the argument in Chapter Two that highlighted the need for an exceptional response to this threat.

³ S Cousins, 'UN Security Council: Playing a Role in the International Climate Change Regime?' (2013) 25 (2) Global Change, Peace and Security 191; C Penny, 'Greening

arguments, although containing great validity have not yet been able to push climate change into the remit of Article 39. This is partly because they fail to engage the question of the permanent members, instead merely highlighting that any progress will have to have their acquiescence. It is here that this project seeks to intervene, not by defining what constitutes a threat to peace but by using securitisation theory to analyse concrete instances where Article 39 was activated, asking how this course of action was argued by the particular actors involved.⁴

The question of how as opposed to what has the benefit of flexibility. By asking what a threat to peace is, attempt is being made to fit climate change into a rigid model reflective of an already established term, albeit one that fluctuates. By asking how an issue is justified as a threat to peace we are able to draw useful parallels that are applicable to climate change but do not require it to fit within an already cast shape. Recognising the severity of the threat and the pressing timeframe we have to respond, we must find out how the activation of Article 39 has been justified previously, in order to mobilise this knowledge in the context of climate change. The theory of securitisation provides a useful lens in which to approach this task.

Chapter One established that the permanent members are going to be examined as the main securitising actors because of their position of control over the agenda of the UNSC. They are the gatekeepers of securitisation. The intention of this chapter is to find out how they have argued to securitise past international security threats. Specific verbatim records will be examined, through which the speech acts of the permanent members will be identified and analysed via an inductive reasoning method. Corresponding resolutions will feature where appropriate to showcase important parts of the arguments used to facilitate the securitisation of these issues.

the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 International Environmental Agreements 35; S Scott, 'Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate?' (2008) 9 Melbourne Journal of International Law 495.

⁴ For a full discussion on this point see Chapter One.

The narratives presented here were identified through the course of an inductive reasoning process and include magnitude; transnational scale; collective interest; insufficient response; and urgency. Analysis of the relevant security threats revealed that these markers are always given attention by the permanent members. Others do manifest but with less consistency, and so their value in understanding the core arguments leading to securitisation is limited, excluding them from the purview of this research. For example, a sixth narrative was being considered through the guise of 'scope', which was loosely interpreted to mean the wider impact of a threat. On terrorism and Ebola there was consideration of wider impacts through the societal implications present.⁵ In regard to proliferation no such considerations were offered, and so scope was not a consistently present narrative in the securitisation of the three international security threats, removing it from the final presentation here.

When making arguments throughout this chapter, statements from the permanent members will be used to evidence the presence of narratives. At times each permanent member's statement will feature on a particular point to showcase the different security logics being used to construct a narrative.⁶ At other times where they make the same point only one or two statements may be used as an example of the argument put forward. In either case, the permanent members will always have agreed with the statements of their counterparts or a veto would have been cast. Arguably, then, a statement made by one permanent member can be interpreted to reflect the agreement, or at least acquiescence, existing between them. Hence, it is not always necessary to showcase the securitising statements of each and every permanent member.

⁵ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370; UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268.

⁶ Chapter One set out the idea that there are consistent patterns in the way issues are constructed as threats, which Buzan et al. call the grammar or logic of security. B. Buzan, O. Waever, J. de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

This idea to understand what prompts the securitisation of a threat has its origins in some earlier work on the UNSC. In 2005 Knight argued to develop a framework of intervention that could be used to determine the appropriateness and legality of using Chapter VII to protect the environment.⁷ Applying a number of criteria to environmental harm, Knight argued that the UNSC could be called upon to intervene when certain conditions arose.⁸ This idea was the antecedent for thinking about thresholds that when crossed could lead to intervention. Knight pulled her criteria from the *In Larger Freedom Report*, which means it was not crafted directly from the normative behaviour of the UNSC.⁹ It was unable to command the authority needed to convince the UNSC to securitise environmental harm. Despite this argument being rooted in pragmatism and legitimacy it has not been advanced any further.

What securitisation theory does to circumvent this problem is situate those actors involved in the process as the central focus. Any knowledge gained comes directly from their practice, removing the need for externally sourced criteria as a way to argue for intervention. Securitisation theory helps us to navigate through the hegemony of the permanent members and understand Article 39 from a perspective stemming directly from their own political exigencies. Using securitisation theory advances Knight's initial idea of an intervention criteria but reverses it, switching from the application of an external criteria to the UNSC, to generating an intervention argument from the internal practice of securitising actors. This thesis seeks to find out if there are consistent narratives underpinned by specific thresholds and triggers that lead the permanent members to securitise threats. This will allow the creation of an argument for UNSC involvement in matters not yet within its remit, like climate change.

⁷ A Knight, 'Global Environmental Threats: Can the Security Council Protect Our Earth?' (2005) 80 (5) New York University Law Review 1549.

⁸ Ibid., Knight's criteria included: magnitude; causation; risk; proportionality; and the balancing of intervention against non-intervention.

⁹ K Annan, 'In Larger Freedom: Towards Development, Security and Human Rights for All' (United Nations, 2005).

III. Narrative: Magnitude

The first narrative to be examined by this project is magnitude. The meaning attached to this term is derived from the UNSC. Resolution 794 referred to the 'magnitude of the human tragedy caused by the conflict in Somalia'.¹⁰ Resolution 929 held 'the magnitude of the human crisis in Rwanda constitutes a threat to peace and security in the region'.¹¹ The UNSC uses the term magnitude to refer to the degree of harm taking place to human life. For the purposes of this thesis the term magnitude refers to the degree of harm caused to human life by a threat to peace. Two arguments will be proffered: first, there are two forms of magnitude, tangible and potential; second, triggers can be identified that underpin its use as a security narrative, but while holding importance they cannot be considered exclusively as the rationale for securitisation.

Analysing the three international security threats revealed that magnitude was a consistent narrative used by the permanent members when arguing for securitisation. Resolutions 1368 and 2177 were adopted on the basis of visible casualties. In Verbatim Record 4370 every permanent member included a comment on the direct impact to the victims, their families and/or the American people, encapsulated by the UK expressing 'heartfelt sympathy for the many bereaved and injured'.¹² In regard to the Ebola outbreak, the UK said every day means 'more Ebola deaths';¹³ and France pointed out that 'several thousand people have already died'.¹⁴ In both instances the permanent members appreciated the magnitude of the threat despite not always being aware of the specific details. There was a reliance on the fact that lives had already been lost, providing a security logic that was easy to interpret as necessitating an exceptional response.

¹⁰ UNSC Res 794 (3rd December 1992) UN Doc S/Res/794, Preamble para 3.

¹¹ UNSC Res 929 (22nd June 1994) UN Doc S/Res/929, Preamble para 10.

¹² UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 2.

¹³ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 17.

¹⁴ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 10.

Employing a narrative based on magnitude was not original to these threats and was present in the UNSC's securitisation of humanitarian situations in the 1990s.¹⁵ It seems that when moving into the realm of international security the permanent members have done so with reference to a narrative used to justify past interventions. The securitisation of new issues is not always straightforward and so it is possible that this overlapping narrative of magnitude was intended to add a layer of legitimacy when moving international security to the UNSC's agenda.¹⁶ Magnitude, based on the security logic of lives lost, is a narrative loaded with graphic imagery, giving it a certain amount of impact in the securitisation of an issue.¹⁷ Its use here is therefore unsurprising.

The more curious discovery is that magnitude can manifest potentially through the hypothetical existence of a threat. An isolated reading of Resolution 1540 and Verbatim Record 4956 indicates the threat was hypothetical, as opposed to Resolutions 1368 and 2177 that were based on actual threats. This finding is not always recognised and Heupel disagrees that Resolution 1540 is constructed on a hypothetical threat, basing her argument on the discovery of the A Q Khan proliferation network in 2003.¹⁸ Khan operated an international network for some years, distributing sensitive materials to state and non-state actors.¹⁹ It was not until the ship BBC China was interdicted on route to Libya that the network was

¹⁵ L Fielding, 'Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises' (1996) 73 University of Detroit Mercy Law Review 551.

¹⁶ K Peters, 'Disasters, climate change and securitisation: the United Nations Security Council and the United Kingdom's Security Policy' (2018) 42 Disasters 196.

¹⁷ Going back to early UNSC interventions, it has been able to draw on magnitude as a way to justify the securitisation of an issue. See Chapter Three for evidence of this in regard to the South Africa Question, UNSC Res 418 (4th November 1977) UN Doc S/Res/418.

¹⁸ M Heupel, 'Combining Hierarchical and Soft Modes of Governance: The UN Security Council's Approach to Terrorism and Weapons of Mass Destruction Proliferation after 9/11' (2008) 43 Cooperation and Conflict: Journal of the Nordic International Studies Association 7.

¹⁹ J Russell, 'Peering into the Abyss' (2006) 13 Non-Proliferation Review 645.

uncovered and the Libyan regime decided to expose Khan's operation.²⁰ In the wake of this discovery the USA began to push a policy of response culminating in Resolution 1540.²¹ However, nowhere in Resolution 1540 or Verbatim Record 4956 is there reference to Khan's network or any specific proliferation activities. Instead, it was grounded in the hypothetical combination of proliferation and the involvement of terrorist organisations.²²

The lack of factual grounding present within Resolution 1540 did not stop the permanent members developing a logic of security based on potential magnitude. The UK and USA both used the word 'deadly' to describe the proliferation threat;²³ and the UK further indicated that the resolution 'will reduce the risk of any future tragedy'.²⁴ France and Russia used the words 'danger' and 'crucial', which link to the severity of the threat that could be interpreted to mean magnitude.²⁵ These adjectives indicate an awareness that proliferation would result in severe adverse effects on human life. This connection is not uncommon, and the literature frequently identifies a risk to human life from proliferation.²⁶ Others linking proliferation and terrorism also rely heavily on the risk of harm to human life.²⁷ The

²⁰ B Kellman, 'Criminalization and the Control of WMD Proliferation: The Security Council Acts' (2004) 11 *The Non-Proliferation Review* 142.

²¹ M Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13 *Journal of Conflict and Security Law* 303.

²² France encapsulated this by stating in 'an era of widespread terrorism, it [proliferation] increases the risk of seeing them [WMDs] fall into the hands of the most dangerous', and China talked about the need to 'prevent the further proliferation of such weapons', UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2, 6.

²³ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 6, 7.

²⁴ *Ibid.*, 8.

²⁵ *Ibid.*, 2, 6.

²⁶ M Shulman, 'The Proliferation Security Initiative as a New Paradigm for Peace and Security' (Strategic Securities Institute, 2006) 7.

²⁷ J Yoo, G Sulmasy, 'The Proliferation Security Initiative: A Model for International Cooperation' (2006) 35 *Hofstra Law Review* 405; E Rosand, 'Combating WMD

permanent members employed a security logic drawn from the general mood of caution surrounding these weapons.²⁸ This strengthened their argument for securitisation by drawing on well-supported lines of reasoning that were hard to refute.

The similarity in the adjectives used also creates a uniformity in the logic of security employed by the permanent members. They were agreed on the justifications required to securitise proliferation, despite a lack of evidence to substantiate this argument. This reflects the finding in the securitisation literature that threats do not always require a factual grounding to be securitised,²⁹ suggesting the permanent members are able to act in a similar fashion to securitising actors operating in other contexts. This logic, based on hypothetical harm, indicates a transition from reaction to pre-emption on the part of the permanent members where proliferation is concerned.

Evidence of this transition to a pre-emptive stance is also present in regard to terrorism and Ebola, but in a much less noticeable fashion because of the tangible magnitudes that command a more central position. Resolution 1368 pointed to the prevention of future attacks, with a thematic interpretation of the threat percolating through the verbatim record. The UK opined that 'mass terrorism is the new evil in our world today, perpetrated by fanatics who are utterly indifferent to the sanctity of human life'; China said that terrorism 'causes tremendous losses to the lives and property of innocent civilians' and is a 'serious potential danger to international peace and security'; and Russia called terrorism a 'plague of the twenty-first

Terrorism: The Short-Sighted US-led Multilateral Approach' (2009) 44 *The International Spectator* 81.

²⁸ The G8 Statement of 2005 determined 'to prevent the spread of weapons of mass destruction to terrorists and other criminals', G8 Statement on Counter Terrorism, Gleneagles 2005, Para 2; the *More Secure World Report* also made similar overtures, UNGA Secretary General's High Level Panel on Threats, Challenges and Change, 'A more secure world: Our shared responsibility' (2nd Dec 2004) A/59/565.

²⁹ F Ciuta, 'Security and the Problem of Context: a Hermeneutical Critique of Securitisation Theory' (2009) 35 *Review of International Studies* 301.

century'.³⁰ This language casts terrorism as something that will continue to manifest unless a response is forthcoming. Use of the words 'fanatics', 'potential' and 'plague' all create connotations of something that must be dealt with pre-emptively or will continue to manifest. Linking terrorism to human life, innocent civilians and human health also created a sense of severity and reinforced that it must be addressed pre-emptively. It appears the permanent members adopted their positions based, also, on the possibility of future lives being lost to terrorism.

Turning to Ebola, the permanent members expressed an appreciation of potential magnitude through their recognition that the virus would continue to exacerbate. The USA held that 'We have all been alarmed by the models of the Ebola trajectory that we have seen – models in which infections rise in steep, terrifying curves'.³¹ France said there was a 'possibility of tens or even hundreds of thousands of more deaths in the future'.³² The UK stated that 'Ebola will kill many thousands more'.³³ It is clear to see the permanent members can move beyond tangible to potential magnitude. This consistent focus on the possibility of future lives being lost allows the assertion that potential magnitude assumes a consistent degree of importance within the securitising arguments of the permanent members. The difficulty lies in how tangible and potential magnitudes can be analysed to identify a threshold, and whether or not a relationship between the two varieties of magnitude exists.

With regard to Resolutions 1368 and 2177 it is possible to identify a numerical threshold where magnitude is concerned. The September 11th attacks claimed 2,996 lives, although at the time of adopting Resolution 1368 this figure was unknown to the permanent members.³⁴ Still, US President Bush had the previous night indicated that thousands of lives had been lost, and this was somewhat evident through the

³⁰ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 2, 5, 5.

³¹ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 9.

³² Ibid., 10.

³³ Ibid., 18.

³⁴ Anonymous, '9/11 Attacks' (The History, 27th August 2018) <https://www.history.com/topics/21st-century/9-11-attacks#section_6> accessed 10th September 2018.

extent of the attack.³⁵ At the time of passing Resolution 2177 the permanent members were told that 2,500 deaths had already occurred as a result of the Ebola outbreak.³⁶ These comparable figures allow the claim that a loss of life reaching into the thousands may represent the crossing of a threshold. This suggests the magnitude of a threat has to be numerically high to prompt the permanent members to begin securitisation, adding a significant amount of importance to this threshold.

When we compare Resolutions 1368 and 2177 with past instances of terrorism and Ebola that were not successfully securitised, the claim that a high magnitude is important becomes further strengthened. Resolution 1269 was loosely preceded by the Moscow bomb of September 1999 where over 200 people were killed.³⁷ The 1998 bombing of the US Embassies in Kenya and Tanzania underscored the adoption of Resolution 1189 and saw 213 deaths in Nairobi,³⁸ and 11 deaths in Dar es Salaam.³⁹ The 1988 Lockerbie bombing killed 270 people and drew the UNSC into the

³⁵ The White House, 'Statement by the President in His Address to the Nation' (The White House Archives, 11th of September 2001) <<https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html>> accessed 29th August 2018.

³⁶ By the end of its cycle Ebola had infected 28,610 people and killed 11,308: CDC, 'Years of Ebola Virus Disease Outbreaks: 40 Years of Ebola Virus Disease Around the World' (CDC, 2019) <<https://www.cdc.gov/vhf/ebola/history/chronology.html>> accessed 10th May 2019.

³⁷ Russia acted as the sponsor for Resolution 1269 and during the 4053rd meeting preceding its adoption, the Russian representative referenced the 'recent terrorist acts in Russia', UNSC Verbatim Record (19th October 1999) UN Doc S/PV/4053, 13; Anonymous, 'Timeline of Russian terror attacks' *The Guardian* (London, 24th January 2011) <<https://www.theguardian.com/world/2011/jan/24/russian-terror-attacks-timeline>> accessed 29th March 2019.

³⁸ W J Crowe et al., 'Report of the Accountability Review Boards, Bombings of the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on August 7th, 1998' (U.S. Department of State, Washington, D.C., 1998) <https://fas.org/irp/threat/arb/board_nairobi.html> accessed 21st March 2019.

³⁹ Ibid.

matter albeit via the non-compliance of Libya and not terrorism specifically.⁴⁰ Since the discovery of Ebola in 1976 there have been various outbreaks.⁴¹ In 1976 Zaire experienced 250 deaths; in 1995 a DRC outbreak exhibited 250 deaths; the Ugandan outbreak of 2000 caused 224 deaths.⁴² Resolutions 1368 and 2177 were underpinned by a magnitude not previously seen in regard to each threat. Furthermore, where Ebola was concerned its incremental progression throughout 2014 supports the claim that magnitude was crucial, and only when a certain number of deaths were confirmed did the permanent members see the need to securitise it.⁴³

In regard to Ebola, magnitude cannot be the only reason for securitisation. Under the category of infectious diseases, in which Ebola is classed, the WHO lists influenza and cholera. Influenza manifests in around 290,000 to 650,000 deaths per annum.⁴⁴ Cholera results in an estimated number of deaths between 21,000 and 143,000 per annum.⁴⁵ From this comparison it is clear the 2014 Ebola outbreak is not distinctive in terms of magnitude. The permanent members were not motivated to securitise Ebola on this basis alone or they would be doing so in regard to at least influenza and cholera, not to mention a host of other health crises, like HIV that has managed to get the UNSC's attention, albeit outside the remit of Article 39.⁴⁶ Even if we accept

⁴⁰ M Plachta, 'The Lockerbie Case: The Role of the Security Council in Enforcing the Principle Aut Dedere Aut Judicare' (2001) 12 EJIL 125.

⁴¹ CDC, 'Years of Ebola Virus Disease Outbreaks: 40 Years of Ebola Virus Disease Around the World' (CDC, 2019) <<https://www.cdc.gov/vhf/ebola/history/chronology.html>> accessed 10th May 2019.

⁴² Ibid.

⁴³ CDC, '2014 Ebola Outbreak in West Africa Epidemic Curves' (CDC 2019) <<https://www.cdc.gov/vhf/ebola/history/2014-2016-outbreak/cumulative-cases-graphs.html>> last accessed 22nd July 2019.

⁴⁴ WHO, 'Influenza (Seasonal) Ask the Expert: Influenza Q&A' (WHO, 6th November 2018) <[https://www.who.int/en/news-room/fact-sheets/detail/influenza-\(seasonal\)](https://www.who.int/en/news-room/fact-sheets/detail/influenza-(seasonal))> accessed 19th April 2019.

⁴⁵ WHO, 'Cholera: Key Facts' (WHO, 17th January 2019) <<https://www.who.int/en/news-room/fact-sheets/detail/cholera>> accessed 16th May 2019.

⁴⁶ HIV is not an infectious disease by classification, but it is a globally spanning virus that in 2017 36.9 million people were living with, and 940,000 people had died from.

that tangible magnitude is important, it cannot be the only threshold crossed that provokes the activation of Article 39, and so the possibility of several factors triggering securitisation is given empirical support.

Also, by considering the finding above that potential magnitude was consistently present in the rationales of the permanent members the value of tangible magnitude might appear to diminish further. It becomes unclear as to whether the permanent members were responding to the tangible magnitude present, or the potential magnitude that may follow if intervention was not forthcoming. Moreover, Resolution 1540 showcases that the permanent members are prepared to rely on potential magnitude alone, again offering a line of reasoning to devalue tangible magnitude as a motivation for securitisation.

At first glance this might appear to undermine the significance of the tangible magnitudes in relation to Resolutions 1368 and 2177. However, returning to the historic instances of terrorism and Ebola, it is possible to find an argument that supports the importance of tangible magnitude. In both threats the magnitude was low, at least comparatively to the interventions through Resolutions 1368 and 2177, meaning the perceived potential magnitude was also low, allowing the permanent members to avoid the activation of Article 39. When these magnitudes increased so did the potential of future magnitudes. Therefore, the tangible magnitudes feed clearly into the perception of potential magnitudes, and so the former remains crucial in leading the decision-making of the permanent members to securitise a threat.

If this is correct it casts Resolution 1540 as an outlier because it lacks a tangible magnitude. A possible explanation lies in the nature of the threat.⁴⁷ Proliferation and

WHO, 'Global Health Observatory (GHO) Data: HIV/AIDS' (WHO 2019)
<<https://www.who.int/gho/hiv/en/>> accessed 23rd May 2019.

⁴⁷ D Joyner, 'Non-proliferation Law and the United Nations System: Resolution 1540 and the Limits of the Power of the Security Council' (2007) 20 *Leiden Journal of International Law* 489.

the use of WMDs has since the creation of such devices been considered a global problem of dire ramifications.⁴⁸ Evidence of this can be found as early as 1968 where Resolution 255 was adopted to provide direct support to the Non-Proliferation Treaty.⁴⁹ This was again reflected in 1992 where proliferation was characterised as a crucial global concern,⁵⁰ indicating that a consistent logic of security existed on the subject of WMDs over a prolonged period of time, likely making it easier for the permanent members to identify and adopt this narrative at the point of Resolution 1540. Thus, the logic of routine in regard to the speech act, probably helps to build consensus among the permanent members, allowing them to act decisively when the time comes for an exceptional intervention.

Contrary to this both terrorism and Ebola have historically been considered problematic but not on the same scale, demonstrated again through the past magnitudes associated with them.⁵¹ Moreover, terrorism has divided opinion, confirmed by the long-standing debates over how to assign a definition to the

⁴⁸ L Scheinman, 'Nuclear Safeguards and Non-Proliferation in a Changing World Order' (1992) 23 Security Dialogue 37; D Joyner, 'The Proliferation Security Initiative: Non-proliferation, Counter-proliferation, and International Law' (2005) 30 Yale Journal of International Law 507.

⁴⁹ UNSC Res 255 (19th June 1968) UN Doc S/Res/255.

⁵⁰ India stated, 'We fully share the concerns expressed by several leaders on the threat posed to international peace and security by the proliferation of nuclear weapons;' Zimbabwe referred to the 'growing menace from the proliferation of weapons of mass destruction' and the President of the Council declared the 'proliferation of all weapons of mass destruction constitutes a threat to international peace and security', UNSC Verbatim Record (31st January 1992) UN Doc S/PV/3046, 99, 127, 145.

⁵¹ J Kinsman, "'A Time for Fear": Local, National and International Responses to a Large Ebola Outbreak in Uganda' (2012) 8 Globalisation and Health <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/1744-8603-8-15>> accessed 31st July 2019.

term;⁵² and health as a concern for the UNSC has also been the subject of dispute.⁵³ Proliferation is distinct from terrorism and Ebola in terms of the historic unity attached to it. For the permanent members to contemplate the activation of Article 39, only in very rare instances will a lack of tangible magnitude be acceptable. The proliferation of WMDs reflects one of these rare instances and the permanent members understand very well that such weapons are not to be used because of their catastrophic effects.⁵⁴ In more ordinary instances an example of the threat posed must be evident and where magnitude is concerned thousands of lives must be affected if this narrative is to be employed. The use of security logics based on harm already caused holds an important place in creating unity among the permanent members and cannot be overlooked when looking to find a way to argue the securitisation of climate change.

IV. Narrative: Transnational Scale

The second narrative to be analysed is transnational scale. The word transnational refers to something taking place or having an effect in more than one state.⁵⁵ Russell referred to 'transnational corporations',⁵⁶ and McInnes discussed 'transnational interactions', indicating the word can be applied in varying contexts.⁵⁷ The word scale is used to portray the extent of something.⁵⁸ Exemplifying this, Wellens discussed

⁵² B Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter' (2002) 3 *Police Practise and Research* 287.

⁵³ C McInnes, A Roemer-Mahler, 'From Security to Risk: Reframing Global Health Threats' (2017) 93 *International Affairs* 1313.

⁵⁴ The fact that both the USA and Russia avoided the use of such weapons during the Cold War evidences their reluctance to open the door to this type of conflict.

⁵⁵ Convention Against Transnational Organized Crime (adopted 15th November 2000, entered into force 29th September 2003) UNTS 2225, 209, Article 3(2).

⁵⁶ J Russell, 'Peering into the Abyss' (2006) 13 *Non-Proliferation Review* 645, 646.

⁵⁷ C McInnes, 'WHO's Next? Changing Authority in Global Health Governance After Ebola' (2015) 91 *International Affairs* 1299, 1310.

⁵⁸ This broadly aligns with the Oxford Dictionary definition of the term.

human rights abuse referring to ‘large-scale violations’,⁵⁹ and Knight referred to ‘regional or global scale’ harm.⁶⁰ These two words (transnational, scale) have independent application, but they are combined here to refer to the extent a threat exists transnationally.⁶¹ Two arguments will be proffered: first, transnational scale consistently appears across each threat but the manner and importance attached to it varies; second, there exists a correlation between transnational scale and magnitude that impacts the significance of this narrative as a justification for securitisation.

In each international security threat, the permanent members reference transnational scale. In Verbatim Record 4370 Russia said terrorism ‘transcends national borders’.⁶² Discussing proliferation the USA pointed to the use of ‘any route or channel’ open to proliferators across ‘a variety of countries’.⁶³ On Ebola, Russia referenced the challenge facing ‘States in the region’.⁶⁴ This consistent appreciation provides a base level of importance to transnational scale, meaning it might act as a prerequisite for securitisation by ensuring that Article 2(7) of the Charter is not infringed.⁶⁵ Any argument seeking to securitise an international security threat within the meaning of Article 39 will have to exhibit a transnational scale. Beyond this base level acknowledgement, the permanent members are relatively free in how they interpret transnational scale. This has led to each international security threat exhibiting different qualities, and so a like for like comparison is largely unhelpful in revealing consistently applied thresholds or triggers that underpin this narrative.

⁵⁹ K Wellens, ‘The UN Security Council and New Threats to the Peace: Back to the Future’ (2003) 8 *Journal of Conflict and Security Law* 15, 59.

⁶⁰ A Knight, ‘Global Environmental Threats: Can the Security Council Protect Our Earth?’ (2005) 80 (5) *New York University Law Review* 1549, 1553.

⁶¹ The nature of some threats allows them to increase in scale and as a consequence become transnational. Examples include the 2014 Ebola outbreak or HIV.

⁶² UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5.

⁶³ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 5.

⁶⁴ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 12.

⁶⁵ Article 2(7) protects the domestic jurisdiction of states from UN interference.

International terrorism divides the permanent members where transnational scale is concerned. The UK referred to it as a 'global issue'.⁶⁶ China and Russia used the phrase 'international terrorism', and France called for a 'global strategy'.⁶⁷ The USA referred to a 'war against terrorism' and highlighted that no distinction would be made 'between the terrorists who committed these acts and those who harbour them', broadly alluding to the crossing of international frontiers.⁶⁸ One point of unity does emerge because the permanent members are all uninterested in specific border crossings. However, these statements provide only a vague impression that the threat was transnational, and the language choices suggest diverging interpretations. The varying logics of security employed show that the permanent members were able to view the threat according to their individual perspectives. Yet, this did not cause disagreement and the broad link between these submissions was enough to secure unity behind this narrative. Or it might be the case that transnational scale is only able to assume a very low level of importance to their securitisation arguments and so a more definitive unity was not required.

The literature often disagrees with this finding. For instance, Wellens when discussing terrorism suggests that 'it is the international character of the acts, which bestow upon them the qualification of being a threat'.⁶⁹ Unfortunately what this means remains vague and Wellens fails to clarify how he interprets the word international in this context. It might be argued that a semantic difference exists between the words international and transnational, with the latter referring more clearly to the crossing of borders and the former pointing to a threat existing at the interstate level. In either case there is a lack of clarification by the permanent members and a distinct absence of precision in their decision making, invalidating Wellens' point that an international character is crucial.

⁶⁶ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 3.

⁶⁷ Ibid., 7.

⁶⁸ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 7.

⁶⁹ K Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future' (2003) 8 *Journal of Conflict and Security Law* 15, 42.

Others also place undue emphasis on the transnational scale of terrorism. Cortright refers to Al-Qaeda's nature as spread across sixty states, tacitly implying the UNSC's intervention was based on this transnational scale.⁷⁰ Heupel also focusses explicitly on the transnational scale of terrorism and how the UNSC has gradually adapted its response accordingly.⁷¹ Cortright and Heupel overlook that Resolution 1368 was the precursor to Resolution 1373 upon which they found their arguments, with the former adopted absent the same level of information available. There is no doubt that Resolution 1373 is hugely important, but without this earlier intervention it is possible no such follow up would have occurred. We have to concentrate on Resolution 1368 as the original point where terrorism was securitised, within which there is a general lack of focus on a specific transnational scale, reducing its level of importance as a securitisation narrative. Securitisation may not need to rely on the finding of an international character, but for the presence of Article 2(7) of the UN Charter.

Where proliferation is concerned there is a broad-stroke approach to identifying a transnational scale, and again there is a lack of precision to substantiate this point. France pointed to the 'emergence of trafficking networks' but offered no observation as to the size or number of these networks or even evidence that they existed, let alone transnationally.⁷² The USA referred to the 'flow of these deadly weapons and materials' but did not offer any accuracy as to how significant or where this flow was taking place.⁷³ Russia pointed to the 'black market', merely alluding to a scale that may or may not be transnational.⁷⁴ The permanent members are content to accept

⁷⁰ D Cortright, 'Can the UN Battle Terrorism Effectively?' (2005) 133 (2716) USA Today 62.

⁷¹ M Heupel, 'Adapting to Transnational Terrorism: The UN Security Council's Evolving Approach to Terrorism' (2007) 38 Security Dialogue 477.

⁷² UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

⁷³ Ibid., 5.

⁷⁴ Ibid., 6.

one another's vague assertions of a transnational problem,⁷⁵ but in terms of identifying the scale to which this was taking place there is a lack of detail provided.

Returning to the idea that the discovery of the Khan network in 2003 was a stimulus for Resolution 1540,⁷⁶ Albright and Hinterstein provide some level of clarity as to the transnational extent of this network, finding that it lasted for at least two decades and interacted with at least three states.⁷⁷ This raises the question, why did the permanent members avoid resorting to this example of a proliferation network to support their arguments? It could be contended that they wanted a forward-looking resolution to tackle future proliferation, and this makes sense given the tone of Resolution 1540.⁷⁸ Yet, there is no reason why the Khan network could not have exemplified the transnational scale of the problem and substantiated with evidence the possibility of non-state actor involvement.⁷⁹ This decision to avoid validating Resolution 1540 with evidence of a transnational scale indicates again that it might not have been a crucial security logic for the permanent members. Combined with the varied interpretations provided, it is again plausible that transnational scale is important to achieve securitisation, but only to the extent that it can be broadly inferred.

⁷⁵ France referred to 'joint action', the USA pointed to 'strong export controls' and China spoke of the 'international non-proliferation process', all alluding to the need for state-level cooperation because of the transnational character of the threat, UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2, 5, 6.

⁷⁶ M Heupel, 'Surmounting the Obstacles to Implementing UN Security Council Resolution 1540' (2008) 15 Non-Proliferation Review 95.

⁷⁷ D Albright, C Hinterstein, 'Unravelling the A.Q. Khan and Future Proliferation Networks' (2005) 28 Washington Quarterly 109.

⁷⁸ Within Resolution 1540 the operative paragraphs make clear the emphasis on transnational character, UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540, Operative para 3(c).

⁷⁹ Russell finds that globalization and non-state actors are overlapping subjects. With the permanent members focussing on the latter it could be argued they were hinting at the transnational scale of the problem, but this is conjecture lacking supportive evidence. J Russell, 'Peering into the Abyss' (2006) 13 Non-Proliferation Review 645.

Unlike the previous two threats, Resolution 2177 was based on a discrete scenario and subject to an extremely high level of evidentiary clarity. The outbreak was predominantly restricted to West Africa and the USA noted that the 'virus jumped across borders', with China echoing that 'Diseases do not heed national borders'.⁸⁰ Furthermore, all permanent members focussed on the spread of the virus through Liberia, Guinea and Sierra Leone. The transnational scale was identified restrictively, only involving three frontiers.⁸¹ These border crossings were the product of the manner in which the disease spread, leading Wilson to refer to the transnational scale as a 'spill-over effect'.⁸² The outbreak became transnational as a result of an increasing domestic spread that allowed it to reach and extend beyond borders. This shows a transnational scale does not have to be linked to a globally recurring problem as in the case of terrorism or proliferation. Instead the transnational scale can be limited to a regional existence involving very few states, signifying a relatively low threshold may exist where this narrative is concerned.

The level of attention paid to transnational scale in the Ebola situation might at first glance appear to increase its level of importance as a narrative for securitisation. However, the timing of Resolution 2177 undermines the significance of transnational scale on the basis that if the permanent members were concerned by the virus crossing borders they would have intervened much earlier in 2014.⁸³ The fact they did not indicates that something other than the transnational scale motivated their decision to intervene. As the magnitude of the outbreak evolved throughout 2014 it makes sense that this logic assumed greater significance in their process of

⁸⁰ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 8, 15.

⁸¹ Focus rested on Guinea, Liberia and Sierra Leone, but reference was made to 'Nigeria and beyond', UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble para 3.

⁸² G Wilson, 'Collective Security, "Threats to the Peace", and the Ebola Outbreak' (2015) 6 Journal of the Philosophy of International Law 1, 13.

⁸³ WHO, 'Statement on the 1st Meeting of the IHR Emergency Committee on the 2014 Ebola Outbreak in West Africa' (Media Centre, WHO Statement, 8th August 2014) <<http://www.who.int/mediacentre/news/statements/2014/ebola-20140808/en/>> accessed 17th July 2019.

reasoning. This validates Wilson's argument that state security lost ground to human security because only once a certain impact on humanity was recorded, irrespective of borders being crossed, did the permanent members intervene.⁸⁴ Even though this detailed attention contrasts Resolutions 1368 and 1540, the level of importance placed on the transnational scale is similarly narrow, adding further weight to the possibility that its role as a securitising narrative is limited.

What then can we learn from the transnational scale of the three international security threats? We know there is a level of importance attached to this marker because the permanent members consistently allude to it. The manner in which they seek to substantiate the existence of a transnational scale indicates that it does not occupy a routinely high level of importance. Even in the Ebola example where there was a much greater focus on the precise nature of the transnational scale it was found that the timing of Resolution 2177 undermined its significance in comparison to other markers like magnitude. We also know that the manner of the transnational scale varies significantly, and this undermines the possibility of any definitive thresholds being identified to underpin the consistent use of security logics. However, as the following paragraphs will detail, if we consider transnational scale in correlation to the magnitude of a threat an interesting pattern emerges that helps to explain how this narrative retains importance in the securitisation process.

Creating a spectrum of magnitude going from low to high, it appears that the transnational scale associated with the threat adopts a reverse correlation. In other words, a higher magnitude will result in transnational scale assuming a lower priority to the permanent members. At the high end of the magnitude spectrum sits the proliferation threat. Corresponding to this, the level of attention paid to transnational scale was minimal. The permanent members did point out broad-stroke characteristics of the proliferation threat that linked to transnational scale, but they remained vague in their portrayal of this aspect, refusing to acknowledge

⁸⁴ G Wilson, 'Collective Security, "Threats to the Peace", and the Ebola Outbreak' (2015) 6 *Journal of the Philosophy of International Law* 1.

any prior examples that might have exemplified it. The fact a possible example of transnational scale was available but ignored suggests it was not a crucial security logic in the decision to activate Article 39 and took on less significance than the perceived magnitude of the threat.

Moving to terrorism, the correlation between transnational scale and magnitude again appears to favour the latter, with all of the permanent members making overtures towards the lives lost and harm caused. Conversely, the effort made to substantiate a transnational scale was questionable. Russia and China point to 'international terrorism' offering no indication of what this actually pertained to.⁸⁵ China also highlighted that the assault was isolated to the USA pointing out the location of the 'terrorist attacks against New York, Washington, D.C., and Pennsylvania', which might be read to undermine any arguments of a transnational scale.⁸⁶ The UK and France remained vague, pointing to the global nature of the problem and the need for a response equal to this. The lack of cohesion on transnational scale was unnecessary because the high magnitude of the attacks had already generated 'solidarity' among the permanent members, leading their decision to activate Article 39.⁸⁷

Where Resolution 1368 is concerned a complication arises because the focus of the text is not exclusively on the facts of September 11th. Instead the permanent members chose to give a thematic existence to the threat of terrorism. The UK said 'mass terrorism is the new evil in our world today' and Russia referred to terrorism as a 'plague of the twenty-first century'.⁸⁸ By introducing the September 11th attacks as within the broader threat of terrorism the transnational scale of the problem was given a much greater existence, which might challenge the idea that scale and magnitude negatively correlate. Evidence of this thematic transnational scale was absent from the verbatim record; however, research does indicate that instances of

⁸⁵ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5.

⁸⁶ Ibid., 5.

⁸⁷ Ibid., 5.

⁸⁸ Ibid., 2, 5.

terrorism were on the rise. The number of terror attacks taking place around the globe each year between 1995 and 2001 was greater than the typical number of annual attacks that took place between 1961 and 1994.⁸⁹ Further exemplifying this point, in 1989 only three global terror attacks took place but in 1999 this figure had increased to twelve.⁹⁰

Viewing terrorism thematically, the transnational scale of the threat was increasing, and this could lead to the conclusion that it was able to gain some ground on magnitude as a security logic. Looking deeper, these instances actually support the position of magnitude over transnational scale on the basis that an increasing number of transnational attacks were unable to provoke securitisation. They indicate that something was different about the September 11th attacks, which was their magnitude. Although the relationship between transnational scale and magnitude is not as one-sided where terrorism is concerned, the latter remained a more important security logic. This means the correlation between magnitude and transnational scale sits somewhere closer to the middle of the spectrum but still leans towards the magnitude end.

At the opposite end of the spectrum, the Ebola virus does not exhibit a high level of magnitude inherent within its nature.⁹¹ For the magnitude of the virus to be high the scale of the outbreak must be commensurate. Historic outbreaks of Ebola were confined to rural regions with a limited capacity to spread, exhibiting a subsequently

⁸⁹ U.S. Department of State, 'Significant Terrorist Incidents, 1961-2003: A Brief Chronology' (U.S. Department of State, Archives, January 2001 – January 2009) <<https://2001-2009.state.gov/r/pa/ho/pubs/fs/5902.htm>> accessed 28th March 2019.

⁹⁰ Ibid.

⁹¹ Ebola is transmitted between humans and its magnitude is directly linked to its ability to spread, which has historically been limited. C Enemark, 'Ebola, Disease-Control, and the Security Council: From Securitisation to Securing Circulation' (2017) 2 *Journal of Global Security Studies* 137.

low domestic scale and a correspondingly low magnitude.⁹² In converse to this the 2014 outbreak saw the virus spread further than ever previously documented taking it beyond borders,⁹³ encapsulated by the USA that pointed to the 'spread across Guinea, Liberia and Sierra Leone'.⁹⁴ Without this 'unprecedented scale' the magnitude of the outbreak would not have been so high.⁹⁵ Had the outbreak not become transnational the magnitude would have been much less and it is possible intervention would not have taken place when it did and this might explain why there was much more focus on the transnational scale in this instance.⁹⁶ In contrast to proliferation the transnational scale of the outbreak was the more important metric for judging the level of the threat. The lower the magnitude of a threat the more important the transnational scale becomes to justify securitisation.

Despite a base level of importance to this threshold marker, the level of attention it receives can vary. There is no doubt that the securitisation of an international security threat will rely on transnational scale to some extent. However, it must always be analysed in the context of other narratives to determine the value attached to it by the permanent members when making their securitisation arguments. It is an important narrative, but only to the extent that it creates a broad unity among the permanent members, from which they can rely on their own security logics to make arguments for securitisation.

V. Narrative: Collective Interest

⁹² CDC, 'Years of Ebola Virus Disease Outbreaks: 40 Years of Ebola Virus Disease Around the World' (CDC, 2019)

<<https://www.cdc.gov/vhf/ebola/history/chronology.html>> accessed 10th May 2019.

⁹³ D Fidler, 'Epic Failure of Ebola and Global Health Security' (2015) 21 *Brown Journal of World Affairs* 179.

⁹⁴ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 8.

⁹⁵ *Ibid.*, 10.

⁹⁶ To exemplify this point consider that the DRC Ebola outbreak of 2018 is largely confined to one state and the UNSC has yet to intervene despite an exacerbating magnitude, WHO, 'Ebola Virus Disease Democratic Republic of the Congo: External Situation Report 1' (WHO, 11th May 2018).

The third narrative to be examined by this project is collective interest. The meaning behind this term comes from the submissions made before the UNSC in the 1992 heads of state meeting.⁹⁷ China said that it was 'ready to cooperate with all the other members of the Security Council, to discuss issues of common interest to the international community'.⁹⁸ The UK held some threats require 'the collective response of the international community'.⁹⁹ Applying these statements here, the collective interest narrative refers to matters that are common to all states and so it is in their interests to respond together. Two arguments will be submitted: first, collective interest consistently manifests as a security logic within the three international security threats assuming a significant level of importance despite varying degrees of existence; second, collective interest concerns must manifest indiscriminately, demanding universal responses.

Across each of the three international security threats collective interest consistently manifests as a security logic of the permanent members. With regard to terrorism the UK stated that it 'was an attack on the whole of modern civilisation', and Russia said 'It is a brazen challenge to all of humankind'.¹⁰⁰ Addressing proliferation France said international initiatives in this area were 'essential for the security of all states',¹⁰¹ and the USA said 'no one nation can meet this challenge alone'.¹⁰² Speaking on Ebola, China held the outbreak was 'threatening the security of international public health'.¹⁰³ The Ebola outbreak is the least prominent example of the permanent members advancing the idea of collective interest, yet it still assumes a place in their overall securitisation arguments. The question becomes, what

⁹⁷ UNSC Verbatim Record (31st January 1992) UN Doc S/PV/3046.

⁹⁸ Ibid., 94.

⁹⁹ Ibid., 147 – The President was referring directly in this sentence to economic and social development, but just a few pages prior had highlighted acts of terrorism as something for the 'international community to deal effectively with', Ibid., 144.

¹⁰⁰ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 3, 5.

¹⁰¹ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

¹⁰² Ibid., 6.

¹⁰³ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 8, 15.

allowed these threats to generate a sense of collective interest and was there a threshold or trigger present?

Terrorism was portrayed as against humanity and advanced as a thematic problem, linking all instances under one banner. Despite Russia saying that the September 11th attack 'transcends national borders', it in fact did not and a thematic character was the only way to circumvent the reality that it was limited to one state.¹⁰⁴ Portraying terrorism as a thematic problem France offered that 'most of our countries have suffered' its effects, indicating through use of the word 'most' that the collective interest was not universal but merely widespread.¹⁰⁵ This leads to the indication that Resolution 1368 was not adopted on the basis that all states were experiencing insecurity as a result of terrorism, simply that some states had experienced terror-related insecurity.¹⁰⁶ The threshold for collective interest may not have to be universal to become a security logic.

While this argument probably helped to convince the wider UNSC membership of the need to support the resolution, its strength to sway the permanent members absent the magnitude of the September 11th attacks was limited. In Verbatim Record 4053 preceding Resolution 1269 where Article 39 was not activated, the USA said 'All of us have a stake in this fight'; the UK argued terrorism was a 'threat to the wider peace and security of the international system'; and China stated that 'international terrorist activities have become increasingly rampant'.¹⁰⁷ The difference between Resolutions 1269 and 1368 was the support the latter was able to get from the magnitude of the attacks. The collective interest argument thus appears reliant on the support of other threshold markers to achieve the activation of Article 39, potentially limiting its overall significance as a securitisation narrative in its own right.

¹⁰⁴ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5.

¹⁰⁵ Ibid., 7.

¹⁰⁶ A point given validity by the fact the USA was one such state.

¹⁰⁷ UNSC Verbatim Record (19th October 1999) UN Doc S/PV/4053, 7, 8, 9.

Examining proliferation, the extent to which harm is directed at states cannot be measured because no such examples exist. This problem is overcome in the body of Resolution 1540 where the idea of collective interest stemming from proliferation is linked closely to terrorism and the involvement of non-state actors, providing enough justification for a thematic characterisation of the threat.¹⁰⁸ France said 'In an era of widespread terrorism, it [proliferation] increases the risk of seeing them [WMDs] fall into the hands of the most dangerous'.¹⁰⁹ Despite the USA arguing 'this threat and the actions we are taking today concern the entire United Nations membership', it appears this is not the case.¹¹⁰ The entire UN membership was not threatened by terrorism and so equally the entire UN membership was not threatened by proliferation.¹¹¹ Again, where proliferation is concerned the collective interest threshold emanating from the threat need only be widespread and not universal.

Resolution 2177 was centred firmly on the Ebola outbreak of West Africa and not given a thematic character, but the permanent members continued to advance the idea of collective interest. The USA focussed on the nature of the disease, highlighting its capacity for 'exponential spread' and then arguing the 'United Nations was built for global challenges like this one'.¹¹² France took a similar stance and said 'Our collective responsibility is focussed on three priorities: to act, to coordinate and to prevent', arguing Ebola 'could spread far beyond the region'.¹¹³ These linguistic choices are intended to reinforce the collective interest inherent to the outbreak by advancing the risk to the international community. Terrorism and proliferation were afforded collective interest status through a thematic character connecting all instances of the threat together, generating a security logic based on widespread harm. Contrary to this the Ebola outbreak appears to generate collective

¹⁰⁸ UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540, Preamble paras 8, 14.

¹⁰⁹ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

¹¹⁰ We will return to this idea later in this section.

¹¹¹ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 5.

¹¹² UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 9.

¹¹³ *Ibid.*, 10.

interest through the potential reach of a single outbreak, which was exhibited through its grip on West Africa.¹¹⁴

The presence of this security logic is not based on similar factual realities and collective interest is not determined by actual harm. In the case of terrorism and proliferation the harm was characterised as widespread, and this was only achieved via a thematic interpretation of each threat. Looking at Ebola the actual harm was limited in the most part to three regional states. In each case there was no example of universal harm taking place. It might be argued the lack of thematic character granted to the Ebola outbreak reduces the collective interest argument. However, this is a reflection of the nature of the threat that required circumstantial and not abstract responses. In other words, the Ebola outbreak did not require a thematic characterisation to generate the required response, and this does not infringe upon the collective interest argument present. This does mean the threshold for actual harm emanating from these threats is variable. In regard to terrorism and proliferation the harm had to be widespread, where Ebola is concerned the harm was in the most part limited to a few states, making it difficult to identify a consistent trigger that will prompt the creation of a narrative based on collective interest.

If we accept the actual harm emanating from each threat presents a varying and non-universal threshold in terms of collective interest, this raises the possibility that something else might have been motivating the permanent members to employ this security logic. The answer to this comes from the indiscriminate nature of the three threats. Although each one was only able to implicate a portion of the international community the exact membership of this portion was unspecified. Each of the three international security threats was indiscriminate in terms of which states may be affected. In regard to terrorism the UK said the attack was 'against humanity itself and the values and freedoms we all share' and France said it is against the 'values

¹¹⁴ Russia pointed to the spread on the 'African Continent', with the UK suggesting other 'countries in the region must be ready if the disease spreads to them'. UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 12, 17.

and principles that unite us'.¹¹⁵ Although terrorism was unable to offer a universal element of actual harm it was able to offer insecurity to any state that shared the same value system. Considering most states have signed up to the UN Charter, which is a value system, it becomes clear that terrorism was of collective interest based on its potential to affect any state within this system.

In regard to proliferation the permanent members all pointed to the 'involvement of non-state actors',¹¹⁶ with the USA recognising this new dynamic would result in an 'uncontrolled spread'.¹¹⁷ France said 'international initiatives in this area' must be strengthened for the 'security of all states'.¹¹⁸ By using this type of language the USA and France are alluding to the idea that the threat could indiscriminately affect states. Furthermore, precisely as above, the link with terrorism meant the permanent members were transferring the same logic into the proliferation setting. Russia said WMDs were being proliferated 'primarily for terrorist purposes' and the UK said such weapons 'might fall into the hands of terrorists'.¹¹⁹ Such arguments reflect the possibility that any state might become the target of terrorism and so any state might be subject to proliferation-related consequences, again exhibiting an indiscriminate harm.

In the context of Ebola, France said 'It is our obligation to halt the outbreak before it spreads out of control' and China argued the outbreak 'has been spreading rapidly, widely and deeply'.¹²⁰ The outbreak was characterised with the potential to spread out of control, providing a link to an indiscriminate character because it had the potential to impact any member of the international community. This is a slight stretch because the statements made are less clear. But the linguistic focus on control, or lack of it, imparts the idea of something that has an elemental character

¹¹⁵ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 2, 7.

¹¹⁶ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 6.

¹¹⁷ Ibid., 5.

¹¹⁸ Ibid., 2.

¹¹⁹ Ibid., 6, 7.

¹²⁰ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 10, 15.

of unpredictability, reinforced with adjectives like ‘rapidly’, ‘widely and ‘deeply’.¹²¹ At the passing of Resolution 2177 there was a general lack of spread beyond Western Africa, yet, there was nonetheless indiscriminate potential, and this connected the whole of the international community to the problem creating a strong narrative to argue for securitisation.

This recognition of an indiscriminate nature is the most important finding of the collective interest narrative because this is the core argument that draws in the international community, forcing states to accept they have a vested interest to address the threat. When applying the lens of indiscriminate character, the threshold for collective interest becomes quite high where all three international security threats are concerned. Where actual harm only needs to threaten a collection of states presenting a low threshold, the indiscriminate nature of a threat must be universal at least in potential, creating a high threshold. Still, this might be challenged when we consider that collective interest also has a relationship with collective responses.

The verbatim records show that collective interest is also based on the necessity to create universal responses, without which international security cannot be achieved. In regard to terrorism China referred to the ‘ongoing enhancement of cooperation’; Russia pointed to the task of ‘joining the efforts of the entire international community in combatting terror’.¹²² On proliferation, France said there was a need to ‘improve joint action’.¹²³ The USA said ‘we need the broadest possible cooperation to stop them’, and the UK pointed to the need for ‘cooperative and inclusive measures’.¹²⁴ On Ebola, the USA said that ‘we have not come together sufficiently to confront it’ and argued the response ‘must be an all-hands on deck operation’.¹²⁵ China held that fighting Ebola ‘was a common responsibility of all countries in the

¹²¹ Ibid., 15.

¹²² UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5, 5.

¹²³ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

¹²⁴ Ibid., 5, 7.

¹²⁵ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 8.

world'¹²⁶ and the UK said 'we need a mammoth and sustainable global effort if we are to beat this scourge'.¹²⁷

Where terrorism and proliferation are concerned this is based on the fact that no matter what the permanent members do in their own states or regions they will remain at risk if offenders are able to operate freely in other parts of the world. Krisch, discussing terrorism calls this a technical response because it focusses on the disruption of activities that lead to terror events.¹²⁸ A failure to disrupt these threats globally would allow the harm emanating from them to remain, indiscriminately creating insecurity, which could affect the permanent members. Despite the fact that the actual harm emanating from these two threats does not need to be universal and differing security logics exist, the indiscriminate nature of harm resulting from a lack of universal responses meant that the collective interest threshold must remain high to underpin this narrative.

However, if we consider that the permanent members often operate according to self-interest, the insecurity present perhaps does not need to be universal or widespread but only able to question their defences.¹²⁹ It is beyond doubt that in the wake of September 11th the USA embarked upon a mission to securitise international terrorism through the UNSC, with the White House making a concerted effort to rally the international community into this way of thinking.¹³⁰ The leadership of the USA was also paramount in the momentum that led to Resolution 1540.¹³¹ The

¹²⁶ Ibid., 15.

¹²⁷ Ibid., 18.

¹²⁸ N Krisch, 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council' in C Walter, S Voneky, S Roeben, F Schorkopf, (eds) *Terrorism as a Challenge for National and International Law: Security Versus Liberty* (1st edition, Springer 2003) 879.

¹²⁹ Ibid. Treading this line, Krisch goes as far as to call the USA a hegemon.

¹³⁰ K Stiles, 'The Power of Procedure and the Procedures of the Powerful: Anti-Terror Law in the United Nations' (2006) 43 *Journal of Peace Research* 37.

¹³¹ J Yoo, G Sulmasy, 'The Proliferation Security Initiative: A Model for International Cooperation' (2006) 35 *Hofstra Law Review* 405.

permanent members largely drafted the text of this resolution between themselves, indicating that they felt some sort of ownership over the problem.¹³² Collective interest may need to be present on a superficial level, but the reality is the permanent members might only need to believe that they are threatened, at which point they will adopt a leadership role to seek the securitisation of the matter.¹³³ In other words, the permanent members will rely on the security logic of indiscriminate harm if they are the ones that are threatened.

The Ebola outbreak does not fit so easily with this argument on the basis that even though the disease was indiscriminate, it was at the adoption of Resolution 2177 not seriously threatening to undermine the security of the permanent members. In the preceding paragraph it was suggested that to protect some states everyone has to respond collectively, with regard to Ebola the same argument is apparent except the difference is that the states in need of protection did not explicitly include the permanent members. The nature of the Ebola virus was such that if left to exacerbate it would have spread regionally, continentally, and then perhaps globally.¹³⁴ This potential might have been enough to encourage the permanent members to securitise the matter. However, it is also worth noting that the permanent members do act for the resolution of situations that do not explicitly involve them and, as Nasu argues, this has moved towards the protection of human security in recent years.¹³⁵ They are able to intervene absent any direct correlation

¹³² J Burroughs, 'The Role of the UN Security Council' in J Burroughs et al., *Nuclear Disorder or Cooperative Security?* The Weapons of Mass Destruction Commission <<http://wmdreport.org/ndcs/online/NuclearDisorderPart1Section3.pdf>> accessed 24th April 2019.

¹³³ This finding largely supports the argument of Sandler, who finds terrorism provides a security challenge for targeted nations. T Sandler, 'Collective Versus Unilateral Responses to Terrorism' in W F Shughart, R D Tollison (eds) *Policy Challenges and Political Responses* (1st edition, Springer 2005) 75.

¹³⁴ C Enemark, 'Ebola, Disease-Control, and the Security Council: From Securitisation to Securing Circulation' (2017) 2 *Journal of Global Security Studies* 137.

¹³⁵ H Nasu, 'The Place of Human Security in Collective Security' (2013) 18 *Journal of Conflict and Security* 95.

between the harm and their security, acting exactly as the UNSC was envisioned to behave.¹³⁶ The Ebola virus may represent one of these instances and intervention could have been premised on the basis that the group needed to protect some of its members, and potentially many of its members, from an indiscriminate harm demanding collective responses.

To recap, the collective interest narrative offers a number of different lessons to take away. First, where an actual harm is concerned the threshold for collective interest is relatively low, only needing to affect a small number of states. However, this finding is qualified because the indiscriminate nature of the threat means that the affected states cannot be identified pre-emptively. The collective interest emanating from a threat must be universal in that any state might be affected. In combination with the fact that anything other than a universal set of responses will allow the indiscriminate nature of the threat to continue to pose problems for the international community, it appears that collective interest is based on a relatively high threshold. This, of course, rests on ignoring the fact that the permanent members act as hegemons and will move to securitise an issue of collective interest if they can identify themselves as the recipients of potential harm.

VI. Narrative: Insufficient Response

The fourth narrative to be examined is insufficient response. The UNSC consistently includes reference within resolutions to the intended response mechanisms to a threat, such as conventions or international institutions.¹³⁷ The wider literature on the three international security threats also places emphasis on the intended

¹³⁶ Other examples of this would be the South Africa question, UNSC Res 418 (4th November 1977) UN Doc S/Res/418; or the Rwanda situation, UNSC Res 929 (22nd June 1994) UN Doc S/Res/929.

¹³⁷ UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368, Operative para 4; UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540, Preamble para 5; UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble para 12.

responses and their level of competence.¹³⁸ Insufficient response refers to the inability of the intended mechanisms to tackle the threat in question. Two arguments will be proffered: first, the permanent members take a flexible view when identifying where along the chain of causation an insufficient response exists; second, in all three international security threats the intended response mechanisms were overwhelmed by the evolution of another threshold marker, which was paramount in this narrative becoming part of the securitisation argument.

The precise focus of the UNSC when looking at intended responses appears to vary along the chain of causation. Resolution 1368 concentrated on the inaction of states when it called for ‘full implementation of the relevant international anti-terrorist conventions’.¹³⁹ At the adoption of this resolution the operation of the anti-terror conventions was ‘extremely low’.¹⁴⁰ Their ability to tackle terrorism was not under scrutiny because they had not been able to operate properly. The possibility of an insufficient response was directed towards the inaction of states that had caused this problem. China explicitly focussed on this low state engagement, through its expression of support for ‘the practical implementation of the relevant international conventions’, drawing a line of causation between this inaction and the inability of the anti-terror conventions to operate sufficiently.¹⁴¹ Despite no other permanent

¹³⁸ Ward said that the ‘global community lacked the necessary tools to deal with the scope of the challenge posed by international terrorism’. C Ward, ‘Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council’ (2003) 8 *Journal of Conflict and Security Law* 289, 289; Garvey said ‘the nuclear weapons devil has worked its way out of the containment formally attributed to the treaty [NPT]’. J Garvey, ‘A New Architecture for the Non-Proliferation of Nuclear Weapons’ (2008) 12 *Journal of Conflict and Security Law* 339, 340; Gostin argued that the ‘international response to the current outbreak of Ebola virus in West Africa...has been fractured and delayed’. L Gostin, ‘Ebola: Towards an International Health Systems Fund’ (2014) 384 *The Lancet* 1321, 1321.

¹³⁹ UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368, Operative para 4.

¹⁴⁰ Only two countries had ratified or acceded to all twelve anti-terror agreements. C Ward, ‘Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council’ (2003) 8 *Journal of Conflict and Security Law* 289, 291.

¹⁴¹ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 5.

members making this point, they were able to include within Resolution 1368 an unequivocal direction that states should respond by implementing the relevant conventions, signifying their broad agreement that this lack of engagement was a problem.

The extent of this agreement includes an understanding of what was causing poor state engagement. Resolution 1368 is influenced by the problematic content of conventions. Ward found a disconnection among the conventions because they were unable to sidestep definitional issues and create agreement as to the nature of the terror threat.¹⁴² Resolution 1368 avoided these definitional problems by grouping 'any act of international terrorism' together as a threat to international peace and security.¹⁴³ Operative Paragraph four effectively streamlines the different conventions into a single regime, by calling for universal implementation.¹⁴⁴ It takes aim at a central reason why states were reluctant to engage the anti-terror conventions and removes any element of choice where implementation was concerned. The permanent members did not focus on this point in their submissions, but they were able to identify the source of the insufficient response and agree on how to proceed.

Examining proliferation, in Verbatim Record 4956 every permanent member made comments related to the intended responses, either by talking about the role of Resolution 1540,¹⁴⁵ or by recognising the validity of the current non-proliferation

¹⁴² C Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8 *Journal of Conflict and Security Law* 289, 291.

¹⁴³ UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368, Operative para 1.

¹⁴⁴ W Messmer, C Yordan, 'A Partnership to Counter International Terrorism: The UN Security Council and the UN Member States' (2011) 34 *Studies in Conflict and Terrorism* 843.

¹⁴⁵ France stated Resolution 1540 was responding to 'a gap in the regime', and the UK pointed out that the resolution was responding 'to threats not covered by existing regimes', UNSC Verbatim Record (28th April 2004) UN Doc/S/PV/4956, 2, 7.

regime.¹⁴⁶ This increased attention is likely because the non-proliferation regime had been in operation since 1968, generating near universal membership and so could be evaluated in terms of its proficiency.¹⁴⁷ Russia referenced non-state actors and their terrorist intentions, finding that the resolution was 'targeted specifically at that threat'.¹⁴⁸ France said the resolution was 'filling a gap in the regime' and China said it was 'enhancing the international non-proliferation process'.¹⁴⁹ The logic of security here is not based on the actions of states, as was the case with terrorism, but on the deficiency of the regime that had fallen behind the evolving threat. Securitisation can therefore be justified according to a regime's effectiveness irrespective of high levels of state engagement.

However, the permanent members adopted a second interpretation of insufficient response by linking the non-proliferation regime to the subsequent action of states. The USA said that each member state would need to 'review its national laws...to meet the resolution's requirements', and Russia said 'it contains a set of practical measures at the national level'.¹⁵⁰ The gap in the non-proliferation regime had a direct link to the intended response of states.¹⁵¹ By relying on the mechanisms of the non-proliferation regime states had become exposed to the non-state actor dimension.¹⁵² The security logic underpinning the adoption of Resolution 1540 is based on the need to improve the intended response of the non-proliferation regime and as a consequence the response of states that were party to it. The insufficient

¹⁴⁶ China pointed out that Resolution 1540 was adopted in 'compliance with existing international law' UNSC Verbatim Record (28th April 2004) UN Doc/S/PV/4956, 6.

¹⁴⁷ L Scheinman, 'Nuclear Safeguards and Non-Proliferation in a Changing World Order' (1992) 23 Security Dialogue 37.

¹⁴⁸ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 6.

¹⁴⁹ Ibid., 2, 6.

¹⁵⁰ Ibid., 5, 6.

¹⁵¹ P Crail, 'Implementing UN Security Council Resolution 1540' (2006) 13 Non-Proliferation Review 355.

¹⁵² M Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2009) 13 Journal of Conflict and Security Law 303.

response narrative is drawn from a holistic view that looks along the line of causation to identify the point at which a remedy is required.

This level of attention was repeated in Verbatim Record 7268, but with much more focus on the capacity of states to respond to the Ebola outbreak. France said ‘we will find a lasting solution only by helping the affected countries to strengthen their health systems’.¹⁵³ The USA called for ‘flooding them with the resources that are desperately needed’.¹⁵⁴ Russia spoke about ‘providing financial and technical assistance to suffering countries’¹⁵⁵ and China said the ‘international community should respond...by expeditiously providing assistance to the affected countries’.¹⁵⁶ The permanent members made clear there was a response deficit from the three most affected states, and a connection was made between this and the manifestation of harm. Thus, even where the threat is linked directly to the response capacity of states the permanent members can identify a line of causation; they are not limited to the insufficient responses of international mechanisms and can base their argument for securitisation on state circumstances.

However, a link between the insufficient response of the three most affected states and the support provided by the World Health Organisation (WHO) is also present. Russia said, ‘we plan to contribute \$3.5 million to the WHO to step up the organisations readiness to respond’.¹⁵⁷ China also pledged a financial contribution to the WHO but only after affirming it was making a contribution directly to the states suffering. By referencing the need for further institutional engagement the permanent members were inadvertently pointing out that this had been less than adequate. This is a point made often in the literature, and so although the

¹⁵³ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 11.

¹⁵⁴ Ibid., 8.

¹⁵⁵ Ibid., 12.

¹⁵⁶ Ibid., 15; the USA, and the UK both made similar assertions with significant attention to detail, indicating clearly that the response capacity of states was their priority.

¹⁵⁷ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 13.

permanent members appear to take a diplomatic line it is clear the insufficient response of the WHO to the outbreak was part of their reasoning to securitise the threat.¹⁵⁸ They can interpret an insufficient response not just directly but also indirectly, by looking further along the line of causation to other factors that have led to the threat exacerbating. This makes this narrative flexible according to the specific circumstances of each threat the UNSC deals with, which is precisely the point of using securitisation theory here as a means to identify repeating themes that are applicable in ranging circumstances.

Each intended response was insufficient in its own way, which is useful because of the flexibility it provides, but also does not allow us to say with any certainty what threshold that when crossed underpinned this narrative. Circumventing this problem, it might be possible to ignore the distinct points of insufficiency and simply ask what prompted a belief from the permanent members that the intended responses were insufficient, allowing the creation of this narrative.

At first glance the events of September 11th immediately overwhelmed the anti-terror conventions, rendering them suddenly unequipped to respond to terrorism. Taking this approach, however, ignores all prior instances of terrorism that equally exposed the ineptitude of the anti-terror conventions.¹⁵⁹ Acknowledging these past attacks suggests two things. First, the anti-terror conventions were overwhelmed

¹⁵⁸ D Fidler, 'Epic Failure of Ebola and Global Health Security' (2015) 21 Brown Journal of World Affairs 179; L Gostin, 'Ebola: A Crisis in Global Leadership' (2014) 384 The Lancet 1323; A Kamradt-Scott, 'WHO's to Blame? The World Health Organisation and the 2014 Ebola Outbreak in West Africa' (2016) 37 Third World Quarterly 401.

¹⁵⁹ W J Crowe et al, 'Report of the Accountability Review Boards, Bombings of the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on August 7th, 1998' (U.S. Department of State, Washington, D.C., 1998) <https://fas.org/irp/threat/arb/board_nairobi.html> accessed 21st March 2019; Anonymous, 'Timeline of Russian terror attacks' *The Guardian* (London, 24th January 2011) <<https://www.theguardian.com/world/2011/jan/24/russian-terror-attacks-timeline>> accessed 29th March 2019; M Plachta, 'The Lockerbie Case: The Role of the Security Council in Enforcing the Principle Aut Dedere Aut Judicare' (2001) 12 EJIL 125.

incrementally. With each attack that took place in the years preceding 2001, the conventions were undermined. Secondly, the point at which this became untenable for the permanent members was when the magnitude of international terrorism increased dramatically. Only then did they acknowledge that there was a response deficiency. Magnitude and response insufficiency are connected, and only when the former reached a certain level did the latter become measured as overwhelmed.

The magnitude of the September 11th attacks highlighted to the permanent members that the autonomy of states to choose whether to engage with the conventions was no longer plausible.¹⁶⁰ Taking a slightly different view, Ward argues the tools to address terrorism were absent, though this is not strictly correct.¹⁶¹ The tools were in fact present, they were simply housed in a forum that could not mobilise them effectively. This is important because the existence of these tools up to the point of September 11th was deemed sufficient. Even though Resolution 1269 called for greater implementation of the anti-terror conventions and was largely ignored by the international community,¹⁶² this did not provoke the permanent members to take further action.¹⁶³ At the point of Resolution 1269 it is possible to claim the insufficient response of the international community was not deemed problematic enough to take further action and activate Article 39. The difference between Resolutions 1269 and 1368 is the magnitude attached to each attack that preceded them, rendering the choice of states to join conventions as no longer viable, thus confirming a link between magnitude and response insufficiency, at least in the case of terrorism.¹⁶⁴

¹⁶⁰ C De Jonge Oudraat, 'Combating Terrorism' (2003) 26 Washington Quarterly 163.

¹⁶¹ C Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8 Journal of Conflict and Security Law 289.

¹⁶² C De Jonge Oudraat, 'Combating Terrorism' (2003) 26 Washington Quarterly 163.

¹⁶³ UNSC Res 1269 (19th of October 1999) UN Doc S/Res/1269.

¹⁶⁴ M Heupel, 'Combining Hierarchical and Soft Modes of Governance: The UN Security Council's Approach to Terrorism and Weapons of Mass Destruction Proliferation after 9/11' (2008) 43 Cooperation and Conflict: Journal of the Nordic International Studies Association 7.

Moving to the proliferation threat, Resolution 1540 is not explicitly underpinned by a factual event and so it is more challenging to identify what prompted the realisation from the permanent members that the non-proliferation regime was insufficient. This did not stop them introducing a link to terrorism. Russia indicated the nexus between proliferation and terrorism was a 'crucial' concern and the UK characterised it as 'urgent and horrific'.¹⁶⁵ Relying on this link it might be possible to suggest that the stimulus for Resolution 1540 was linked to the magnitude of terrorism that could now reach the intensity of September 11th. This poses the question why did Resolution 1540 not follow the September 11th timeline more closely? The delay until 2004 suggests the link between terrorism and proliferation was not premised on the September 11th attacks and so magnitude is removed as a factor that led to the non-proliferation regime being viewed as insufficient.

Looking beyond the verbatim record, there is a strong current of thought that connects the discovery of the Khan network in 2003 to the adoption of Resolution 1540.¹⁶⁶ The extent to which the Khan network was operating and its ability to successfully subvert all non-proliferation efforts meant there was a very real possibility that terrorist groups were able to access WMDs, providing justification for the link between the two subjects.¹⁶⁷ This does not mean magnitude suddenly became relevant. Instead, focussing on the extent of the Khan network, its transnational scale was exposed by Libya detailing just a small portion of its international activities.¹⁶⁸ The discovery of Khan's network represents a single

¹⁶⁵ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 6, 7.

¹⁶⁶ D Albright, C Hinderstein, 'Unravelling the A.Q. Khan and Future Proliferation Networks' (2005) 28 Washington Quarterly 109; J Caves, 'Globalisation and WMD Proliferation Networks: The Policy Landscape' (2006) 5 Strategic Insights 1; P Crail, 'Implementing the UN Security Council Resolution 1540' (2006) 13 Non-Proliferation Review 355; L Dunn, 'The NPT' (2009) 16 Non-Proliferation Review 143.

¹⁶⁷ M Heupel, 'Combining Hierarchical and Soft Modes of Governance: The UN Security Council's Approach to Terrorism and Weapons of Mass Destruction Proliferation after 9/11' (2008) 43 Cooperation and Conflict: Journal of the Nordic International Studies Association 7.

¹⁶⁸ J Russell, 'Peering into the Abyss' (2006) 13 Non-Proliferation Review 645.

incident, but its activities had been going on for two decades.¹⁶⁹ It is therefore very likely that the transnational scale of the threat was vast, and, as such, had completely voided the non-proliferation regime.¹⁷⁰ The transnational scale of proliferation was potentially so widespread the permanent members realised the intended responses were completely insufficient, hence they used adjectives like 'crucial' and 'urgent' to justify securitisation.¹⁷¹

Turning to the Ebola outbreak of 2014, for the first nine months the permanent members chose not to intervene, which suggests they were content with the intended response mechanisms up to that point. At the adoption of Resolution 2177 it became clear a shift in attitude had occurred. The USA held 'the affected countries had no prior knowledge or experience' and 'it has overwhelmed clinics and hospitals'.¹⁷² Russia highlighted its efforts to 'strengthen the public health-care system[s]'.¹⁷³ and China argued the 'current Ebola outbreak has overwhelmed the public health systems of the three countries'.¹⁷⁴ The permanent members were able to identify that the intended response through state health care provision had been overrun. Evidence also exists to prove this was the case.¹⁷⁵ The combination of

¹⁶⁹ D Albright, C Hinderstein, 'Unravelling the A.Q. Khan and Future Proliferation Networks' (2005) 28 Washington Quarterly 109.

¹⁷⁰ J Caves, 'Globalisation and WMD Proliferation Networks: The Policy Landscape' (2006) 5 Strategic Insights 1.

¹⁷¹ Garvey argues the non-proliferation regime did 'not directly, deliberately, or comprehensively address what is perhaps the most serious non-proliferation concern today – the threat of nuclear terrorism.' J Garvey, 'A New Architecture for the Non-Proliferation of Nuclear Weapons' (2008) 12 Journal of Conflict and Security Law 339, 344.

¹⁷² UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 8.

¹⁷³ Ibid., 12.

¹⁷⁴ Ibid., 15.

¹⁷⁵ African Health Observatory, 'Sierra Leone: The Health System' (WHO Regional Office for Africa, 2018) <http://aho.afro.who.int/profile_s_information/index.php/Sierra_Leone:The_Health_System> accessed 1st August 2018; WHO, 'Liberia: a Country – and its Capital – Are Overwhelmed with Ebola Cases' (Emergencies preparedness, response, January 2015) <<http://www.who.int/csr/disease/ebola/one-year-report/liberia/en/>> accessed 1st

magnitude and scale was pivotal in this realisation. Only when the magnitude and scale of the outbreak reached certain levels did the permanent members come to realise that there was a response deficiency, relying on this to create a powerful security logic to underpin this narrative.

The permanent members also engaged with the indirect response of the WHO to address the outbreak, suggesting a realisation it too had become overwhelmed. However, it is not clear if the permanent members came to this conclusion on their own or whether they were led by the submissions of health experts before the UNSC.¹⁷⁶ Dr Chan (then Director General of the WHO) used the word 'emergency' and stated the situation was 'likely the greatest peacetime challenge that the United Nations and its agencies have ever faced'.¹⁷⁷ Dr Chan also highlighted the 'degree of suffering' and 'magnitude of cascading consequences'.¹⁷⁸ Dr Nabarro reinforced a sense of urgency by stating the 'outbreak that is advancing in an exponential fashion' has a 'rapid upward acceleration'.¹⁷⁹ Within these submissions it became clear the response from the WHO and the wider international community was insufficient. The language used reflects the increasing scale and magnitude of the problem, linking the inability of the WHO to respond to the same logics of security that were used to reason an insufficient state response to Ebola.

In summary, the permanent members are consistently concerned with the intended response mechanisms. Where they direct their attention depends on the level of

August 2018; WHO, 'The Ebola Virus Shows its Tenacity' (Emergencies preparedness, response, January 2015) <<http://www.who.int/csr/disease/ebola/one-year-report/guinea/en/>> accessed 15th August 2018; P Piot, J Muyembe, J Edmunds, 'Ebola in West Africa: From Disease Outbreak to Humanitarian Crisis' (2014) 14 *The Lancet* 1034.

¹⁷⁶ At the adoption of Resolution 2176 just three days before Resolution 2177 the permanent members avoided intervening explicitly to address Ebola, suggesting a continued belief that the outbreak was being responded to sufficiently.

¹⁷⁷ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 5.

¹⁷⁸ *Ibid.*, 5.

¹⁷⁹ *Ibid.*, 4.

causation that can be identified between the intended responses and the harm. However, despite taking a different approach to each threat the permanent members are clear in their finding that the responses in question were overwhelmed and unable to respond effectively to the threat because of an advancing magnitude and/or transnational scale, which likely highlighted the collective security implications.

VII. Narrative: Urgency

The final narrative to be examined is urgency. The meaning attached to this term is derived from the ordinary sense of the word, which denotes the quality of something requiring immediate attention.¹⁸⁰ Urgency is partially reflective of the concept of imminence, which is sometimes attached to discussions on self-defence and the remit of the UNSC.¹⁸¹ However, there is an inherent amount of semantic ambiguity attached to this concept,¹⁸² compounded by arguments related to the temporal interpretation of an imminent threat.¹⁸³ Moreover, the UNSC through its linguistic choices has overtly characterised threats as urgent, providing a sound justification for its selection here.¹⁸⁴ Two arguments will be made. First, urgency is consistently

¹⁸⁰ Anon, 'Urgency' *Cambridge Dictionary* (24th July 2020)

<<https://dictionary.cambridge.org/dictionary/english/urgency>> accessed 24th July 2010.

¹⁸¹ C Stahn, 'Terrorist Acts as Armed Attack: The Right to Self-Defence, Article 51 ½ of the UN Charter, and International Terrorism' (2003) 27 (2) *The Fletcher Forum of World Affairs* 35; Svarc, 'Redefining Imminence: The Use of Force Against Threats and Armed Attacks in the 21st Century' (2006) 13 (1) *ILSA Journal of International and Comparative Law* 171; J Yoo, 'Force Rules: UN Reform and Intervention' (2006) 6 (2) *Chicago Journal of International Law* 641; Annan K, 'In Larger Freedom: Towards Development, Security and Human Rights for All' (United Nations, 2005).

¹⁸² T Taylor, 'The End of Imminence?' (2004) 27 (4) *Washington Quarterly* 57.

¹⁸³ M Rockefeller, 'The Imminent Threat Requirement For the Use of Pre-emptive Military Force: Is It Time for a Non-Temporal Standard?' (2004) 33 (1) *Denver Journal of International Law and Policy* 131; B Schmidt, M Williams, 'The Bush Doctrine and the Iraq War: Neoconservatives Versus Realists' (2008) 17 (2) *Security Studies* 191.

¹⁸⁴ This will be evidenced in the following paragraph.

found as a rationale for intervention to the point that it features explicitly in each resolution, signifying a high level of agreement among the permanent members. Second, the logics used by the permanent members to characterise a threat as urgent vary according to specific circumstances, but in each case another narrative underpins this finding.

Across the three international security threats a link to urgency can be identified in each resolution. On terrorism, Resolution 1368 calls on states to work ‘urgently to bring to justice the perpetrators’.¹⁸⁵ Resolution 1540 on proliferation, recognises the ‘urgent need for all States to take additional effective measures to prevent [the] proliferation’.¹⁸⁶ In response to the Ebola outbreak, Resolution 2177 underscored ‘that the control of outbreaks of major infectious diseases requires urgent action’ and called on ‘States to provide urgent resources and assistance’.¹⁸⁷ The linguistic choices of a resolution are important and when the permanent members disagree on a formulation, they can force the UNSC into paralysis.¹⁸⁸ When they agree this does not necessarily mean a resolution will be constructed with such strong language. It is evident that the permanent members were firmly in agreement that there was an urgent character inherent to these international security threats. The deliberate linguistic choices are intended to reflect this and remove any ambiguity as to what was expected from the international community. Attention now turns to ask what

¹⁸⁵ UNSC Res 1368 (12th September 2001) UN Doc S/Res/1368, Operative paragraph 3.

¹⁸⁶ UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540, Preamble paragraph 12.

¹⁸⁷ UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble paragraph 13, Operative paragraph 7.

¹⁸⁸ J Lederman, ‘U.S. insisting that the U.N. call out the Chinese origins of the coronavirus’ *NBC News* (28th March 2020) <<https://www.nbcnews.com/politics/national-security/u-s-insisting-u-n-call-out-chinese-origins-coronavirus-n1169111>> accessed 27th July 2020; J Brunnee, ‘The UN’s relative silence speaks volumes about the U.S.’s failure to lead’ *The Globe and Mail* (13th April 2020) <<https://www.theglobeandmail.com/opinion/article-the-uns-relative-silence-speaks-volumes-about-the-uss-failure-to/#comments>> accessed 13th July 2020.

allowed these three threats to be characterised with the same sense of urgency despite their different circumstances.

With regard to terrorism, the sense of urgency portrayed by the permanent members comes from a number of logics, but each with the same underlying premise. The UK referred to terrorism as ‘the new evil in our world today’.¹⁸⁹ China, Russia and France referenced the ‘challenge’ posed to the ‘international community’.¹⁹⁰ The USA pointed to the ‘war against terrorism’.¹⁹¹ Within these statements is the logic that the threat was ongoing. Although the attacks appeared to be isolated, they represented the manifestation of something more. By recognising that the threat was ongoing the permanent members were able to infer a need to respond with urgency to prevent further harm. It was their implication that without an urgent response from the international community the threat would be allowed to continue or repeat. Despite the lack of uniformity in the linguistics employed, it is possible to see that this narrative comes from the same source, adding a sense of unity that increases its importance to the overall securitisation argument.

However, this also appears to be true in the UNSC’s previous handling of terrorism prior to the activation of Article 39. Resolution 1269 held it was ‘Deeply concerned by the increase in acts of international terrorism’.¹⁹² In the corresponding verbatim record, the USA said ‘terrorism has shown no sign of letting up’ and France referred to the ‘fight against terrorism’ noting ‘this was not the first time the Council has taken a stand on this subject’.¹⁹³ The permanent members were aware of the ongoing threat but notably avoided characterising it as urgent throughout Resolution 1269. Instead words like ‘necessity’, ‘encourages’ and ‘priority’ are used to frame the need to respond, all of which have less linguistic presence than a characterisation of

¹⁸⁹ UNSC Verbatim Record (12th September 2001) UN Doc S/PV/4370, 2.

¹⁹⁰ Ibid., 5, 7.

¹⁹¹ Ibid., 7.

¹⁹² UNSC Res 1269 (19th October 1999) UN Doc S/Res/1269, Preamble paragraph 1.

¹⁹³ UNSC Verbatim Record (19th October 1999) UN Doc S/PV/4053, 7, 8.

urgent.¹⁹⁴ It cannot be the case that terrorism acquired a sense of urgency simply because of its ongoing thematic nature.

The answer to this is found by considering urgency alongside magnitude.¹⁹⁵ September 11th was distinct from past attacks because of its increased magnitude. Only when this reached a certain level did this ongoing threat become urgent according to the permanent members. If left outside the scope of Article 39 and absent a suitable response, there was a chance similarly severe attacks could take place. The logic of security used to frame threats as urgent was based on the identification of an increase in magnitude. Although the permanent members were unified in their interpretation of terrorism as an urgent threat, this was unable to stand as a security logic in its own right.

Turning to proliferation, a sense of urgency was argued by creating a link to terrorism. The UK argued that such weapons and materials 'might fall into the hands of terrorists' and in 'the face of that threat...it was imperative' for the Council to act.¹⁹⁶ Although China did not reference terrorism directly, it spoke of the involvement of 'non-state actors', which could be interpreted to include terrorists.¹⁹⁷ Making this connection, proliferation was being viewed through the same lens as terrorism, which was an urgent priority of the permanent members.¹⁹⁸ However, in the case of terrorism, it was an increased magnitude that gave life to a sense of urgency. Where proliferation is concerned the severity of the consequences of such

¹⁹⁴ UNSC Res 1269 (19th October 1999) UN Doc S/Res/1269, Preamble paragraph 4, Operative Paragraph 2.

¹⁹⁵ See section III on magnitude for a full discussion of its significance.

¹⁹⁶ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 7.

¹⁹⁷ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 6.

¹⁹⁸ M O'Connell, 'Enhancing the Status of Non-State Actors Through the Global War on Terror?' (2005) 43 Columbia Journal of Transnational Law 435; A Tujan, A Gaughran, H Mollett, 'Development and the Global War on Terror' (2004) 46 (1) Race and Class 53; C Flint, S Radil, 'Terrorism and Counter-Terrorism: Situating al-Qaeda and the Global War on Terror within Geopolitical Trends and Structures' (2009) 50 Eurasian Geography and Economics 150.

weapons had long been understood.¹⁹⁹ Thus, although proliferation was cast as an urgent threat because of its connection to terrorism, it seems that the exact logic of security employed was not identical.

An additional logic on proliferation is present that addresses this distinction. France referred to the 'emergence of trafficking networks'.²⁰⁰ The USA said proliferation 'is a clear and present threat'.²⁰¹ China spoke of the need to prevent 'further proliferation'.²⁰² Russia said proliferation was 'becoming one of the crucial threats to international peace and security'.²⁰³ The UK claimed it was 'a real, urgent and horrific threat'.²⁰⁴ The argument appears to be that the international community had already fallen behind the threat and so there was an urgent need to catch up. Although the verbatim record is absent specific examples of proliferation, it has been argued there was at least a contextual backdrop to the UNSC intervening.²⁰⁵ It is not unreasonable to assert that the sense of urgency underlying the permanent member's arguments is based on a belief that the threat was already in existence, which they are able to agree upon despite offering no facts to support this belief. Again, this shows the strength of urgency as a narrative as it did not require hard justificatory evidence for the permanent members to employ it.

¹⁹⁹ In 1968 the UNSC first addressed proliferation and WMDs, UNSC Res 255 (19th June 1968) UN Doc S/Res/255; L Scheinman, 'Nuclear Safeguards and Non-Proliferation in a Changing World Order' (1992) 23 (4) Security Dialogue 37.

²⁰⁰ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

²⁰¹ Ibid., 5.

²⁰² Ibid., 6.

²⁰³ Ibid., 6.

²⁰⁴ Ibid., 8.

²⁰⁵ D Albright, C Hinderstein, 'Unravelling the A.Q. Khan and Future Proliferation Networks' (2005) 28 Washington Quarterly 109; M Heupel, 'Surmounting the Obstacles to Implementing UN Security Council Resolution 1540' (2008) 15 Non-Proliferation Review 95; D Joyner, 'Non-proliferation Law and the United Nations System: Resolution 1540 and the Limits of the Power of the Security Council' (2007) 20 Leiden Journal of International Law 489.

Connected to this logic the idea of scale becomes important. Proliferation was historically confined to state aspiration.²⁰⁶ This changed with the adoption of Resolution 1540. France referred to 'an additional dimension to the danger of proliferation' and pinpointed this as 'the involvement of non-state actors'.²⁰⁷ The USA said that non-state actors were 'seeking to exploit weak export-control laws and security measures in a variety of countries'.²⁰⁸ The switch of focus from state to non-state actor proliferation meant a huge increase in the scale of the threat that was already taking place around the world. The new sense of scale was perceived to be vast, transnational and when linked to terrorism able to create a sense of urgency. Proliferation was potentially taking place on a transnational scale never before seen and this security logic was used to generate a sense of urgency that the permanent members were able to unite around.

Turning to the Ebola outbreak, the permanent members were acutely aware that the situation was urgent. The USA called for 'swift and decisive action'.²⁰⁹ France said, 'this is an emergency', 'let us act now'.²¹⁰ Russia thought the affected countries could not continue without 'the coordinated response of the international community'.²¹¹ China said 'time is of the essence',²¹² and the UK declared 'there is simply no time to waste'.²¹³ A temporal factor is present in their interpretation of the situation, creating a sense of urgency. This contrasts their earlier engagement through Resolution 2176, where the word urgent does not feature.²¹⁴ However, within Resolution 2176 attention is drawn to two documents for consideration that do

²⁰⁶ P Crail, 'Implementing the UN Security Council Resolution 1540' (2006) 13 Non-Proliferation Review 355.

²⁰⁷ UNSC Verbatim Record (28th April 2004) UN Doc S/PV/4956, 2.

²⁰⁸ Ibid., 5.

²⁰⁹ Ibid., 7.

²¹⁰ Ibid., 10, 11.

²¹¹ Ibid., 12.

²¹² Ibid., 15.

²¹³ Ibid., 17.

²¹⁴ UNSC Res 2176 (15th September 2014) UN Doc S/Res/2176; UNSC Verbatim Record (15th September 2014) UN Doc S/PV/7263.

include a very brief characterisation of the Ebola crisis as urgent.²¹⁵ Nevertheless, there was a clear change in temporal understanding of the threat between the two meetings, which although only three days apart led to the threat being characterised as urgent.

One possible reason for this change in perspective was the exacerbating magnitude and scale of the outbreak. These two triggers were becoming more severe, and the permanent members were aware that this escalating dynamic was only going to continue. The USA and France referenced the ‘unprecedented’ scale of the outbreak.²¹⁶ China said the ‘Ebola pandemic is rapidly spreading’ and the UK argued that the ‘United Nations has a vital role to play in bringing Ebola under control’.²¹⁷ The expansion of the epidemic in terms of magnitude and scale does support a temporal characterisation leading to a sense of urgency. But it is unlikely that this alone could be attributed as the reason for the permanent members suddenly believing a response was urgent. If they were led by these motivations, they would have intervened much earlier in 2014. It is also questionable how much change in magnitude and scale could have taken place in the three days between UNSC meetings. No doubt these triggers helped to substantiate the urgency of the situation, but they must have been accompanied by something more to generate a sense of urgency.

As the Ebola outbreak spread across the three most affected states its impact beyond health became apparent. France argued that the outbreak had become ‘an economic and social crisis that could also generate a political crisis’ and ‘reignite

²¹⁵ UNGA Report of the Secretary General, ‘Twenty-eighth progress report of the Secretary-General on the United Nations Mission in Liberia’ (15th august 2014) UN Doc S/2014/598;

UNGA Letter of the Secretary General, ‘Letter dated 28th August 2014 from the Secretary-General addressed to the President of the Security Council’ (2nd September 2014) UN Doc S/2014/644.

²¹⁶ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 7, 10.

²¹⁷ Ibid., 15, 17.

chaos in those countries'.²¹⁸ Russia spoke of the 'broader consequences of the outbreak'.²¹⁹ China referred to the outbreak as a 'multifaceted problem, impacting the politics, security, economics and societies of those countries concerned'.²²⁰ The UK called it a 'humanitarian, social and economic crisis'.²²¹ These broader logics underpin the argument that without international intervention there was a possibility that the three most affected states would have continued to spiral downward. The urgent characterisation of the situation can be linked to the possibility of states collapsing, which differentiates this outbreak from past health crises and provides a very strong narrative to support securitisation.²²²

Because of this broader impact on the viability of the states in question, the collective interest in stopping the outbreak from exacerbating any further was becoming more visible. The USA referenced its jump 'across borders' and the need to halt 'further spread'.²²³ France said, 'we know the epidemic could spread far beyond the region' and Russia noted its spread 'on the African continent'.²²⁴ China took the strongest position and said the outbreak was 'threatening the security of international public health'.²²⁵ As the states involved became overwhelmed the risk of wider spread increased. The permanent members were justifying their intervention on the need to stop the spread at the source in order to avoid collective interest repercussions. This led China to argue that the 'international community should respond to the Ebola outbreak with a heightened sense of urgency'.²²⁶ The logic of security used here is based on the need to halt the outbreak before it

²¹⁸ Ibid., 10.

²¹⁹ Ibid., 13.

²²⁰ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 15.

²²¹ Ibid., 17.

²²² Health crises alone have been unable to achieve Article 39 status in the past. For an example of this see the HIV/AIDS resolution that failed to activate Article 39: UNSC Res 1308 (17th July 2000) UN Doc S/Res/1308.

²²³ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268, 7, 8, 9.

²²⁴ Ibid., 10, 12.

²²⁵ Ibid., 15.

²²⁶ Ibid., 15.

spreads through the international community, indicating that urgency is again dependent on the evolution of another narrative.

To recap, urgency is an important narrative used by the permanent members. However, they develop this narrative from varying security logics and so it is difficult to definitively substantiate what will trigger an argument of urgency. Yet, the evolution of other thresholds when connected to urgency was able to explain the foundations of this narrative and allow the justifications for its use to come to light. Urgency does not stand alone but is derived from its relationship to the evolution of other narratives.

VIII. Concluding Remarks

This chapter has examined the securitisation of the three international security threats (terrorism, proliferation, Ebola) according to the arguments of the permanent members. The knowledge acquired allows the claim that when certain thresholds and triggers are crossed the permanent members are able to unite in the activation of Article 39 through the creation of these five narratives. The logics of security employed can at times vary on the surface, but often there is an underlying source that allows the permanent members to unite behind them. These narratives are not independent, and the above analysis has shown they often work in conjunction with one another. Only when the right conditions across each narrative are met will the activation of Article 39 be possible, and the need for securitisation become apparent to the permanent members. Securitisation theory has usefully been employed, identifying how the permanent members have sought the securitisation of these three international security threats.

When evaluating any international security threat in the context of a potential Article 39 activation the magnitude, transnational scale, collective interest, insufficient response and urgency narratives must be examined holistically. On its own the acquisition of this knowledge does not offer any further advance on securitising climate change before the UNSC. All it achieves is to illuminate the thresholds and

triggers that allow the permanent members to unite behind these narratives. The following chapter will apply these findings to climate change in order to provide a new argument that might be used to help advance its securitisation.

Chapter Five

Framing Climate Change as an Article 39 Threat

*'The current and projected implications of climate change could easily support its characterization as a threat to international peace and security.'*¹

I. Introduction

Chapter Four examined the narratives employed by the permanent members when arguing for the securitisation of international security threats. Within these narratives, the thresholds and triggers that when crossed led to intervention were explored and knowledge on what underpins securitisation collected. The next stage is to take the lessons learnt and apply them to climate change. In other words, does climate change reflect these narratives, and does it cross the thresholds and triggers that would convince the permanent members to securitise it? However, it is not the intention to simply find that climate change reflects the securitisation narratives and hope that the UNSC intervenes. Rather, this chapter is concerned with providing the most suitable frame for those who would argue the securitisation of climate change before the UNSC. In effect, it wishes to provide potential securitising actors, or those that wish to influence them, a viable means with which to convince the permanent members of the need to embark upon the securitisation of climate change.

Securitisation theory was first used to understand how the permanent members seek to argue the activation of Article 39. This information is now being used to construct an argument that might help to transfer climate change to the security agenda. The structure of this chapter will follow the five narratives: magnitude; transnational scale; collective interest; insufficient response; and urgency. Following this, it will be considered how framing climate change in this way might be usefully applied in practice.

¹ C Penny, 'Climate Change as a Threat to International Peace and Security' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edn, EE 2018) 25, 43.

II. Climate Change: Magnitude

Across the three international security threats the permanent members responded to both tangible and potential magnitude. However, it was only in the proliferation instance that an example of tangible magnitude was not required to lead them. Proliferation is subject to a long-standing belief that if left to exacerbate the consequences will be grave.² Climate change in contrast is a somewhat new concern, only coming before the UNSC in 2007.³ In addition, it has often been characterised as outside the security agenda, further limiting the chance of it suddenly acquiring the character of a grave concern.⁴ Like the terrorism and Ebola instances, a tangible example of climatic magnitude will be necessary to lead the permanent members to alter their perspective.

The WHO estimates there are in excess of 150,000 annual deaths from climatic impacts.⁵ Examined in isolation this number crosses the tangible magnitude threshold required to attract the attention of the permanent members. This figure is broken down into three broad categories: altering disease patterns; food and water insecurity; and extreme weather events. Immediately this poses a problem for the permanent members because it is not explicitly clear where the magnitude of climatic impact comes from. The dispersed and non-discrete nature of these climatic harms means they do not lend themselves well to the usual manner in which the permanent members operate. That is, to identify and respond to instances of clearly identifiable harm.

² UNSC Verbatim Record (31st January 1992) UN Doc S/PV/3046; UNSC Verbatim Record (19th June 1968) UN Doc S/PV/1433.

³ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663.

⁴ As recently as January 2019 Russia has stated a belief that it is 'excessive, and even counterproductive, to consider climate change in the Security Council', UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451, 16.

⁵ Anonymous, 'Climate Change' (WHO, Health and Environment Linkages Initiative (HELI, 2019) <<https://www.who.int/heli/risks/climate/climatechange/en/>> accessed 29th August 2019.

Leading up to the adoption of Resolutions 1368 and 2177, the permanent members were able to pinpoint a set of circumstances with a clearly identifiable magnitude. Applying this to climate change, it is not visible where the 150,000 fatalities per year originate. Despite this estimate from the WHO placing climatic magnitude above the threshold identified, it is unlikely on its own to generate the requisite attention from the permanent members.⁶ The timeframe involved might also pose a problem. The WHO indicates this climatic magnitude takes place over the course of a twelve-month period, which makes it harder to pinpoint a discrete set of circumstances able to generate the required sense of urgency. The way in which terrorism caught the attention of the permanent members is not applicable to this overarching climatic magnitude noted by the WHO. The Ebola instance shows an elongated view is possible, and the UNSC monitored the situation over a period of months, allowing a parallel to be drawn with annual climatic magnitude. This argument is limited by the relatively isolated geographic nature of the harm that resulted from the outbreak compared to the dispersed magnitude stemming from climate change.

This overarching interpretation of climatic magnitude is unable to offer a viable means in which to present climate change as triggering the threshold to attract permanent member attention, despite being numerically sufficient. To circumnavigate this problem the different manifestations of climatic magnitude noted by the WHO will be analysed according to their individual instances, which might have a greater chance of exhibiting the conditions necessary to attract the permanent members. The following paragraphs will assess disease exacerbation, food and water insecurity, and extreme weather events.

The climatic magnitude from altering disease patterns comes from changing global temperatures, creating the conditions that allow an increase in their geographic

⁶ Chapter Four found that the magnitude of actual harm from international security threats has to reach into the thousands.

range.⁷ Exemplifying this, malaria-carrying mosquitoes can move beyond their traditional territories.⁸ Mosquitoes also transmit dengue fever, which has become more prolific in recent decades and has started to manifest beyond its traditional zones.⁹ The WHO is cautious in its prognosis of exactly how many deaths are being caused because of the link between climate change and disease exacerbation, stating that, 'Measuring the health effects from climate change can only be very approximate'.¹⁰ Rocklov and Tozan illustrate this point, estimating that dengue fever currently claims 10,000 lives per year, but they were unable to pinpoint a distinction within this figure according to conventional and additional climatic impacts.¹¹ Climate change is exacerbating the mortality rate of diseases but it is difficult to operationalize this into an argument that could be used to persuade the permanent members of the need to intervene because no clear lines of distinction exist to highlight the specific impact of climate change.

A further problem is that climatic magnitude from increased disease spread would likely be felt across vast geographic spaces. Unlike the 2014 Ebola outbreak, it may not be easy for the permanent members to isolate a set of circumstances and identify a magnitude that warrants intervention. The more likely reality is that a disease exacerbated by a warming climate will have a very widespread impact reflecting the vast spread of increasing temperatures, diluting the appearance of

⁷ S Ryan et al., 'Global Expansion and Redistribution of Aedes-borne Virus Transmission Risk with Climate Change' (2019) 13 PLOS: Neglected Tropical Diseases 1.

⁸ C Flavin, H French, G Gardner, 'State of the World 2002' (World Watch Institute, 2002).

⁹ Anonymous, 'A Billion People Will Be Newly Exposed to Diseases Like Dengue Fever as World Temperatures Rise' (Georgetown University Medical Centre, 28th March 2019) <<https://www.sciencedaily.com/releases/2019/03/190328150856.htm>> accessed 30th August 2019.

¹⁰ Anonymous, 'Climate Change and Health' (WHO, 2019) <<https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>> accessed 29th August 2019.

¹¹ J Rocklov, Y Tozan, 'Climate Change and the Rising Infectiousness of Dengue' (2019) 3 Emerging Topics in Life Sciences 133.

harm and so failing to generate global attention.¹² Nevertheless, this is speculation and an outbreak of significant magnitude beyond a disease's usual territory may be able to command global focus, and encourage the permanent members to intervene.¹³ For now, disease exacerbation from climate change remains unable to offer the permanent members the character of magnitude to prompt securitisation.

Moving to food and water security, both will be placed under significant strain with a temperature increase of 1.5°C.¹⁴ In terms of quantifying the current impact of this insecurity, the Food and Agricultural Organization (FAO) expresses the difficulty of accurately linking climatic impacts with malnutrition, but does find the prevalence of undernourishment directly correlated to those states experiencing severe drought conditions between 2006 and 2016.¹⁵ Exemplifying this, in 2013 cereal production in Lesotho was at a ten-year low because of droughts, causing '725,000 people' to be food insecure.¹⁶ Such events offer a discrete set of circumstances to accentuate the threat and so might have potential to draw the attention of the permanent members.

The FAO found that 'countries with high exposure [to climate shocks] have more than double the number of undernourished people (351 million more) as those without high exposure'.¹⁷ The report does not detail how many deaths occur as a direct result of climatic-induced undernourishment. It does find in 2017 that 29 million people suffered 'acute food insecurity' as a result of climate shocks, with 3.9

¹² It has been argued this attention was crucial in the securitisation of the Ebola outbreak. C McInnes, 'Crisis! What crisis? Global health and the 2014-15 West African Ebola Outbreak' (2016) 37 *Third World Quarterly* 380.

¹³ IPCC Report, 'Global Warming of 1.5°C: Summary for Policy Makers' (2018) 11.

¹⁴ *Ibid.*

¹⁵ FAO, 'The State of Food Security and Nutrition in the World' (2018).

¹⁶ UNEP, 'Yearbook: Emerging Issues in Our Global Environment 2013' (2013), 15; UN Central Emergency Response Fund, 'Resident/Humanitarian Coordinator Report 2012 on the Use of CERF Funds in Lesotho' (UN CERF, 2012).

¹⁷ FAO, 'The State of Food Security and Nutrition in the World' (2018) 54.

million requiring 'urgent life-saving emergency assistance'.¹⁸ In 2013 there were 875,000 deaths in children under the age of five because of 'wasting' due to food insecurity, malnourishment and poor access to water.¹⁹ These impacts are exacerbated by climate change and so it is reasonable to attribute at least a portion of these figures to it. It is not unfounded to assert that thousands of people worldwide are suffering appalling food and water insecurity as a result of climate change.

The magnitude coming from food and water insecurity is likely able to trigger the required threshold to attract the attention of the permanent members. The problem is this magnitude is not based on a discrete set of circumstances. The deaths involved are dispersed, sometimes globally, and not isolated to a clearly identifiable event that can be linked to climate change. The likelihood of the permanent members identifying a climatic magnitude from this widespread harm is slim, despite the thousands of lives lost every year crossing the numerical threshold. The global circumstances and non-linear nature of food and water insecurity is unable to discretely characterise the harm as a climatic magnitude caused by rising temperatures, limiting its utility here as a frame for the securitisation of climate change.

Examining the last category of climatic harm noted by the WHO, the term extreme weather event refers to floods, droughts, heatwaves, high precipitation rates, wildfires, storms and hurricanes.²⁰ The IPCC says 'extreme weather and climate events have been observed since about 1950' and some have been linked to changing temperatures, rising sea levels and increasing precipitation.²¹ As the global climate undergoes changes to its natural state, extreme weather events increase in frequency and power, making it difficult to dismiss climate change as the cause of

¹⁸ Ibid., 58.

¹⁹ Ibid., 19.

²⁰ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970-2012)' (2014).

²¹ IPCC, 'Climate Change 2014 Synthesis Report Summary for Policymakers' (2014), 7.

the exacerbating impacts.²² These events offer the most potential in terms of identifying climatic magnitude because they often manifest in discrete conditions with a clear causal link to the harm. Extreme weather events are able to sidestep the limitations noted above in regard to disease exacerbation and food and water insecurity. They offer an improved chance of projecting the required character of climatic magnitude to draw the attention of the permanent members.

The UNEP documented a range of extreme events and the resulting magnitudes: landslides in Haiti caused several deaths and displaced 65,000 people; 13,500 families were affected by flooding in Paraguay after heavy rains; flash floods in Russia killed 144 and affected 15,000 people; floods in Myanmar left 6,000 people without homes; tropical storms in South China killed 34 people and affected hundreds of thousands more; an Indian monsoon killed 27 and left 900,000 people homeless.²³ These figures show that discrete climatic magnitude is quantifiable in regard to extreme weather events, but in most cases the isolated nature of these events meant the harm was then too low to draw in the permanent members. This will probably allow them to continue ignoring these events in the same way they ignored instances of terrorism prior to September 11th and Ebola prior to 2014. If extreme events are to be used to characterise climate change as exhibiting the required magnitude, they will need to exhibit a level of harm reflecting that seen on September 11th or during the 2014 Ebola outbreak.

The World Meteorological Organisation (WMO) provides evidence of climatic impact that might meet this threshold, finding that between 1970 and 2012, 1.94 million

²² See, for example, Hurricane Dorian. S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019) <<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>> accessed 1st December 2019.

²³ UNEP, 'Yearbook: Emerging Issues in Our Global Environment 2013' (2013) 14, 15.

deaths have occurred as a result of extreme weather events.²⁴ This figure is cumulative, drawn across many instances, and so it is unlikely to get the attention of the permanent members on its own for similar reasons to those argued above. Examining the details of this figure, however, provides some valuable findings. In 2010 the Russian Federation experienced extreme heat that resulted in 55,736 deaths; in 2008 Storm Nargis killed 138,866 people in Myanmar; and in 1983 an Ethiopian drought killed 300,000 people.²⁵ The report goes on to find that Hurricane Mitch (1998) killed 14,600 people and in Venezuela a flash flood took 30,000 lives (1999).²⁶ Additional research shows the European heatwave in 2003 killed 70,000 people.²⁷ These examples provide evidence of discrete climatic events exhibiting a magnitude well in excess of that required to attract the attention of the permanent members.

Climatic magnitude from extreme weather events is able to trigger the threshold required for securitisation. The terrorism and Ebola interventions were premised on a magnitude reaching into the thousands within discreet circumstances that the permanent members could easily interpret as distinct from past iterations of each threat. The climatic magnitude from these events reflects this in terms of numerical quantification and distinct character of harm. The connection between the event and the impact is easily identifiable and discrete enough to accentuate the magnitude of the harm. The link to climate change is scientifically inarguable because as the world has warmed these events have intensified. Extreme weather events provide the perfect frame for climate change to be characterised with a magnitude that is able to trigger the permanent member's threshold for intervention. The only way to prevent the future occurrence of these high magnitude events is to respond to rising temperatures through the implementation of a technical response that addresses

²⁴ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

²⁵ *Ibid.*, 8.

²⁶ *Ibid.*, 6.

²⁷ J M Robine et al., 'Death Toll Exceeded 70,000 in Europe During the Summer of 2003' (2008) 331 *Science Direct* 171.

the cause of this problem.²⁸ This reflects a similar argument to that used to pass Resolution 1373 and so there is scope to believe it could be employed to attract the attention of the permanent members in regard to climate change.²⁹

A further argument to convince the permanent members of the need to intervene comes from the potential magnitude that accompanies climatic impacts. As temperatures increase it is estimated that one billion people could find themselves living in areas experiencing diseases that were once restricted to more tropical climates.³⁰ By the year 2050, 5.7 billion people could be living in regions of water scarcity and by 2025 48% of global land could become prone to drought, which will have a severe impact on food and water availability for the surrounding populations.³¹ Food security will become an issue for one hundred million people worldwide.³² Between 1995 and 2015 the GEO6 Report found that 1.7 billion people have been affected by extreme weather events, of which 700,000 died.³³ The implication is that unless changes are made a similar number of climate casualties will manifest in the immediate future.

The potential magnitude associated with climatic impact is vast and well beyond the thresholds previously reasoned by the permanent members. These magnitudes alone should be enough to help make the permanent members understand what the

²⁸ This idea of a technical response is drawn from the arguments of Krisch, who was discussing the UNSC's response to terrorism. N Krisch, 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council' in C Walter, S Voneky, S Roeben, F Schorkopf (eds), *Terrorism as a Challenge for National and International Law: Security Versus Liberty* (1st edition, Springer 2003) 879.

²⁹ Ibid.

³⁰ Anonymous, 'A Billion People Will Be Newly Exposed to Diseases Like Dengue Fever as World Temperatures Rise' (Georgetown University Medical Centre, 28th March 2019)

<<https://www.sciencedaily.com/releases/2019/03/190328150856.htm>> accessed 30th August 2019.

³¹ UNEP, 'Frontiers 2018/19: Emerging Issues of Environmental Concern' (2018).

³² IPCC, 'Climate Change and Land: Summary for Policy Makers' (2019) 28.

³³ UNEP, 'GEO6: Healthy Planet Healthy People' (2019).

future holds unless securitisation is forthcoming. Also, these speculative magnitudes hold further import because they reflect the relationship between tangible and potential magnitude that was evident in regard to terrorism and Ebola. It was ambiguous as to whether the permanent members were relying solely on the tangible magnitude, or the fact it represented an example of what could potentially follow. It is important that a relationship between tangible and potential climatic harm can be presented to the permanent members in order to create the same conditions they relied on in past instances of securitisation, rendering these findings extremely useful in framing climatic magnitude.

Although disease exacerbation and food and water insecurity are devastating, it is only by centralising extreme weather events that climate change can be framed in a way that triggers the magnitude narrative with the character required to replicate the lines of reasoning used by the permanent members. This is the most plausible way to argue the magnitude narrative has been triggered by climate change and so convince the permanent members of the need to intervene via a technical response. Given these findings, the rest of this chapter will have to focus on extreme weather events to remain consistent in the development of an argument to frame climate change as in need of securitisation.

III. Climate Change: Transnational Scale

Each international security threat exhibited some form of transnational scale, suggesting a base level of importance to this marker. However, there was a lack of consistency in the character of transnational scale, which is useful because it means climate change can be compared to the different templates to see which it fits most closely with. The level of attention on transnational scale varied, which indicates that when applying this marker to climate change there is room for flexibility. Connecting to this level of attention was a relationship with magnitude and so this marker cannot be analysed in isolation. To remain consistent with the findings above, focus will have to be on the transnational scale of climate change in connection to extreme weather events.

First, it must be clear that climate change manifests at the transnational level. The characterisation of climate change by environmental reports appears to have a long-standing interpretation of the problem as existing globally. The State of the World Report 2002 said 'Global emissions of carbon have grown' and referred to 'climbing global temperatures'.³⁴ The UNEP references 'global climate change'³⁵ and the IPCC places significant emphasis on global warming.³⁶ Climate change is a global concern because the entire planet is warming, but this is only the cause of climatic impact. When looking at the international security threats the permanent members were less interested in delving into their foundational causes, and more concerned with identifying the manifesting consequences. An examination of climate change must follow this pattern and focus on how climatic impacts from extreme weather events are transnational.

The UNEP finds that 'all countries...are vulnerable to the adverse impacts of climate change'.³⁷ This suggests that climatic-induced extreme weather events can be given a thematic characterisation by virtue of their global ubiquity, despite the discrete nature of these events. The UNEP further holds that 'all countries are connected' by climate change impacts.³⁸ By connecting states together in this way the focus is removed from each discrete event and placed on the broader problem of climate change, further reinforcing a transnational scale via a thematic interpretation of the harm. This reflects the same pathway reasoned by the permanent members to view terrorism as a global problem. Instead of allowing the different instances of terrorism to be viewed according to their own individual circumstances they were grouped as part of a broader problem. Applying this here, climate change is the broader problem that is able to have discrete impacts around the globe in the form of extreme

³⁴ C Flavin, H French, G Gardner, 'State of the World 2002' (World Watch Institute 2002) 31, 5.

³⁵ UNEP, 'Yearbook: Emerging Issues in Our Global Environment 2014' (2014) 7.

³⁶ IPCC, 'Climate Change 2014 Synthesis Report Summary for Policymakers' (2018).

³⁷ UNEP, 'Yearbook: Emerging Issues in Our Global Environment 2013' (2013) 7.

³⁸ *Ibid.*, 7.

weather events. This provides a strong argument that climate change triggers the threshold required for the identification of a transnational scale.

Unlike the terrorism example climatic impacts have a second thematic connection because they are all linked by the exact same cause, namely rising temperatures. Terrorism may have been global in terms of existence, but attacks and groups were not linked by a common cause or set of circumstances.³⁹ With climatic impact the cause is always the same and each event is connected to changing global conditions, making it impossible to disconnect extreme weather events from climate change. This reinforces the transnational scale, and frames climate change in such a way that it is difficult to ignore the need for a technical response at the international level. If this thematic interpretation of the problem could be linked explicitly to the experiences of the permanent members it would offer a robust argument to convince them of the transnational scale of climate change and the need for a commensurate response. However, any event connected to this thematic characterisation will have to exhibit a relationship with magnitude able to trigger the threshold of intervention if it is to get the attention of the permanent members.

A high magnitude attached to an event could preclude the need for a clear or significant transnational scale, allowing greater reliance on a thematic identification of this marker. A low magnitude event would be reliant on a strong and obvious transnational scale that increases the range of the threat. In the terrorism instance the permanent members prioritised the magnitude of the attack and only vaguely pointed to the transnational scale as linked to the thematic ubiquity of the harm. The extreme events listed by the UNEP had low magnitudes and so would not be able to rely on a vague transnational scale through a thematic characterisation to get the attention of the permanent members. Moreover, in each of these cases the harm appears to be isolated within state borders, demanding still greater magnitudes. These low numerical illustrations would prevent the permanent members from being

³⁹ B Hoffman, *Inside Terrorism* (revised and expanded edition, Colombia University Press 2006).

able to minimise the need for a specific transnational scale. Only in cases where there is significant loss of life will the attention of the permanent members be available in regard to a thematic interpretation of transnational scale, and this is not arguable in regard to the extreme weather events listed by the UNEP.

Considering the WMO findings, tens of thousands of people were found to have died from discrete climatic weather events.⁴⁰ The magnitude of these events was such that it would preclude the need to identify a clear transnational scale, reflecting the relationship between magnitude and scale that was present in regard to terrorism and to a lesser extent proliferation. Only by centralising these extreme events of sizeable magnitude is it possible to rely on the thematic transnational scale of climate change. As long as there is evidence that the extreme events in question are linked to climate change the permanent members could be convinced to lessen their requirement for an obvious transnational scale, relying instead on the thematic interpretation of the threat.

It is possible they will be reluctant to rely on this thematic characterisation of climate change, thus demanding a more tangible transnational scale. Looking at the regional spread of the 2014 Ebola outbreak the permanent members were able to identify a localised transnational scale based on a spillover effect. Applying this here, the IPCC finds 'Changes in climate can amplify environmentally induced migration both within countries and across borders'.⁴¹ The State of the World Report also pointed to the 'flow of people across international borders' because of climate-induced impacts.⁴² Discrete climatic impacts such as extreme weather events and their consequences can become transnational in and of themselves, just like in the case of Ebola. The 2017 South Asia floods exemplify this type of transnational scale, with high precipitation causing flooding across India, Bangladesh, and Nepal, forcing people to

⁴⁰ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

⁴¹ IPCC, 'Climate Change and Land: Summary for Policy Makers' (2019) 17.

⁴² C Flavin, H French, G Gardner, 'State of the World 2002' (World Watch Institute, 2002) 130.

migrate.⁴³ In this instance the existence and impact of an extreme weather event was able to spill across borders, providing a clearly identifiable transnational scale to the problem of climate change and so lessening the reliance on a thematic interpretation. Any arguments seeking to traverse this pathway will have to carefully identify and frame the relationship that exists between magnitude and transnational scale. Looking at some of the WMO examples it would not be difficult to argue that high magnitude events are also able to cross borders and so trigger the thresholds of intervention. Reversing the situation, it might be more challenging to argue that events with a high transnational scale and low magnitude should be securitised. In the context of disease exacerbation and food and water insecurity this problem largely precluded these aspects being useful frames for climate change.

The most persuasive argument to make in regard to this marker is that climate change exists as a thematic threat, exhibiting a vast transnational scale. Taking this approach while allowing for less precision in regard to border crossings will necessitate that only those extreme weather events with a high magnitude are used to frame the problem. As long as the magnitude is high there will be less need for clear indicators of a transnational scale to trigger intervention. Framing climate change in this way and focussing on this symbiotic connection between magnitude and transnational scale offers the best way to argue its securitisation.

IV. Climate Change: Collective Interest

It must be decided whether or not there are collective interest implications from climate change. It was discovered the actual harm resulting from a threat does not need to be universal, instead it only needs to be widespread. The indiscriminate nature of the harm, however, must create the potential for any member of the international community to experience it. Furthermore, the permanent members

⁴³ Anonymous, 'Severe Monsoon Rains Flood South Asia' (NASA, Earth Observatory, 8th September 2017) <<https://earthobservatory.nasa.gov/images/90920/severe-monsoon-rains-flood-south-asia>> accessed 3rd September 2019.

might need to be subjected to that harm to fully realise the collective security implications and the need for comprehensive international responses.

The link between climate change and collective interest must be premised on the impact extreme weather events have around the world. The IPCC details some examples of widespread climatic harm from extreme weather events: tropical cyclones are continental and 1.15 billion people live in areas that experience them;⁴⁴ across North America 'Flooding and heavy precipitation events have a variety of significant direct and indirect...impacts';⁴⁵ in Europe 'Coastal flooding is an important' disaster;⁴⁶ across Africa an 'overall increase in dryness' has been observed, which will lead to widespread food and water insecurity.⁴⁷ The harm emanating from climate change is not universal because not every state is equally affected by these impacts. But these findings indicate climatic impact from extreme events is present around the world and able to have a widespread impression on both states and peoples. In many of these examples the climatic harm is continental, making it hard to refute that extreme weather events cause widespread destruction. The first threshold is easily met, but it is only a preliminary trigger, holding less significance to the permanent members than those that follow.

More challenging, the impact must be indiscriminate, posing potential harm to any member of the international community. Toulmin said 'it is clear...that everybody is vulnerable in some way' to the impacts of climate change.⁴⁸ Unpacking this statement in regard to extreme weather events, their spread across the globe ensures that very few states remain outside the path of harm. The uncontrollable

⁴⁴ IPCC, 'Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation' (2012) 240.

⁴⁵ Ibid., 259.

⁴⁶ Ibid., 256.

⁴⁷ Ibid., 253.

⁴⁸ J Vidal, 'Climate Change Will Hit Poor Countries Hardest, Study Shows' *The Guardian* (27th September 2013) <<https://www.theguardian.com/global-development/2013/sep/27/climate-change-poor-countries-ipcc>> accessed 10th September 2019.

nature of these events parallels the reasoning used by the permanent members to securitise the 2014 Ebola outbreak. Adjectives like rapidly, widely and deeply were applied to the Ebola outbreak and could easily be used to describe the nature of extreme weather events, reinforcing the possibility they could strike indiscriminately, creating a comparative argument that might have utility in convincing the permanent members to intervene. Alone this argument will likely not reach the threshold required to persuade the permanent members to recognise an indiscriminate nature.

This is because the possibility exists that climatic impact will be worse for developing states, which may be unable to adapt to climatic consequences.⁴⁹ This might allow the argument that developed states could avoid or absorb the harm from climate change.⁵⁰ Challenging this, the nature of extreme weather events is becoming more unpredictable. Hurricane Dorian, for instance, was able to cause unexpected and significant harm to the USA.⁵¹ Studies also show that some of the biggest global economies including the USA and China are likely to feel climatic consequences to a far more pronounced degree than was previously thought, undermining their ability to absorb these shocks.⁵² The permanent members have been the recipients of indiscriminate harm and they will continue to face these climatic consequences along with the rest of the international community. Any suggestion that they will be able to avoid indiscriminate climatic harm is misleading and climate change should be framed to reflect this fact.

⁴⁹ Q Schiermeier, 'Telltale Warming Likely to Hit Poorer Countries First' (2018) 556 *Nature* 415.

⁵⁰ P Nath, B Behera, 'A critical Review of Impact of and Adaptation to Climate Change in Developed and Developing Economies' (2010) 13 *Environment, Development and Sustainability* 141.

⁵¹ S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019) <<https://www.nationalgeographic.com/environment/2019/09/how-warm-water-fuels-a-hurricane/>> accessed 16th September 2019.

⁵² K Ricke, L Drouet, K Caldeira, M Tavoni, 'Country-level Social Cost of Carbon' (2018) 8 *Nature Climate Change* 895.

The above argument indicates that climatic harm can have a direct impact on the permanent members. Their territories and peoples are not excluded from the impact of extreme weather events and their economies will be severely affected. This is a useful point in helping to present an argument that they are equally vulnerable to climatic harm. Yet, as the terrorism example clarifies, an event will need to take place to exemplify this vulnerability and its magnitude will need to be significant, even when one of their territories comes under threat.⁵³ This poses the question, are the climatic magnitudes being experienced by the permanent members comparable to September 11th and so able to inspire a leadership role in the securitisation process?

In 2003 a severe European heatwave resulted in the premature death of 70,000 people.⁵⁴ The 2019 record temperatures in France saw 1,500 heat-related deaths.⁵⁵ In Russia, 55,000 premature deaths were provoked by the heatwave of 2010.⁵⁶ The USA and China have been exposed to heatwave impacts exacerbated by climate change,⁵⁷ and the UK experiences severe precipitation events.⁵⁸ Even if the permanent members adopt the more cynical position of only responding when their own security is challenged it is not hard to argue that climate change is posing the

⁵³ The city of Moscow was the subject of a terror attack prior to Resolution 1269, but the magnitude was likely not enough to prompt the securitisation of terrorism through Article 39.

⁵⁴ J M Robine et al., 'Death Toll Exceeded 70,000 in Europe During the Summer of 2003' (2008) 331 *Science Direct* 171.

⁵⁵ R Brackett, 'Summer Heat Waves Kill 1,500 People in France' (The Weather Channel, 8th September 2019) <<https://weather.com/news/news/2019-09-08-summer-heat-waves-kill-1500-people-in-france>> accessed 10th September 2019.

⁵⁶ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

⁵⁷ IPCC, 'Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation' (2012), 258; J Tan et al., 'Heat Wave Impacts on Mortality in Shanghai, 1998 and 2003' (2007) 51 *International Journal of Biometeorology* 193.

⁵⁸ Anonymous, 'Economic Impacts of Flooding in the UK' (LSE, 14th January 2016) <<http://www.lse.ac.uk/GranthamInstitute/news/economic-impacts-of-flooding-in-the-uk/>> accessed 1st November 2019.

necessary harm directly to them, with a level of magnitude that is sometimes more than reflective of the threshold required to trigger intervention. Combined with the indiscriminate and unpredictable nature of extreme weather events, the permanent members could be convinced of the collective interest inherent to climate change. Any argument presenting this case to them should highlight their vulnerability with reference to specific examples featuring a high magnitude, in the hope of prompting a recognition that they are subject to indiscriminate harm. Again, it is clear the collective interest argument is connected to the magnitude of an event with the latter assuming a significant level of sway over this marker, reinforcing that these triggers must be analysed and argued holistically.

The final point in regard to collective interest is to establish that only through a collective response can the harm be addressed. The permanent members must believe their own security can only be improved via collective responses. As was the case with all three international security threats, but most clearly evident through proliferation, the only way to respond and safeguard the interests of the permanent members was to develop collective responses. In the proliferation instance all states had to adopt measures to stop the activities of non-state actors. A failure to create this blanket response would have allowed the insecurity to continue and the vulnerability of the permanent members would have remained irrespective of their own independent measures, a point not lost on them.

Applying this to extreme weather, once an event takes off it is impossible to stop. Hurricane Dorian offers a recent example of an extreme event that once in operation could not be mitigated, leading eventually to massive amounts of harm.⁵⁹ In 2019 the UK experienced extreme levels of precipitation and it was rendered unable to

⁵⁹ S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019)
<<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>> accessed 1st December 2019.

mitigate the impact or provide successful adaptive mechanisms.⁶⁰ Such events are beyond the ability of even the most developed to respond and even the permanent members become mere witnesses to the devastation inflicted. The only way for these events to be addressed is pre-emptively through the technical response of collective emissions reduction. It must be stressed that the permanent members are not able to mitigate these events independently or immediately prior to their inception. Once an extreme weather event has begun it is already too late. The only way they can respond is by mitigating the causes of climate change, which was precisely the reasoning used to securitise proliferation and so there is scope to believe this frame can be usefully applied to climate change.

To recap, the collective interest narrative is triggered by climatic impacts from extreme weather events, with the requisite level of harm, indiscriminate character and necessity for collective response all present. The permanent members are equally vulnerable once an extreme weather event begins. They will not be able to mitigate these climatic harms without the pre-emptive and combined response of the international community. Relying on specific examples where the territory of a permanent member is harmed by an extreme event will have the greatest likelihood of success in convincing them of the collective interest implications. It is also reasonable to suggest that the best chance of advancing this argument will be through an immediate response to an extreme weather event decimating the territory of a permanent member. This will help to highlight the collective interest inherent to climate change that they cannot avoid, and reinforce the urgent need for technical responses at the international level to pre-empt these disasters.

V. Climate Change: Insufficient Response

⁶⁰ Anonymous, 'UK Weather: More Rain Forecast After Flash Floods Across Britain' (BBC, 2nd October 2019) <<https://www.bbc.co.uk/news/uk-49890229>> accessed 1st November 2019.

The permanent members consistently made reference to the intended responses to a threat, which included looking at the functioning of conventions, the content of conventions, the actions of states, and the ability of institutions to fulfil their role. This broad spectrum is useful because it allows arguments to be made concerning the actions of states and the content of the international climate framework.⁶¹ In addition to identifying the point at which an insufficient response exists the permanent members must also be under the impression that the intended response has become overwhelmed.

There can be little doubt that the intended responses to climate change housed in international climate law are insufficient. Chapter One provided a detailed analysis of the Kyoto Protocol and Paris Agreement in which it was argued that both approaches (hard and soft) have proven unable to stem climate change. These legal responses attempt to target the global emission of greenhouse gases by creating a unified international response. The fact that emissions continue to rise and have done so throughout the history of ICL shows the intended responses to climate change are insufficient. There can be no debate on this point. What, however, is up for consideration is whether or not the permanent members have the scope to identify the point at which this response is insufficient?

The first option is to look at the terrorism precedent and the point at which the permanent members identified an insufficient response. There was little focus on this aspect in their submissions,⁶² but inclusion within Resolution 1368 indicated a tacit agreement among the permanent members that the failure of states to sign up to the anti-terror conventions was a significant point of insufficiency. There is little point comparing the intended climate responses to the terrorism example because ICL exhibits a very successful engagement rate, having attained near universal

⁶¹ As will be expanded in Chapter Six the permanent members do reference international climate law.

⁶² Only China explicitly referenced this point.

membership.⁶³ There can be no claim that international climate law is insufficient because of a lack of engagement from the international community.

Turning attention to the proliferation example, the permanent members identified an insufficient response because of gaps in the regime. Proliferation had evolved to include non-state actors, which meant the primary focus of the regime, concentrating on the action of states, had inadvertently created gaps susceptible to exploitation.⁶⁴ These gaps transferred to the response of states that equally became insufficient against the new non-state actor dynamic. Applying this to ICL, it is possible to argue that gaps exist in the framework. The Paris Agreement exhibits a clear lack of binding obligations, within which a number of vital aspects of the problem are allowed to go unaddressed. For instance, there is no provision on the need to phase out fossil fuels.⁶⁵ There is also a lack of reduction targets to facilitate the achievement of its broader objectives. However, these gaps are not the product of an evolving threat but are instead deliberately negotiated by state parties. Had states been willing to include binding and specific obligations they would have, and so at first glance it is difficult to compare the insufficient response of the climate framework to the reasoning that led to intervention in the proliferation instance.

However, there is also an inadvertent gap in the climate framework that might be exploited to show the permanent members that the intended response is insufficient. The common but differentiated responsibility norm, although centralised through Paris to allow states to set their own response agenda, is in some cases

⁶³ Anonymous, 'Depository' (UN Treaty Collection, 2019) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&lang=_en&clang=_en> accessed 27th November 2019.

⁶⁴ D Albright, C Hinderstein, 'Unravelling the A.Q. Khan and Future Proliferation Networks' (2005) 28 Washington Quarterly 109.

⁶⁵ J Dehm, 'Post Paris Reflections: Fossil Fuels, Human Rights and the Need to Excavate New Ideas for Climate Justice' (2017) 8 Journal of Human Rights and the Environment 280.

resulting in little or no action being taken to reduce emissions.⁶⁶ The Agreement commits to ‘Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels’.⁶⁷ As the INDCs and NDCs continue to come under scrutiny it is becoming clear that there is a significant gap between the objective of Paris and the means with which to achieve it. States may have been given the autonomy to set and meet their own climate obligations, but their actions must still match the ambition of the Agreement. At present they are not, and so it is arguable an unintentional gap in the framework exists that will preclude the achievement of its objectives. This should be highlighted to the permanent members and emphasis placed on the ability of this gap to undermine the entire regime, reflecting the same rationales used in the proliferation setting.

Despite already having a point to highlight an insufficient response to the permanent members, it is worth touching on the Ebola example that highlights a different way to reason this narrative. In this instance the insufficient response was identified directly through the inability of specific states to respond to the Ebola emergency. Applying this to climate change it might be possible to argue an insufficiency based on the capacity of states to respond to the needs of the climate framework. The obvious line to take here is that developing states may struggle to generate or implement a sufficient INDC to mitigate climate change.⁶⁸ Mexico, for instance, highlighted in its INDC that it could take greater action if international support is provided, indicating that levels of capacity might determine the sufficiency of state

⁶⁶ J Rogelj et al., ‘Paris Agreement Climate Proposals Need a Boost to Keep Warming Well Below the 2°C’ (2016) *Nature* 534.

⁶⁷ Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12th December 2015, entered into force on the 4th of November 2016) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 2(1)(a).

⁶⁸ P Christoff, R Eckersley, ‘Comparing State Responses’ in J Dryzek, R Norgaard (eds) *The Oxford Handbook of Climate Change and Society* (1st edition, Oxford University Press 2011) 431.

responses.⁶⁹ It could be argued before the UNSC that many states in a similar position to Mexico will need support if they are to introduce a sufficient response to the threat. The permanent members are not beyond adopting this line of argument and so it may have merit in helping to convince them of the need to intervene.

This means those developed states that have the capacity but are choosing not to respond will be ignored by the UNSC. This is not a satisfactory scenario and if the UNSC is to intervene it should be through a balanced approach that does not prejudice states based on development. With that in mind, the developed states are supposed to be providing support to international climate funds and developing greater international response capacity.⁷⁰ They are as yet failing to do so, at least to the degree necessitated by the scale of the problem and the needs of developing states.⁷¹ This could be used to highlight to the permanent members that there is an expectation within the Paris Agreement that is not being fulfilled because of the unexpected lack of commitment in the INDCs of the developed states. Those with the means to support climate mitigation are not making the requisite commitments and the permanent members have in the past taken aim at this type of inadvertent inaction. When they reasoned the Ebola intervention it was based on the need for those developed states to provide greater financial and physical resources to the WHO. This argument allows the insufficient climate response to be framed in a way that directly resonates with the past motivations of the permanent members.

The permanent members could be petitioned to intervene based on the incapacity of developing states to sufficiently respond, and the choice of developed states to

⁶⁹ Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015).

⁷⁰ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 4(3); Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12th December 2015, entered into force 4th November 2016) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 9(3).

⁷¹ M Fridahl et al., 'Supporting Nationally Appropriate Mitigation Actions through the Green Climate Fund: Governance Capacities and Challenges' (2014) 4 CCLR 257.

insufficiently respond to UNFCCC mechanisms. Taking this dual approach, they could be petitioned to intervene based on the inadvertent gaps in the intended response of ICL. Targeting the developing and developed world by identifying the shortcomings attributable to each will help to ensure that no group of states are prejudiced by intervention, and arguments of inequity and colonial aspiration will be marginalised. Highlighting that the accidental gaps inherent to the Paris Agreement and wider UNFCCC are seriously damaging its chance of success should be the predominant frame used to present this argument to the permanent members.

Turning to the other important finding within this narrative, the intended responses to a threat must be overwhelmed. In the case of all three international security threats there was a link between the developing magnitude and or transnational scale of the threats, which had rendered the intended responses insufficient. In regard to climate change this point must be made with reference to extreme weather events. Looking at the examples highlighted earlier by the WMO, their magnitude was significant enough to warrant the argument that the intended responses to climate change are overwhelmed.⁷² As the atmosphere has continued to heat these events have become more frequent and in some instances exhibited an amplified intensity.⁷³ Moreover, in some cases tens of thousands of deaths have occurred.⁷⁴ Linking the insufficient response to an increasing magnitude would allow

⁷² WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

⁷³ S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019)

<<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>> accessed 1st December 2019; M Le Page, 'Cyclone Kenneth is one of the strongest storms to hit mainland Africa' *New Scientist* (26th April 2019) <<https://www.newscientist.com/article/2200925-cyclone-kenneth-is-one-of-the-strongest-storms-to-hit-mainland-africa/>> accessed 19th November 2019.

⁷⁴ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

the argument that the UNFCCC and subsequent conventions are being overwhelmed and have been for some time.

This might invite argument from climate sceptics that the Paris Agreement now exists, and it is against this latest incarnation of ICL that we must compare climatic events. To that end, in 2019 Cyclone Idai struck the African continent causing mass devastation.⁷⁵ Sprawling through Mozambique, Malawi and Zimbabwe, Idai had a transnational scale, not too dissimilar to that of the 2014 Ebola outbreak.⁷⁶ The magnitude of Idai in terms of death toll was over 1000 people.⁷⁷ Idai was able to affect 1.8 million people, displacing over four hundred thousand and causing many thousands to suffer disease.⁷⁸ Idai represents one of the worst 'weather related disaster[s] to hit the southern hemisphere'.⁷⁹ Its destructive power was compounded by the warmer atmosphere, which contained a greater concentration of moisture that was deposited in Mozambique causing mass flooding.⁸⁰ The overall humanitarian impact of Idai was catastrophic, leaving 2.2 million people in need of

⁷⁵ M Goldberg, 'Cyclone Idai Has Caused Massive Devastation in Mozambique, Malawi and Zimbabwe' (UN Dispatch, 19th March 2019) <<https://www.undispatch.com/cyclone-idai-has-caused-massive-devastation-in-mozambique-malawi-and-zimbabwe/>> accessed 5th December 2019.

⁷⁶ Anonymous, 'Idai (Southern Indian Ocean)' (NASA: Hurricane and Typhoon Updates, 28th March 2019) <<https://blogs.nasa.gov/hurricanes/tag/idai-2019/>> accessed 5th December 2019.

⁷⁷ S Leahy, 'Why Cyclone Idai Was So Destructive' *National Geographic* (21st March 2019) <<https://www.nationalgeographic.co.uk/environment/2019/03/why-cyclone-idai-was-so-destructive>> accessed 5th December 2019.

⁷⁸ Anonymous, 'Tropical Cyclones Idai and Kenneth' (WHO, 10th May 2019) <https://www.afro.who.int/sites/default/files/2019-05/NationalSitRep1Mozambique10May2019_ENG.pdf> accessed 6th December 2019.

⁷⁹ S Leahy, 'Why Cyclone Idai Was So Destructive' *National Geographic* (21st March 2019) <<https://www.nationalgeographic.co.uk/environment/2019/03/why-cyclone-idai-was-so-destructive>> accessed 5th December 2019.

⁸⁰ Ibid.

urgent assistance.⁸¹ There is no question, extreme weather events routinely overwhelm the Paris Agreement and wider UNFCCC.

This is just one example of how climatic impacts are continuing to exacerbate and become far more problematic for states all around the world. The insufficient response of the Paris Agreement to address the problem of emissions and so halt the exacerbation of these extreme events represents a complete failure of the ordinary mechanisms, which must now be considered overwhelmed.⁸² The intersection between magnitude and insufficient response is irrefutable and will only get worse. Making this argument to the permanent members might convince them that the status quo should not be allowed to prevail.⁸³ This argument would have most impact if presented immediately after an extreme weather event strikes one of their territories, but it is also applicable to events occurring around the globe. Framing climate change in this way offers the best approach to argue that the ordinary responses are insufficient.

VI. Climate Change: Urgency

Within the international security threats, the permanent members identified an urgent need to respond. The variation through which this manifested means there is scope to consider a number of pathways in which climatic harm could be framed as

⁸¹ Anonymous, 'Cyclones Idai and Kenneth' (UN Office for the Coordination of Humanitarian Affairs, 2019) <<https://www.unocha.org/southern-and-eastern-africa-rosea/cyclones-idai-and-kenneth>> accessed 5th December 2019.

⁸² F Harvey, 'One Climate Crisis Disaster Happening Every Week, UN Warns' *The Guardian* (7th July 2019)

<<https://www.theguardian.com/environment/2019/jul/07/one-climate-crisis-disaster-happening-every-week-un-warns>> accessed 19th November 2019.

⁸³ Cyclone Kenneth represents another example of climate change exacerbating extreme weather events and has been labelled the most powerful cyclone to ever hit Africa. M Le Page, 'Cyclone Kenneth Is One of the Strongest Storms to Hit Mainland Africa' *New Scientist* (26th April 2019)

<<https://www.newscientist.com/article/2200925-cyclone-kenneth-is-one-of-the-strongest-storms-to-hit-mainland-africa/>> accessed 5th December 2019.

urgent. Maintaining uniformity with the rest of this chapter, the focus of this section will have to be on extreme weather events and how they might be framed as urgently requiring intervention. However, it is important to situate this research within the scientific camp that is unequivocal on the urgent nature of this threat, and so, first, it will be revealed that climate change represents an urgent threat generally. Second, the urgent nature of extreme weather events will be analysed alongside other narratives to determine if their evolution can provide a suitable frame for an urgent characterisation that will resonate with the permanent members.

Climate change is an urgent threat. There is little doubt on this point from the scientific community and the IPCC held in 2018 that without 'increased and urgent mitigation ambition in the coming years...global warming will surpass 1.5°C in the following decades, leading to irreversible loss...and crisis after crisis'.⁸⁴ The report went on to find that climate change represents 'an urgent and potentially irreversible threat to human societies and the planet'.⁸⁵ The IPCC has been criticised for being too sedate with regard to its findings on climate change.⁸⁶ Consequently, its use of the word urgent in this report is not an example of hyperbole or exaggeration. It should be interpreted as a reflection of the severe and urgent nature of the climate threat, that if allowed to continue unchecked will have a devastating impact on humanity and the planet. With this in mind, some in the scientific community have called for climate action to be framed around two principles: first, that climate change represents an 'immediate and existential threat'; second, that 'an emergency response is essential'.⁸⁷ From the scientific perspective, there can be no argument on the urgent nature of the climate change threat.

⁸⁴ IPCC, 'Global Warming of 1.5°C' (2018), vi.

⁸⁵ Ibid., 79.

⁸⁶ D Spratt, I Dunlop, 'What Lies Beneath' (National Centre for Climate Restoration 2018).

⁸⁷ D Spratt, I Dunlop, 'What Lies Beneath' (National Centre for Climate Restoration 2018), 39.

A WMO study from 1970 to 2012 identified that weather-climate-and-water related disasters claimed the lives of 1.94 million people.⁸⁸ The time span of this figure likely means the permanent members would not view these climatic impacts as urgent. However, many of these weather extremes may be afforded greater intensity as a direct result of climate change. For instance, heatwaves are expected to become more intense with climbing global temperatures, and by 2030 they are anticipated to cause the 'additional annual deaths of 38,000 people'.⁸⁹ The frequency of hurricanes appears to be linked to increasing temperatures.⁹⁰ Warmer oceans are also able to supercharge hurricanes, making them more destructive.⁹¹ Almost all coastal cities will be 'increasingly vulnerable to rising sea levels, floods and storm surges caused by climate change and extreme weather events'.⁹² Climatic impacts from extreme weather events are becoming increasingly urgent because of their frequency, intensity and impact on humanity.

The continuation of emissions and the steady rise of global temperatures will increase the risk of extreme weather around the world.⁹³ Consequently, the WMO findings should not be interpreted as a reflection of climatic impacts to come from extreme weather, but as the absolute minimum impact that will manifest in the

⁸⁸ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

⁸⁹ IPCC, 'Global Warming of 1.5°C' (2018), 452.

⁹⁰ S Seneviratne et al., 'Changes in climate extremes and their impacts of the natural physical environment' in C B Field et al. (eds), *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, A Special Report of Working Groups I and II of the IPCC (CUP 2019) 109, 160.

⁹¹ S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019)

<<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>> accessed 1st December 2019.

⁹² UNEP, 'GEO6: Summary for Policymakers' (2019), 6.

⁹³ R Pidcock, R Pearce, R McSweeney, 'Mapped: How Climate Change Affects Extreme Weather Around the World' (15th April 2020)

<<https://www.carbonbrief.org/mapped-how-climate-change-affects-extreme-weather-around-the-world>> accessed 29th July 2020.

future. It is hard to argue that there is not an urgent need to address the emissions problem in order to prevent the increasing harm that these events will have on humanity. There is also a temporal factor involved, and if we do not start reducing emissions immediately the chance of failing to meet the 1.5°C target is ‘significantly increased’, which will compound the escalating impact of extreme weather.⁹⁴ The threat from climate change presents urgent challenges for the global community through the exacerbation of extreme weather events. However, to be useful here, this urgent nature must be linked to other narratives in order to frame the climate threat in a way that resonates with the permanent members. The following paragraphs will consider the urgent nature of extreme weather events as linked to magnitude, scale and collective interest.

Beginning with magnitude, we know from earlier in this chapter that the impact from extreme weather is able to cross the threshold required to trigger intervention, at least according to the numerical thresholds identified in regard to terrorism and the 2014 Ebola outbreak. The magnitude of harm emanating from extreme weather events should be able to instil a sense of urgency. However, despite significant extreme weather magnitudes being visible within their own territories, the permanent members have made no move to securitise these threats.⁹⁵ Even dramatic events like Hurricane Katrina were unable to generate any sense of urgency despite more than 1200 deaths.⁹⁶ It might be the case that this death toll was within that which can be expected where hurricanes are concerned, suggesting for an extreme event to be successful in attracting permanent member attention, it may have to reach magnitudes well in excess of its usual impact. This was the case in regard to the securitisation of terrorism and Ebola. In both these cases the intervention was preceded by a magnitude never before seen. Where magnitude is

⁹⁴ IPCC, ‘Global Warming of 1.5°C’ (2018), 358.

⁹⁵ See examples discussed earlier in regard to the 2003 heatwave in Europe and the 2010 heatwave in Russia.

⁹⁶ S Gibbons, ‘Hurricane Katrina, Explained’ *National Geographic* (16th January 2019) <<https://www.nationalgeographic.com/environment/natural-disasters/reference/hurricane-katrina/>> accessed 29th July 2020.

concerned the permanent members will remain in a state of apathy, until the urgency of the threat is reflected through a magnitude of previously unseen proportions.⁹⁷

Moving to scale, the proliferation example indicates that where a dramatic shift in the reach of a threat takes place the permanent members can be convinced of the need to securitise. The inclusion of non-state actors exponentially increased the transnational scale of the threat, and this generated a sense of urgency when linked to terrorism. Where extreme weather events are concerned the scale of the threat has undergone no obvious change. Climate change is increasing the reach of threats and guaranteeing that more borders are crossed. But essentially the cause of the harm is still the same climatic forces as before, they are simply more pronounced now. This will make it difficult for the permanent members to identify a change in circumstance that has led to an increased scale either locally, transnationally or internationally. The threat from extreme weather events in 2020 will likely be interpreted as no different from that which was visible in 1970. Even taking a thematic interpretation of the threat will likely produce no change in perspective because extreme weather events have always existed globally. Consequently, there is little scope to argue that an increasing scale will instil a sense of urgency.

The last threshold marker that might evolve to advance a sense of urgency is collective interest. In regard to the Ebola outbreak, the permanent members became aware that the situation was progressing beyond just a health crisis, to a social and political catastrophe that would have repercussions on the viability of the states in question. In turn this may have had a destabilising effect on the region, ultimately

⁹⁷ Even where an event exhibits unseen power and only chance prevented a vast magnitude, the permanent members remain unable to identify a potential threat, see: S Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes' *National Geographic* (4th September 2019) <<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>> accessed 1st December 2019.

resulting in the virus becoming more widespread and potentially reaching further into the international community. As such, the need to respond and prevent these cascading consequences was present in the minds of the permanent members. Where climate change is concerned there is potential for repercussions from an extreme weather event to have collective interest ramifications.

Extreme events such as droughts, floods, and food and water shortages might appear at first glance to be domestic problems. Nevertheless, these climate-change-induced insecurities cause problems at the level of the international community because of their impacts on regional and international stability.⁹⁸ As climatic harm manifests, migration becomes a more frequent response.⁹⁹ Internal territories and neighbouring states may start to experience pressures, which could cause an increase in regional tension.¹⁰⁰ Human security issues may advance through the implementation of measures to stop mass migration.¹⁰¹ This might manifest through immediate violence at international frontiers. It is also possible that states may begin to initiate aggressive policies to secure greater access to essential natural resources in order to protect their own populations.¹⁰² Extreme weather events may destabilise states causing economic instability, facilitating a descent into chaos that could force further migration and regional tension.¹⁰³ Thus, although at first glance climatic implications appear to be human-security-centric or domestic in nature they may rapidly link to state instability, leading to international insecurity.

⁹⁸ IPCC, 'Climate Change and Land: Summary for Policy Makers' (2019).

⁹⁹ C Farbotko, H Lazrus, 'The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu' (2012) 22 *Global Environmental Change* 382.

¹⁰⁰ *Ibid.*

¹⁰¹ O Brown, R McLeman, 'A Recurring Anarchy? The Emergence of Climate Change as a Threat to International Peace and Security' (2009) 9 *Conflict, Security and Development* 289.

¹⁰² P H Gleick, 'Water and Conflict: Fresh Water Resources and International Security' (1993) 18 *International Security* 79; UNEP, 'GEO 6: Healthy Planet Healthy People' (2019).

¹⁰³ WMO, 'Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2012)' (2014).

With these consequences in mind it is possible to argue that climate change will have collective insecurity repercussions, and so a sense of urgency could develop as an extreme event unfolds. This offers the most viable way to argue that another narrative could advance to generate the required sense of urgency from the permanent members. It is also likely that in such a setting the magnitude and scale of a threat would become relevant in the same way they contributed to the permanent members reading the Ebola outbreak as a threat to peace. Again, we can see that the narratives do not operate independently but are closely linked to one another. In the context of climate change a sense of urgency is most easily extrapolated from the collective interest implications involved, providing the most viable way in which to frame this pending catastrophe as in need of an urgent response from the UNSC.

VII. Application of Frame

This chapter has argued that the most suitable way to frame climate change as a threat to peace is through the exacerbating impact it has on extreme weather events and the intensified consequences that will follow. By doing so the thresholds and triggers that underpin the securitisation narratives are met. This finding does not mean the permanent members will suddenly be convinced of the need to securitise climate change. Instead, questions are raised concerning how the UNSC will know when the thresholds and triggers are met, and what good does this knowledge do to advance the climate security agenda.

Climate change is a self-evident threat; it is happening.¹⁰⁴ In the same way conflict is visible, the impact of climatic-induced extreme weather is plain to see. If an extreme weather event takes place that is able to draw on the narratives presented here, then it is possible that the UNSC will be able to identify the threat as in need of securitisation. This is precisely what happened in response to the September 11th

¹⁰⁴ D Spratt, I Dunlop, 'What Lies Beneath' (National Centre for Climate Restoration 2018).

attacks and the 2014 Ebola outbreak. In both cases observable global events attracted the attention of the UNSC and implicitly crossed the thresholds and triggers, allowing the permanent members to unite behind a securitisation agenda. An extreme weather event of unseen proportions will be visible, likely triggering the thresholds for securitisation. It is hoped that the permanent members would respond according to their own past rationales of securitisation and activate Article 39. However, we know the UNSC does not behave according to a strict rule of precedent and so waiting in hope for an event to unite the permanent members is potentially unhelpful and may even be counterproductive. As such, this last section is not about the UNSC recognising when the thresholds and triggers have been met. Instead, the knowledge acquired on what underpins the securitisation of threats should be mobilised to advance the climate security agenda.

The Director-General of the United Nations Environment Programme (UNEP) has in the past appeared before the UNSC to argue the threat posed by climate change.¹⁰⁵ The statement made was scientifically accurate but lacked understanding of how threats had been securitised previously. Mr Steiner referred to the IPCC's Fourth Assessment Report as 'uncontested in terms of the international peer review' and argued that climate change was 'overtaking the rather conservative scenarios' previously predicted.¹⁰⁶ He went on to talk about the 'linear warming' that has occurred over the past five decades, before stating that 'natural disasters are fundamentally disruptive events'.¹⁰⁷ His arguments were sedate, unable to invoke a sense of collective urgency that drew on previous securitisation logics. Subsequently, the permanent members were not moved to securitise climate change.

Using the knowledge generated here, arguments could be framed to draw on the securitisation narratives and frame climate change in a way that resonates more clearly with the permanent members and their logics of security. Experts appearing

¹⁰⁵ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587.

¹⁰⁶ Ibid., 3.

¹⁰⁷ Ibid., 4, 5.

before the UNSC is not without precedent and in 2014 evidence to support the securitisation of Ebola was submitted by several relevant actors.¹⁰⁸ Dr Chan, then Director-General of the WHO, specified that ‘Everything now is unprecedented. Everything now is happening faster than ever before’¹⁰⁹ and ‘with such a degree of suffering and such a magnitude of cascading consequences’.¹¹⁰ Dr Chan drew on magnitude, stating that ‘5500 people have been infected. Well over 2500 have died’.¹¹¹ The outbreak was described as ‘a threat to national security well beyond the outbreak zones’.¹¹² Dr Chan also highlighted that ‘hunger has become an even greater concern than the virus’,¹¹³ further arguing that ‘we must catch up in the most urgent and pragmatic way possible’.¹¹⁴ These narratives reflect the lines of reasoning used by the permanent members in their own submissions to securitise international security threats. The influence these arguments had on them in this instance is not clear, but the parallel lines of justification employed does suggest that the permanent members can at least be guided by expert submissions if arguments are presented in the right way.¹¹⁵

Appearing before the UNSC and framing climate change according to the narratives and their underpinning thresholds presents a novel route in which to further the securitisation of this threat. If a UNEP representative was to come before the UNSC and draw on climate-related extreme weather in the manner argued throughout this chapter, it may have much greater impact than was cultivated in 2011.¹¹⁶ It may help

¹⁰⁸ Several health experts participated in the meeting, but for the purposes here only Director-General Chan has been used to exemplify how they may argue for the securitisation of a threat before the UNSC.

¹⁰⁹ UNSC Verbatim Record (18th September 2014) UN Doc/S/PV/7268, 5.

¹¹⁰ Ibid., 5.

¹¹¹ Ibid., 5.

¹¹² Ibid., 5.

¹¹³ Ibid., 5.

¹¹⁴ Ibid., 5.

¹¹⁵ Considering the impact outside experts have on the securitisation of threats is a future line of research that could be explored.

¹¹⁶ This is when Director-General Steiner first appeared before the UNSC: UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587.

the permanent members to realise that the triggers for intervention already exist, prompting them to unite behind a securitisation agenda. Nonetheless, the UNEP might be successful in framing climate change according to the securitisation narratives but that does not mean Article 39 will follow as a pre-emptive precaution. It is accepted that this is unlikely, and the onset of a sizable climatic disaster will probably be necessary for the permanent members to respond through Article 39. When such a disaster strikes, the world and the UNSC will watch the inevitable unfold.

In such an instance the narratives identified here may still be useful. Following the September 11th attacks, the USA embarked upon a course to securitise terrorism,¹¹⁷ demonstrating that a single permanent member can drive forward the securitisation of an issue, convincing its counterparts of the need to activate Article 39. The UK has been an advocate of climate security since 2007, driving debate and arguing for its securitisation.¹¹⁸ The frame identified here could be useful if the UK, or any other permanent member, decided to try and convince the others of the need to securitise climate change. By drawing on this frame, such an argument would be rooted in the practice of the permanent members and may have greater impact than previous attempts at securitisation. There is also no reason that other members of the wider UNSC could not use this argument to try and achieve securitisation or convince the permanent members to embark upon this pathway. It is here, in the context of practical application, that this thesis has most utility and should be employed by those seeking to find ways to convince the permanent members of the need to securitise climate change.

VIII. Concluding Remarks

¹¹⁷ K Stiles, 'The Power of Procedure and the Procedures of the Powerful: Anti-Terror Law in the United Nations' (2006) 43 *Journal of Peace Research* 37.

¹¹⁸ F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

Those who wish to see climate change brought within the scope of Article 39 have so far failed to present arguments capable of moving the permanent members towards this objective.¹¹⁹ One of the core motivations of this thesis was to address this deficit and present an argument that would help to realise this ambition. This chapter set out with the knowledge of how the permanent members justify uniting in the face of international security threats and respond through Article 39. Applying this to climate change has allowed a number of arguments to be presented that stem from the securitising arguments of the permanent members and so might help to push the climate security agenda forward.

Looking at the narratives that have prompted past intervention, climate change was carefully framed in a way that would best resonate with the permanent members. Focussing on extreme climatic events, it has been shown that climate change exhibits the requisite magnitude and transnational scale to attract their attention. It also represents an indiscriminate collective interest threat that must be responded to at the international level, in large part because the intended responses have been rendered insufficient by an advancing magnitude. There is a sense of urgency, that stems from climate change itself, but also springs from the collective insecurity implications present from extreme weather events. Importantly, it has become clear that these narratives operate in connection with one another and are of little use on their own. Applying them holistically climate change can be framed as an Article 39 international security threat in a way that might be useful to help convince the permanent members of the need to intervene. Applying this knowledge pre-emptively experts may be able to push forward the climate security agenda before the UNSC. However, it is recognised that such an argument is most likely to gain traction with the permanent members in the aftermath of a never-before-seen climatic emergency.

¹¹⁹ C Penny, 'Climate Change as a Threat to International Peace and Security' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 25.

Chapter Six

Crafting a Response to Climate Change

*'The Council could work in parallel with the climate regime, and support and supplement its implementation and effectiveness.'*¹

I. Introduction

This chapter seeks to consider what function the UNSC could undertake were it to securitise climate change. Discussion exists on its suitability to enter the climate change arena, both in and outside the UNSC. This must inform the discourse here to help forge a defensible pathway towards a positive climate resolution. It will be argued the UNSC could be mobilised to provide a complementary function to international climate law, capitalising on its benefits without swaying too closely to its negative qualities. To make this case, four questions will be addressed: what are the arguments against UNSC intervention; what is the position of each permanent member; what would a complementary role for the UNSC look like; and would it be effective?

II. Arguments Against Intervention

The following is a brief review of arguments that may be raised against resorting to the UNSC to address the climate crisis. It reveals the different types of potential response that might be available to the UNSC if it decided to activate Article 39 in the context of climate change. Since 1992 there has been discussion on the prospect of the UNSC involving itself in the matter of environmental harm.² Overtime this has

¹ A Boyle, J Hartmann, A Savaresi, 'The United Nations Security Council's Legislative and Enforcement Powers and Climate Change' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 101, 116.

² C Tinker, 'Environmental Security in the United Nations: Not a Matter for the Security Council' (1992) 59 *Tennessee Law Review* 787.

evolved to focus specifically on a role for the UNSC in climate change.³ A common context to these discussions is the assertion that the traditional mechanisms for addressing climate change are proving unable to stem the problem.⁴ Once established, arguments diverge on the point of involving the UNSC, with debate surrounding the manner of intervention and some opposing this move altogether. This section illustrates these arguments, with the intention of allowing them to be factored into the third section of this chapter that will advocate a UNSC response to climate change.

The UNSC was designed with a particular character and competence that may not lend itself to the type of response climate change requires.⁵ It was initially designed to handle matters of a conventional conflict nature.⁶ Its mandate was informed by the events of WWII, which led to its remit being couched in terms linked to conflict and military situations, albeit with the flexibility to evolve.⁷ Commentators have subsequently contemplated that involvement in climate change may be through the lens of military intervention.⁸ This leads to a clash between the UNSC's traditional remit and climate change, which is not in essence of military character. Such a response would be inappropriate and the application of force to the resolution of climate change remains ambiguous. Trina Ng highlights that there is a 'glaring incongruity between environmental measures and armed military action'.⁹ Yet,

³ S Scott, R Andrade, 'The Global Response to Climate Change: Can the Security Council Assume a Lead Role?' (2012) 18 (2) *Brown Journal of World Affairs* 215.

⁴ B Boer, 'The Globalisation of Environmental Law: The Role of the United Nations' (1995) 20 *Melbourne Law Review* 101; S Cousins, 'UN Security Council: Playing a Role in the International Climate Change Regime' (2013) 25 *Global Change, Peace and Security* 191.

⁵ G Kirk, 'The Enforcement of Security' (1946) 55 *Yale Law Review* 1081.

⁶ F Kirgis, 'The Security Council's First Fifty Years' (1995) 89 (3) *The American Journal of International Law* 506.

⁷ See Chapter Three.

⁸ L Elliot, 'Imaginative Adaptations: A Possible Environmental Role for the UN Security Council' (2003) 24 *Contemporary Security Policy* 47.

⁹ T Ng, 'Safeguarding Peace and Security in our Warming World: A Role for the Security Council' (2010) 15 *Journal of Conflict and Security Law* 275, 297.

because of the manner of its constitution once Article 39 has been activated the UNSC has access to Article 42 responses.¹⁰ A military-based reaction to climate change is a theoretical possibility, leading some to immediately discount the UNSC as a viable response option to climate change, or at least omit force from discussion, which is problematic because nothing excludes it from UNSC deliberation.¹¹

Force comes with unintended impacts on the environment. Again Ng leads on this problem and says, 'military action is a blunt instrument that could ironically do more harm than good'.¹² Research supports this assertion in the climate context, and the US Air Force is able to generate a gigantic amount of greenhouse gas emissions.¹³ Conventional military responses like ground interventions also have detrimental environmental impacts.¹⁴ The destruction of land and forests in the achievement of military objectives will negate any potential benefit being sought. The activation of Article 42 comes with grave physical implications for the environment that challenge its validity and lead to the conclusion it should not feature as a response to climate change.

¹⁰ Nothing in Article 39 limits the UNSC's access to measures involving force via Article 42. Charter of the United Nations (24th October 1945) 1 UNTS XVI, Articles 39, 42.

¹¹ C Voigt, 'Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change' in C Bailliet (ed) *Security: A Multidisciplinary Normative Approach* (1st edition, Brill Publishers 2009) 291.

¹² T Ng, 'Safeguarding Peace and Security in our Warming World: A Role for the Security Council' (2010) 15 *Journal of Conflict and Security Law* 275, 297.

¹³ N Crawford, 'Pentagon Fuel Use, Climate Change, and the Costs of War' (2019) *Watson Institute of International and Public Affairs* 1.

¹⁴ Anonymous, 'Protect Environment From Wars and Conflicts, UN Urges on International Day' (UN, Global Perspective Human Stories, 6th November 2017) <<https://news.un.org/en/story/2017/11/570062-protect-environment-wars-and-conflicts-un-urges-international-day>> accessed 30th October 2019.

In addition, the use of force has negative implications for state relations.¹⁵ It means an end to dialogue and cooperation. Environmental challenges more than any other bind us together; closing down cooperative avenues in the pursuit of unilateral measures of force is detrimental to the humanist ideals that the UN is founded on.¹⁶ Force also comes with the very real prospect that a loss of life will follow. The basis for preserving the environment and responding to climate change is to ensure that humanity can continue to inhabit the earth. Taking life to ensure the continuance of life is infinitely problematic. The prospect of the UNSC authorising the use of force to implement any environmental mandate should be judged as altogether unsuitable. As Murphy puts it, the 'threat of harm does not hurt enough for the use of force'.¹⁷ This sentiment should remain central when evaluating UNSC involvement and force should always be removed from consideration.

Arguments shift to the possibility of sanctions as a means to curb climate harm.¹⁸ Under Article 41 the UNSC has access to a broad array of tools that it could use to penalise a state for climate change inducing activities.¹⁹ To exemplify this, in the case of Brazil, which is embarking upon a project of forest destruction that will have an exacerbating impact on climate change, sanctions could be activated to coerce the administration to cease its current policy of deforestation. This type of response represents an obvious enforcement capability of the UNSC and allows the argument

¹⁵ Voigt points out that environmental law is based heavily on multilateralism. C Voigt, 'Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change' in C Bailliet (ed), *Security: A Multidisciplinary Normative Approach* (1st edition, Brill Publishers 2009) 291.

¹⁶ D Brommesson, H Fernros, 'The Feasibility of an Expanded Regime on the Use of Force: The Case of the Responsibility to Protect' (2013) 16 *Journal of International Relations and Development* 138.

¹⁷ M Murphy 'Achieving Economic Security with Swords as Ploughshares: The Modern Use of Force to Combat Environmental Degradation' (1999) 38 *Virginia Journal of International Law* 1181, 1218.

¹⁸ B Reilly, 'Clear and Present Danger: A Role for the United Nations Security Council in Protecting the Global Environment' (1996) 20 *Melbourne University Law Review* 763.

¹⁹ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 41.

it offers something currently absent from ICL.²⁰ There are numerous problems with this line of argument. The adoption of sanctions for climatic reasons would probably mean that nearly all states would have to be targeted, as very few operate a zero-carbon economy. Only targeting those states with extreme policies such as Brazil could circumvent this criticism. This comes with the problem of how to decide who is a serious climate offender and who is not. Would a distinction be made between those states with high emissions or those states adopting environmentally destructive policies that exacerbate climate change in other ways? There is no clear answer here and the application of sanctions comes with immense logistical difficulties. It is also inevitable that those subject to sanctions will argue the inequity of the application to them and not to others.²¹

Punitive sanctions will not help to build cooperative responses. They will prompt the entrenchment of positions, as was the case in regard to the Democratic People's Republic of Korea that simply absorbed the sanctions as best it could and continued its WMDs programme.²² Even if sanctions could encourage government authorities around the world to cease destructive activities such as logging and burning, they would likely not encourage significant economic alterations to reduce emissions. Infrastructural changes will be costly and difficult and if they are not undertaken universally but at the point of sanctions this will create 'geopolitical tensions'.²³ Such tensions will be further exacerbated if sanctions have a negative impact on human

²⁰ Szasz argues economic pressures under Article 41 might be effective in regard to the environment. P Szasz, 'Restructuring the International Organizational Framework' in E Weiss (ed) *Environmental Change and International Law* (UN University Press 1992) 360.

²¹ R Bereketeab, 'The Morality of the U.N. Security Council Sanctions Against Eritrea: Defensibility, Political Objectives, and Consequences' (2013) 56 *African Studies Review* 145.

²² B Habib, 'The Enforcement Problem in Resolution 2094 and the United Nations Security Council Sanctions Regime: Sanctioning North Korea' (2016) 70 *Australian Journal of International Affairs* 50.

²³ J Boulden, A Charron, 'Evaluating UN Sanctions' (2010) 65 *International Journal* 1, 9.

rights²⁴ or humanitarian conditions.²⁵ Sanctions as a response to climate changing activities may appear to come with consequences of a less hard nature than the use of force, but they come with equally detrimental impressions that may harm the global effort towards the resolution of climate change. The immediate advantages of bringing the UNSC into climate change offer some significant side effects that cannot be ignored.

Related to the above concerns, if the UNSC declares that climate change is a threat to international peace and security the possibility arises that the internal affairs of states could become the subject of international scrutiny.²⁶ There might be a slim argument that points to Article 2(7) of the UN Charter as precluding this, but, the reality is, once the legal hurdle of Article 39 has been overcome international peace and security can be maintained or restored according to the discretion of the UNSC.²⁷ Some argue this will allow the opportunity for mischief in the internal affairs of states.²⁸ In theory this remains a possibility. If the UNSC were to take such a stance it would seriously damage its legitimacy and bring into question why member states participate in the UN system.²⁹ It is worth pointing out that in the age of global communications there is very little that can be hidden from the world, meaning any mischief masquerading as environmental protection would be exposed to public

²⁴ T Biersteker, 'Targeted Sanctions and Individual Human Rights' (2010) 65 International Journal 99.

²⁵ M Doxey, 'Sanctions Through the Looking Glass' (2000) 55 International Journal 207; K-A Elliot, 'Assessing UN Sanctions After the Cold War' (2010) 65 International Journal 85.

²⁶ T Gill, 'Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers Under Chapter VII of the Charter' (1995) 26 Netherlands Yearbook of International Law 33.

²⁷ M Koskeniemi, 'The Police in the Temple Order, Justice and the UN: A Dialectical View' (1995) 6 EJIL 325; J Nkala, 'The United Nations, International Law and the Rhodesian Crisis' (1986) 35 International and Comparative Law Quarterly 480.

²⁸ L Malone, 'Green Helmets: A Conceptual Framework for Security Council Authority in Environmental Emergencies' (1996) 17 Michigan Journal of International Law 515.

²⁹ M Glennon, 'Why the Security Council Failed' (2003) 82 Foreign Affairs 16.

scrutiny.³⁰ It is also possible that any such move would prompt a veto, allowing the permanent members to check the intentions of one another and preclude intervention on illegitimate grounds.³¹

It is impossible to rule out that the UNSC would act under Articles 41 and 42 of the UN Charter, if it intervened in the climate threat. Theoretically there is nothing to prevent this. However, the political nature of the UNSC and the difference of perspective on issues means that there is a check and balance to its operations. The veto power gives the permanent members a means in which to prevent action being taken on contentious matters, and some have argued this gives the veto contemporary utility.³² Given the difference in perspective of the permanent members on the climate threat, it is unlikely that an extreme intervention activating Articles 41 or 42 would be possible. The far more likely outcome is a compromised and carefully crafted resolution that avoids any direct interference in the sovereign autonomy of all states. Consequently, it is the claim here that there is a minimal risk of the UNSC adopting a resolution that is punitive through the use of sanctions or force.

Legitimate interference may still cause disagreement if it is orientated towards policies that have development repercussions. Developing states may object to those that caused climate change in the first instance dictating internal state policy through the UN system.³³ The neoliberal and potentially colonial connotations of such a step

³⁰ Ibid. Whether or not this would sway the permanent members is debatable.

³¹ T Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter* (1st edition, Brill Nijhoff 2019).

³² T Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter* (1st edition, Brill Nijhoff 2019).

³³ J Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2016) 33 *Windsor Yearbook of Access to Justice* 129.

may exacerbate rifts among the international community.³⁴ The G77 already represents a collection of states that do not believe the UNSC is an appropriate forum for climate change because of the shared responsibility model that might follow.³⁵ Shared responsibility undermines common but differentiated responsibility, reinforcing a divide between the developed and the developing. Climate change is already subject to division, and so any intervention from the UNSC should be aimed at reducing these tensions, not inflaming them further.³⁶ It is difficult to view the involvement of the UNSC in climate change as a straightforward matter that can avert these concerns, which is partly why there is reluctance to traverse this pathway. Any intervention the UNSC does take will have to be carefully balanced and constructed to minimise the exacerbation of these anxieties.

A further apprehension relates to the inherent character of the UNSC and how this may lead to serious problems of inequity.³⁷ The UNSC does not embody an institution of equal nations, instead reflecting the hegemonic power balance of 1945.³⁸ The permanent members hold a position of great authority. Their permanency allows them to control the UNSC and steer its agenda, compounded by their ‘tendency to use secretive exclusionary deliberations’.³⁹ Moreover, although ten other states join formal proceedings, evidence suggests it takes at least six months for these non-permanent members to grasp how the UNSC operates,

³⁴ D Hursh, J Henderson, D Greenwood, ‘Environmental Education in a Neoliberal Climate’ (2015) 21 *Environmental Education Research* 299.

³⁵ A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, ‘Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations’ (2011) 23 *Global Change, Peace and Security* 315.

³⁶ B Bolin, ‘The Kyoto Negotiations on Climate Change: A Science Perspective’ (1998) 279 *Science* 330.

³⁷ H Bachram, ‘Climate Fraud and Carbon Colonialism: The New Trade in Greenhouse Gases’ (2004) 15 *Capitalism Nature Socialism* 5.

³⁸ J Alvarez, ‘Hegemonic International Law Revisited’ (2003) 94 (4) *The American Journal of International Law* 873.

³⁹ K Conca, ‘Is There a Role for the UN Security Council on Climate Change’ (2019) 61 *Environment: Science and Policy for Sustainable Development* 4, 10.

meaning a quarter of their experience is spent learning how to engage effectively.⁴⁰ It is not difficult to see the advantage that permanency affords these five states, and how the balance of the UNSC is tilted in their favour.

The permanent members' veto power also means they are able to protect themselves against unwanted UNSC involvement, safeguarding their own interests.⁴¹ The veto is an absolute prerogative, subject only to the minor restriction that the permanent members may not wish to be seen as obstructing action on the world stage.⁴² This limitation extends only as far as the mood engulfing the international community at the time. Veto use did subside somewhat in the cooperative spirit of the 1990s and early 2000s,⁴³ but instances remained where it continued to be employed.⁴⁴ Also, even if the veto is not used this does not mean the threat of its use is absent, and in some cases corridor discussions at the UN result in resolutions being altered or removed altogether in response to a pending veto.⁴⁵ The permanent members find themselves in a position of authority that allows them to assume a hegemonic position over the proceedings of the UNSC.⁴⁶

⁴⁰ S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁴¹ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 27.

⁴² In instances of atrocities against humanity the UK and France have said they will never use the veto to block UNSC action. Anonymous, 'The Veto' (Security Council Research Report, October 2015) <www.securitycouncilreport.org> accessed 30th October 2019.

⁴³ E Luck, *UN Security Council Practise and Promise* (1st edition, Routledge 2006).

⁴⁴ Draft Resolution (11th July 2008) UN Doc S/2008/447, vetoed by Russia and China.

⁴⁵ S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁴⁶ Some argue that the veto is actually useful to balance the permanent members' interests, see: T Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter* (1st edition, Brill Nijhoff 2019).

If climate change were to come before the UNSC this hegemonic nature may preclude a universal policy and instead shield the permanent members from intervention, if they allowed the adoption of a climate change resolution at all.⁴⁷ The history between the UNSC and climate change indicates this power imbalance, and some debates have taken place according to the demand of China that no official 'outcome documents nor follow-up actions' transpire.⁴⁸ Although this request has to some extent been ignored, evidenced through the many subsequent debates before the UNSC, it does exhibit how the permanent members are prepared to exercise their power to reflect their domestic perspective.⁴⁹ This is unlikely to change and Russia particularly continues to adopt a recalcitrant attitude towards climate change on the UNSC's agenda.⁵⁰ This is a significant problem not only because some of the permanent members are serious climate offenders, but also in terms of international equity and cooperation it could damage multilateral efforts and reinforce divisions based on power. If the UNSC introduces a resolution that is skewed by the perspective of a permanent member it could cause greater international disagreement.

International climate law has predicated itself heavily on the need to generate cooperative action that all states can partake to solve the problem.⁵¹ The common but differentiated responsibility model is designed specifically to generate a cooperative spirit and link humanity together in this problem.⁵² Involvement of the UNSC and a destruction of cooperation in place of a hegemonic regime would place the efforts of the last 30 years in jeopardy and take the international community in a

⁴⁷ S Cousins, 'UN Security Council: Playing a Role in the International Climate Change Regime' (2013) 25 *Global Change, Peace and Security* 191.

⁴⁸ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 13.

⁴⁹ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587; UNSC Verbatim Record (30th July 2015) UN Doc S/PV/7499; UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁵⁰ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁵¹ This was evident in the UNFCCC and is reinforced through the Paris Agreement.

⁵² United Nations, *Rio Declaration on Environment and Development* 1992 (14th June 1992) 31 ILM 874, Principle 7.

direction that is not useful or desirable.⁵³ Even though the climate framework is fundamentally inadequate to solve the problem of emissions, it does exhibit a positive effort to generate multilateral responses.⁵⁴ Climate change provides an opportunity for the international community to strengthen and develop relationships to overcome the common endeavours of humanity.⁵⁵ It is perhaps the first truly global problem that no state can escape, and for this reason it could act as the touchstone for future action on similar threats. Involving the UNSC specifically to take a more unilateral approach designed to subvert the failings of ICL would negate this potential and the cooperation achieved so far. Any UNSC intervention has to be tailored to ensure that it does not set back international relations, but helps to encourage them.

To recap, the involvement of the UNSC in climate change is not a one-way street. Instead there exist a number of legitimate arguments that temper the prospect of Article 39 being activated. These arguments can be summarised as: an inappropriate mandate that is too punitive; a unilateral approach that moves away from multilateralism; and a hegemonic character that may allow abuse and set back international cooperation.

III. Perspectives of the Permanent Members

The purpose of this section is to make it clear where the permanent members currently sit in their individual interpretations of climate change. Evidently the absence of an Article 39 resolution means that the narratives, triggers and thresholds of intervention present in past international security threats have not yet manifested in a way that has been able to resonate with the permanent members. Climate

⁵³ C Tinker, 'Environmental Security in the United Nations: Not a Matter for the Security Council' (1992) 59 Tennessee Law Review 787.

⁵⁴ J Brunnee, 'International Environmental Law: Rising to the Challenge of Common Concern' (2006) 100 ASIL 307.

⁵⁵ J Lubchenco, 'Entering the Century of the Environment: A New Social Contract for Science' (1998) 279 Science 491.

change has yet to be securitised. When the narratives do manifest in the manner set out here it is possible that the permanent members will alter their perspectives on intervention via Article 39. It is nonetheless likely that even a significant climate disaster will not wash away all previous positions on the matter and so it is useful to understand precisely what each permanent member thinks. This section does not undermine the narratives argument that is central to this thesis, it simply reflects the UNSC's current position on the matter and uses it as a guide to judge what sort of climate resolution may be viable.

Alongside the concerns of those who comment on the UNSC, the permanent members also present arguments on climate change making its way onto the agenda. Scott contends their perspective is fundamental because of the dominance they exercise over the UNSC.⁵⁶ This dominance has been centralised in this thesis and the theory of securitisation has provided a lens to try and utilise it. This project has operated on the premise the permanent members are equal, justified by Article 27 of the UN Charter that creates a level playing field among them.⁵⁷ However, Scott introduces the idea that within the permanent members there exists a hierarchy, atop of which sits the USA, which has utilised its power to bring innovation to the UNSC through the introduction of the international criminal tribunal and Resolution 1373.⁵⁸ This poses the possibility that a single permanent member might be able to take a lead on climate change and encourage securitisation. This section aims to understand what the permanent members will and will not tolerate in regard to the securitisation of climate change and whether or not there exists any leadership potential that could be harnessed. To do this, each permanent member will be examined to determine their perspective, looking at their long-term engagement

⁵⁶ S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁵⁷ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 27.

⁵⁸ S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

with the subject of climate change before the UNSC and where they position themselves in 2020.

The position of the UK is that climate change constitutes a matter for the UNSC.⁵⁹ In 2007 it spearheaded the UNSC's first climate change meeting, linking the maintenance of international peace and security to the 'building of a shared understanding of what an unstable climate will mean for our individual and collective security'.⁶⁰ In 2011 the UK stressed that a climate change response was not limited to an either/or situation in terms of the UNSC intervening, instead indicating that it could play a complementary role alongside the climate change framework.⁶¹ Scott characterises the UK's position in 2015 as further advanced than any of its counterparts when linking climate change to the manifesting security implications, showcasing its resolve to lead the discourse.⁶² In 2019 the UK was slightly less explicit in its characterisation of climatic harm, but still argued the UN needed to enhance its approach to climate security before concluding 'there is no doubt climate-related security challenges are real'.⁶³ This shows the UK's steadfast position on the matter, and acts as a direct rebuke to Russia, which at the same meeting cast doubt on the climate security nexus (to be examined below). The UK is prepared to challenge its permanent colleagues in the defence of its perspective that climate change belongs on the UNSC's agenda.

The UK supports a complementary role for the UNSC and seems to have an indication of what this might look like. It specifically highlighted the need for a holistic response that links the different climate initiatives together, encourages greater information

⁵⁹ F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

⁶⁰ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 18.

⁶¹ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587.

⁶² S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁶³ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451, 15.

sharing, and facilitates resilience investment.⁶⁴ The UK does not lean towards mitigation or adaptation, remaining ready to support any movement the UNSC can make.⁶⁵ The prospect of the UK taking an independent leadership role has been possible with regard to soft outputs, but it has been unable to convince the other permanent members to adopt a bespoke resolution, likely a reflection of its position towards the lower end of Scott's hierarchy.⁶⁶ Nevertheless, it is a positive force on the UNSC and is unafraid to lead the debate.

In 2007 France asserted the UNSC was not the number one forum for climate change to be addressed in, but 'threats to international security caused by global warming' could not be ignored.⁶⁷ This represents an implicit belief that climate change could be a threat to international peace and security. France also introduced a link between climate and conflict making it less clear whether it was prepared to recognise climate change as a threat to peace in its own right or whether it would have to be attached to conflict. In 2011 the French position became unambiguous with its submission that climate change was a threat multiplier having implications across a number of areas including food and water insecurity as well as conflict.⁶⁸ France went on to say that the UNSC must assume a responsibility to support the climate change conferences in Durban and Rio, indicating a similar belief to the UK that it could see a complementary role for the UNSC.⁶⁹

⁶⁴ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁶⁵ As will be advanced later in this chapter, mitigation refers to actions that would seek to stop or reverse climate change, and adaptation focusses on preparing for climate change consequences.

⁶⁶ Scott situates the USA at the pinnacle of the UNSC, followed by Russia and China, placing the UK and France at the lower end. S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁶⁷ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 11.

⁶⁸ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587.

⁶⁹ Ibid.

By 2018 France accepted that climatic harm was jeopardising international peace and security and there was a collective responsibility case to be heard that would allow the UNSC to intervene without undermining the UNFCCC, reinforcing its focus on a complementary function.⁷⁰ In the 2019 debate it argued to bring all of the different climate think tanks and organisations ‘together in a central place and give them a voice’.⁷¹ This indicates a belief that the current framework is too fragmented, which the UNSC could help to streamline by building ‘consensus on the links between climate and security’.⁷² France is firmly of the belief that the UNSC has a role to play, appearing to have a complementary function in mind reflecting the context of the current framework and its shortcomings.

Scott refers to the position of France as ‘balanced and consistent’, which is reflective of the steady line it has traversed since 2007, allowing the claim it would likely support a climate resolution.⁷³ In terms of response, France appears to support an intervention from the UNSC on a complementary basis, reflecting a similar stance to the UK. These two permanent members are of similar ambition with regard to climate change and the UNSC, offering the possibility of combined leadership, which may help to circumnavigate their positions as the less influential of the permanent members.

In 2007 the USA adopted the position that climate change fell into the ambit of sustainable development, but did not explicitly rule out UNSC intervention.⁷⁴ By 2011 the security implications of climate change were evident in its submissions, and the USA began to see the links between climate change and international peace and security, stating the UNSC has an ‘essential responsibility to address the clear-cut

⁷⁰ UNSC Verbatim Record (11th July 2018) UN Doc S/PV/8307.

⁷¹ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451, 19.

⁷² Ibid. 19.

⁷³ S Scott, ‘The Attitude of the P5 Towards a Climate Change Role for the Council’ in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 209, 215.

⁷⁴ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663.

peace and security implications of a changing climate'.⁷⁵ This attitude was still prevalent in 2015 when the USA indicated its belief that the links between climate and security should be enough to motivate UNSC intervention.⁷⁶ In both 2011 and 2015 the USA was keen to emphasise the UNFCCC as the central response mechanism, aligning itself with the UK and France that any function of the UNSC would be complementary. The strength of conviction towards a UNSC role has lessened somewhat under the administration post-2016 and although the USA does not explicitly rule out this possibility it does appear to be returning climate change to the category of sustainable development. Its position is subject to fluctuations linked to its domestic political circumstance at the time.

Nonetheless, the USA continues to support a role in climate adaption, and in 2019 it said the UNSC 'should play an especially important role in this common effort to assist with [climate] disaster preparedness and response'.⁷⁷ There is little objection from the USA in bringing climate change onto the agenda of the UNSC, but the manner of response will be crucial. The USA will take a keen interest in making sure any climate change response does not interfere with its own priorities, likely meaning a strong mitigation resolution is out of the question. Any leadership potential from the USA will only transpire under certain circumstances, which are not present given the current government. It offers less potential than both France and the UK as a climate advocate before the UNSC, but if convinced of a way forward it could be an instrumental force to help tilt the balance of argument.

The Chinese stance on climate change before the UNSC is one of transition. When the debate first began in 2007 China was clear that it did not believe the UNSC to be an appropriate forum and held that 'Discussing climate change in the Security Council will not help countries in their efforts towards mitigation'.⁷⁸ Instead focus was placed on the UNFCCC and the foundation of common but differentiated

⁷⁵ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587, 7.

⁷⁶ UNSC Verbatim Record (30th July 2015) UN Doc S/PV/7499.

⁷⁷ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451, 21.

⁷⁸ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 13.

responsibility. China believes other UN agencies are more appropriately placed to respond than the UNSC due to its lack of expertise. In 2007 it was insistent that no follow up or outcome document should be created, and it aligned itself with the G77 arguing that climate change was a sustainable development issue.⁷⁹

In 2015 China was much more receptive to discussing the climatic security of small islands developing states (SIDS), though carefully avoided language that would reflect Article 39 too closely.⁸⁰ In the most recent 2019 discussion China was more explicit in regard to the security implications of climate change, although it continued to advocate for other UN agencies to take the lead, particularly highlighting the UNFCCC.⁸¹ However, no longer did China include a clear rebuttal of the UNSC involving itself in climate change. Instead it argued that it is necessary to ‘uphold multilateralism and foster a sense of community’, which is still directing attention away from the UNSC, but in a much less direct manner,⁸² indicating a softened position that may continue to alter as the threat exacerbates.⁸³

China may be reluctant to engage the UNSC because of concerns as to what it can bring to the task that other institutions are not already contributing. No doubt it is also concerned by the prospect of interference with its internal activities, though this should be less a consideration as the veto power will allow any directly impacting provisions to be negotiated out.⁸⁴ It is likely to veto any attempt to introduce mitigation efforts through the UNSC if they are framed as hard law. China is unlikely

⁷⁹ A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, ‘Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations’ (2011) 23 *Global Change, Peace and Security* 315.

⁸⁰ UNSC Verbatim Record (30th July 2015) UN Doc S/PV/7499.

⁸¹ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁸² *Ibid.*, 15.

⁸³ Both the UNEP and WMO record climatic impacts manifesting inside China, see Chapter Three.

⁸⁴ China did this in regard to Resolution 1540 by negotiating with the USA to leave out an interdiction provision. See J Yoo, G Sulmasy, ‘The Proliferation Security Initiative: A Model for International Cooperation’ (2006) 35 *Hofstra Law Review* 405.

to adopt a leadership position, but if convinced that the response was not going to be obligatory or interfere with the autonomy of states it might be inclined to support a complementary role to strengthen the UNFCCC regime.

The position of Russia is the most entrenched, having changed very little from 2007 to 2019. In the first meeting Russia pointed out the UNSC should stick to ‘questions that directly relate to its mandate’, which is a very duplicitous position to take considering that Russia has supported the expansion of the UNSC’s mandate into areas such as terrorism, proliferation and humanitarian protection.⁸⁵ In 2011 Russia expressed that it was ‘sceptical about the repeated attempts that have been made to place on the agenda of the Security Council the issue of the threat posed by climate change’ and reaffirmed its belief that the debate in question should not have taken place.⁸⁶ In 2018 Russia said that it was ‘disappointed’ about yet another climate change and UNSC discussion.⁸⁷ In 2019 it continued to stress its belief the UNSC was not equipped with the expertise or tools to respond to climate change risks, before questioning ‘if they exist and if they are real’.⁸⁸

The position of Russia is the most difficult to overcome. In direct contradiction to France and the UK, Russia seeks to rule out all potential roles for the UNSC in climate change irrespective of whether they are oriented as adaptation or mitigation. If Russia believes there is any possibility of interference with its internal policy it will activate its veto power. In the face of global momentum and absent any support from the other permanent members it may be possible that Russia would abstain from a vote as opposed to activating its veto. Any resolution would have to avoid a hard character or risk a certain Russian veto, and it is likely the remaining permanent members would have to be united in this endeavour to create the requisite pressure.

⁸⁵ UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 17.

⁸⁶ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587, 13.

⁸⁷ UNSC Verbatim Record (11th July 2018) UN Doc S/PV/8307, 15.

⁸⁸ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451, 17.

As the above examination shows, difficulties exist in bringing climate change onto the agenda of the UNSC and some of the permanent members may take a reluctant stance to any such move. On the other hand some permanent members are prepared to lead this task and have been doing so for twelve years. The positive influence that comes from the UK and France might help them to galvanise the USA and China into action. Russia would likely seek to block such a move, but this should not be seen as a terminal obstacle. The recalcitrance of Russia offers no more of a challenge than that already being experienced by ICL that has to contend with each and every party member exercising their own autonomy and possessing the ability to walk away from negotiations. The challenge is to find a response that can attract most of the permanent members and so generate pressure on Russia to at least let a resolution pass.

Each permanent member pointed to the role of the UNFCCC as the primary response mechanism to climate change and so there exists a point of unity to start from. Even those keen on UNSC involvement continue to centralise the UNFCCC, and so any intervention should complement this framework. There is little point in suggesting the UNSC take a leading role to tackle this problem through the creation of new rules and obligations. Its response should be aimed at supporting ICL. Taking this route will extinguish some of the criticisms against involving the UNSC, such as a lack of expertise, and play to the arguments of the permanent members that the UNFCCC should be central.

This also replicates the intention behind some of the UNSC's past interventions. In the case of each international security threat the UNSC took steps to help reinforce the intended responses. At no point did it seek to replace international law as the primary means in which to address the common concerns of states. Even Resolution 1540 that introduced new obligations did not seek to replace the non-proliferation regime, but intended to add to it. The permanent members must be convinced of the need to offer the same type of complementary response in the context of climate change. Taking this approach could help to avoid a veto whilst allowing the UNSC to offer a response to reinforce the presently inadequate international climate law.

IV. Crafting a Climate Resolution

Any envisioned response to climate change must balance the needs of the climate framework against the interests of the permanent members, and those that view the UNSC as an improper forum for climate action. A failure to achieve this balance will mean, either, that intervention lacks utility, or it will fail to generate universal backing and likely prompt a veto. This section will advocate a complementary function for the UNSC in the climate response agenda, which means that intervention will not seek to redirect efforts away from its current mechanisms. It will be contended that the UNSC should work alongside the UNFCCC by aiding the achievement of its objectives, specifically those found in the Paris Agreement.

A complementary function is the most likely to be realised in the current culture of the UNSC, and so, as this thesis intends to offer practical steps to contemporary obstacles it is the most realistic option to pursue. The following subsections will explore what this complementary function might look like and how it would be useful to the climate framework. It will be structured according to: level of intervention; hard or soft character; and focus of a climate resolution.

A. Level of Intervention

Scott introduced four levels of possible intervention: rejection of engagement; non-responses (meaning a response to climate change under the guise of a more traditional heading such as conflict resolution); measured non-binding responses under Chapter VI of the UN Charter; and extreme binding responses under Chapter VII of the Charter.⁸⁹ These four levels will be analysed to decide which is the most suitable to facilitate the UNSC adopting a complementary function to the climate framework. Although it is clear that this thesis decided from the very beginning to

⁸⁹ S Scott, 'Implications of Climate Change for the UN Security Council: Mapping the Range of Potential Policy Responses' (2015) 91 (5) *International Affairs* 1317.

centralise an Article 39 intervention, it is important to consider the other options as they help to accentuate why UNSC involvement at this level is so important in the context of climate change.

Rejection of UNSC engagement now appears unlikely. Since the first climate debate in 2007 there has been irregular but continual discussion, with the most recent debate taking place in January 2019 under the Presidency of the Dominican Republic.⁹⁰ The adoption of Presidential Statements 2011/15 and 2018/3, combined with Resolutions 2349, 2408, 2423 and 2429 all containing the words 'climate change', indicate the UNSC has started its slow journey to intervention.⁹¹ The rotating presidency will allow for further action, because, as the 2019 example proves, those states experiencing severe climatic impacts will not let the subject fade into obscurity.⁹² There is little scope to reject UNSC engagement at this point and, as climatic impact increases, the position of operating from the side-lines will become less tenable. Focus should be on selecting the most suitable direction forward as opposed to resisting this course altogether.

Intervention on the level of non-response is also underway. Although not explicitly referenced, the signature of climate change may sit underneath conflicts that have been subject to resolutions.⁹³ This possibility is debatable in regard to some conflict

⁹⁰ UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁹¹ UNSC Presidential Statement 2011/15 (20th July 2011) UN Doc S/PRST/2011/15; UNSC Presidential Statement 2018/3 (30th January 2018) UN Doc S/PRST/2018/3; UNSC Res 2349 (31st March 2017) UN Doc S/Res/2349, Operative para 26; UNSC Res 2408 (27th March 2018) UN Doc S/Res/2408, Preamble para 19; UNSC Res 2423 (28th June 2018) UN Doc S/Res/2423, Preamble para 28, Operative para 68; UNSC Res 2429 (13th July 2018) UN Doc S/Res/2429, Preamble para 21, Operative para 47.

⁹² This was precisely what happened when the Dominican Republic assumed the Council presidency, leading to a climate meeting on 25th January 2019. UNSC Verbatim Record (25th January 2019) UN Doc S/PV/8451.

⁹³ J Selby, O Dahi, C Frohlich, M Hulme, 'Climate Change and the Syrian Civil War Revisited' (2017) 60 Political Geography 232; UNSC Res 2118 (27th September 2013) UN Doc S/Res/2118 was adopted in regard to the use of chemical weapons in the Syrian civil war.

situations,⁹⁴ but there can be little doubt that in some more recent cases climate change has been a factor recognised by the UNSC:

*'Recognizing the adverse effects of climate change, ecological changes and natural disasters, among other factors, on the stability of Mali, including through drought, desertification, land degradation and food insecurity'*⁹⁵

*'Recognizing the adverse effects of climate change, ecological changes and natural disasters, among other factors, on the situation in Darfur, including through drought, desertification, land degradation and food insecurity'*⁹⁶

Neither of these statements centralises climate change as the cause of the conflict in Mali or Darfur, but they evidence a softening of the UNSC's position towards the connection climate change can have on the creation or exacerbation of a conflict. Responding to these situations, with a broad recognition that climatic impacts could be addressed, climate change is subjected to a UNSC intervention, albeit via the traditional conduit of conflict. In relation to the Darfur situation the UNSC included within its operative paragraphs instructions for the UN and Sudan to 'consider the adverse implications of climate change...in their programmes, including by undertaking risk assessments'.⁹⁷ This direction to 'consider' might be relatively weak, but it evidences the progress of the permanent members to recognise the impact of climate change, and indicates the UNSC is operating on the level of non-responses by directing attention to climate change in situations of conflict.

Non-response interventions allow the UNSC to sidestep the division that might occur if the words climate change appeared in a resolution absent conflict as the primary subject matter. Under this guise peacekeeping operations could be granted a

⁹⁴ K Conca, 'Is There a Role for the UN Security Council on Climate Change?' (2019) 61 *Environment: Science and Policy for Sustainable Development* 4.

⁹⁵ UNSC Res 2423 (28th June 2018) UN Doc S/Res/2423, Preamble para 28.

⁹⁶ UNSC Res 2429 (13th July 2018) UN Doc S/Res/2429, Preamble para 21.

⁹⁷ UNSC Res 2429 (13th July 2018) UN Doc S/Res/2429, Operative para 47.

mandate to respond to the adverse effects of climate change. Elliot and later Conca et al. explored this possibility, finding that the integration of climate expertise into current operations would be logistically challenging due to the structure of the UNSC and its lack of connection to environmental agencies.⁹⁸ The non-response option sounds useful, but its practical benefit is decreased through poor implementation. It is also unlikely to come to fruition any time soon, as despite first being discussed in 2002 little progress has been made to implement this possibility.⁹⁹

The tangible benefit of the non-response option is limited, but this does not mean that softer advantages do not manifest. The inclusion of reference to climate change in a resolution continues to habituate the permanent members to its presence in the context of international peace and security. This slow integration of a subject is not without precedent. The advent of Resolution 1368 declaring with certainty that terrorism was within the meaning of Article 39 was not the first time the subject came before the UNSC. A number of resolutions leading up to 2001 brought terrorism closer to the scope of Article 39.¹⁰⁰ The most significant example was Resolution 1269 that is similar in content to Resolution 1373, absent the activation of Article 39.¹⁰¹ The adoption of this resolution helped to forge a pathway for terrorism into the realm of Article 39. Had this pathway not been laid it is possible UNSC intervention on 12th September 2001 would have experienced much greater hesitance. The permanent members were experienced in handling the subject of

⁹⁸ L Elliot, 'Expanding the Mandate of the UN Security Council to Account for Environmental Issues' (2002) Working Paper, United Nations University, Shibuya, Japan; K Conca, J Thwaites, G Lee, 'Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?' (2017) 17 (2) Global Environmental Politics 1.

⁹⁹ L Elliot, 'Expanding the Mandate of the UN Security Council to Account for Environmental Issues' (2002) Working Paper, United Nations University, Shibuya, Japan.

¹⁰⁰ UNSC Res 748 (31st March 1992) UN Doc S/Res/748 was an early example of terrorism coming before the UNSC in the context of the Libyan non-compliance question; UNSC Res 1189 (13th August 1998) UN Doc S/Res/1189 was a more conventional terror situation coming before the UNSC in the latter half of the 1990s.

¹⁰¹ UNSC Res 1269 (19th of October 1999) UN Doc S/Res/1269.

terrorism and had precedents to draw from. A similar journey may take place in regard to climate change and so these non-response interventions do have some value when adopting a long-term perspective.

However, the problem with the non-response level of intervention is the UNSC will remain reactive, unable to progress to the point of addressing the progenitor causes of climate change. The non-response level of intervention deals only in climatic impact, not its causes. Entering at this level will mean there is no way for the UNSC to complement the central objectives of the UNFCCC. Optimism over centralising non-response intervention is misplaced and the soft benefits noted above must be contextualised according to the need to generate more direct action at a much quicker pace. If the UNSC is to be of use to the climate framework it will have to take place within the next ten years and ideally as soon as possible.¹⁰² Intervention at the level of non-response cannot mitigate climate change in time, if at all.

The next level of intervention to consider is Chapter VI of the Charter, which provides the UNSC authority to engage in dispute resolution and deliver guidance for the avoidance of a situation.¹⁰³ This is useful if those involved are receptive to the UNSC's participation and prepared to abide by its recommendations. However, Chapter VI remains limited to recommendations,¹⁰⁴ which might add global pressure to a persistent climate offender but recalcitrance could easily override intervention, rendering UNSC engagement little more useful than the current model of international climate law. Chapter VI also comes with the reputation that it is the non-binding arm of the UNSC,¹⁰⁵ and so fails to have the same influence afforded to

¹⁰² IPCC Fifth Assessment Report, 'Climate Change 2014: Impacts, Adaptation, and Vulnerability' (2014).

¹⁰³ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Chapter VI.

¹⁰⁴ S Ratner, 'Image and Reality in the UN's Peaceful Settlement of Disputes' (1995) 6 European Journal of International Law 426.

¹⁰⁵ R Higgins, 'The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?' (1972) 21 (2) International and Comparative Law Quarterly 270.

other attributes, which have the benefit of being linked more closely to the concept of security.¹⁰⁶ Moreover, Chapter VI intervention maintains a reactive stance and it is difficult to see how recommendations could be introduced before the eruption of a climate-induced situation. There is little benefit to exploring Chapter VI as the level to intervene because it will not help to mitigate climate change.

As Szasz notes, the binding nature of resolutions is most clearly visible ‘when taken under Chapter VII’.¹⁰⁷ In contrast to this those decisions adopted under Chapter VI come with the reputation of being non-binding. This is supported by Rosand, who argues that for the UNSC to fulfil its role it was gifted the power to take ‘far-reaching decisions, which are binding on U.N. Member States’ courtesy of Chapter VII,¹⁰⁸ again supporting the assertion that Chapter VI is cast as the non-binding arm of the UNSC because of the foil provided by Chapter VII. Moreover, the UNSC has rarely gone down the route of Chapter VI because it would require parties to a situation to agree to a settlement among themselves, something the existence of a dispute proves unlikely.¹⁰⁹ In the climate context the onus is currently on states to agree a way forward and they resolutely fail to do this to the required level time and again. It is therefore unlikely that Chapter VI would be of any great help here.

This leaves Article 39 as the last level of intervention to consider, which Scott believes is the more extreme end of the argument.¹¹⁰ The immediate benefit of intervention at this level is the potential for resolutions to be passed that are of

¹⁰⁶ S Ratner, ‘Image and Reality in the UN’s Peaceful Settlement of Disputes’ (1995) 6 *European Journal of International Law* 426.

¹⁰⁷ P Szasz, ‘The Security Council Starts Legislating’ (2002) 96 (4) *The American Journal of International Law* 901, 901.

¹⁰⁸ E Rosand, ‘The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?’ (2004) 28 *Fordham International Law Review* 542, 553.

¹⁰⁹ R Higgins, ‘The Place of International Law in the Settlement of Disputes by the Security Council’ (1970) 64 *American Journal of International Law* 1.

¹¹⁰ S Scott, ‘Implications of Climate Change for the UN Security Council: Mapping the Range of Potential Policy Responses’ (2015) 91 (5) *International Affairs* 1317.

legislative character.¹¹¹ Nowhere in the Charter is the UNSC granted the authority to introduce international law. Yet, the practical effect of the Charter presents a scenario almost identical to that of a legislator. Article 24 casts the UNSC as having responsibility to maintain international peace and security. Complete discretion is granted to it in the determination of threats and appropriate responses under Article 39. Articles 25 and 48(1) bind UN members to carry out the decisions of the UNSC in the maintenance of international peace and security.¹¹² It is difficult to differentiate between the role of the UNSC in achieving its primary purpose and that of a legislative institution.¹¹³

Many resolutions have been adopted in the past absent a binding character.¹¹⁴ It is beyond the scope of this thesis to investigate the difference in uptake of the international community where a resolution is binding or non-binding. But it is nonetheless reasonable to assert that where Chapter VII resolutions have been adopted, they have had greater gravitas than their non-binding counterparts. For instance, binding Resolution 2177 on Ebola had far greater impact than Resolution 1308 on HIV that was non-binding. Similarly, non-binding Resolution 1269 on

¹¹¹ Although in theory all resolutions are binding, those taken under Chapter VII are granted a greater level of significance and consequent uptake. D Joyner, 'Legal Bindingness of Security Council Resolutions Generally, and Resolution 2334 on the Israeli Settlements in Particular' (EJIL: Talk, January 2017) <<https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/>> accessed 26th November 2018.

¹¹² Charter of the United Nations (24th October 1945) 1 UNTS XVI, Articles 25 and 48(1).

¹¹³ The only substantive restriction on this power to introduce binding decisions is that they must concern the purposes of the UN in the maintenance of international peace and security. A procedural restriction could be considered the need for agreement among the permanent members.

¹¹⁴ M Velasques-Ruiz, 'In the Name of International Peace and Security: Reflections on the United Nations Security Council's Legislative Action' (2011) 18 Columbia International Law Review 13.

terrorism was much less impacting in terms of prompting states to join the anti-terror conventions than Resolutions 1368 and 1373 that made this action obligatory.

If the UNSC is to enter the climate arena usefully, it must do so with the intent of complementing ICL and plugging some of the gaps inherent to this discretion-based framework. It must adopt resolutions with mandates that possess legal character, able to inspire compliance. A Chapter VII intervention is particularly useful in this endeavour, considering its legislative capacity. That is not to suggest this thesis is advocating a binding legislative role for the UNSC, but this possibility must be opened up for reflection. If Article 39 is discounted the benefit of legislative capacity is removed, significantly reducing any scope the UNSC might have for introducing a complementary response that is able to support the ambition of Paris.

There are further benefits inherent to Article 39. It signifies a gravitas that is unparalleled in international law, and it is often interpreted as representing a level of severity demanding attention.¹¹⁵ This can prompt those in positions of domestic power to respond with a sense of urgency, which is the principle benefit that comes from securitising any subject.¹¹⁶ It was precisely this sense of urgency that was intended when the UNSC intervened in terrorism and Ebola. The success of intervention in these instances implies that by tackling climate change through Article 39 the UNSC might generate a renewed momentum within the international community to respond with greater commitment. It might also have the effect of generating anxiety among those who do not wish to see this hegemonic institution enter the climate arena, prompting them to respond with more effort to their obligations under ICL to prevent further evolution of the UNSC's mandate. It is difficult to argue that the benefit of Article 39 being activated is inconsequential. Combined with the accompanying legislative capacity, Article 39 must be the level at which the UNSC intervenes.

¹¹⁵ J Dhanapala, 'The United Nations' Response to 9/11' (2007) 17 *Terrorism and Political Violence* 17.

¹¹⁶ B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1st edition, Boulder, Colorado: Lynne Rienner 1998).

If Article 39 is not activated it may be taken as a sign that the UNSC is not handling the matter seriously.¹¹⁷ It will also preclude any access to Article 41, which may encourage this interpretation of indifference further. Article 39 must be activated if the UNSC is to adopt a resolution with the requisite character to inspire solutions to the problems of the climate framework. This traverses a pathway that some would deem inappropriate because of access to punitive measures and the potential domestic interference that this level of intervention allows.¹¹⁸ In the climate context this fear is unlikely to be realised because some of the permanent members remain steadfast that they will not move towards domestic interference,¹¹⁹ providing a check and balance procedure on the UNSC's scope that probably precludes access to Articles 41 and 42.¹²⁰ Moreover, these concerns lose significance when weighed against the threat of climate change and the drastic need for a way to improve the international response to this threat. To rephrase Murphy, the theoretical prospect of Article 39 abuse is not so real to prevent the further exploration of this pathway.¹²¹

¹¹⁷ This might have been the reason Resolution 1269 was unable to inspire international compliance with the anti-terror conventions.

¹¹⁸ See Section I of this chapter.

¹¹⁹ This has been the consistent position of China on a number of subjects, such as the Yugoslavia, Zimbabwe and Syria questions. UNSC Verbatim Record (25th September 1991) UN Doc S/PV/3009; Draft Resolution (11th July 2008) UN Doc S/2008/447; Draft Resolution (4th October 2011) UN Doc S/2011/612.

¹²⁰ T Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter* (1st edition, Brill Nijhoff 2019).

¹²¹ M Murphy 'Achieving Economic Security with Swords as Ploughshares: The Modern Use of Force to Combat Environmental Degradation' (1999) 38 *Virginia Journal of International Law* 1181.

The activation of Article 39 has been under explored in the past, and too often arguments project the idea that its use means one thing.¹²² In contrast to this viewpoint, different Article 39 resolutions can be analysed to exhibit how they provide varying types of response, which may allow those arguments against this move to be further extinguished. Without providing additional details as to what such a resolution would look like it is also impossible to know whether it would be supported by the permanent members or subject to a veto. At this stage of the argument all that has been determined is that Article 39 must be the level of intervention if the UNSC is to successfully complement ICL. The manner of that activation will be explored in the following subsections.

B. Hard or Soft Character

This subsection will explore the possibility of the UNSC adopting a hard or soft resolution in response to climate change. This distinction (hard and soft) refers to how binding the language of a legal instrument is. It was determined above that any climate resolution has to be at the level of Article 39, which means it comes with a certain gravitas. However, the language of a resolution can vary significantly and alter the extent to which its character is binding or advisory. This subsection will look at where on this continuum a climate resolution should be pitched. The primary focus will be on Resolutions 1373 and 2177 as they represent successful resolutions with distinctly different characters. Resolution 1540 will not feature heavily here because its character is very similar to Resolution 1373 and to repeat discussions would be redundant, but it should be clear the same arguments could easily relate to it.

¹²² B Reilly, 'Clear and Present Danger: A Role for the United Nations Security Council in Protecting the Global Environment' (1996) 20 Melbourne University Law Review 763.

Resolution 1373 targets the abstract threat of international terrorism, not absent factual justification but certainly not linked to a finite scenario.¹²³ All UN members were required to implement actions, including but not limited to criminalising terrorism, asset freezing and preventing the commission of terrorism via information exchange.¹²⁴ The language of Resolution 1373 was binding, with examples including: 'states shall'; 'refrain from'; 'take the necessary steps'; and 'freeze without delay'.¹²⁵ It did not contain any ambiguity as to how the UN community was to respond. Definite measures had to be adopted and in some cases they were intrusive to nation states, but no deviation from the mandate of Resolution 1373 was permitted. In simple terms its character was reflective of hard law.

The success of Resolution 1373 is first evident in its creation. Despite far-reaching obligations, it was able to pass through the UNSC without disagreement, although the lack of any content in the verbatim record means it is impossible to identify if any opposition was verbalised.¹²⁶ Importantly, it managed to avoid provoking a veto and came into existence extremely quickly.¹²⁷ The response from the UN community was resounding and led to the biggest depository of anti-terror information, adding a quantifiable element of success.¹²⁸ However, it is important to recognise that there have been varying levels of uptake and some states have reported difficulty in meeting their obligations under Resolutions 1373.¹²⁹ However, Ward notes that

¹²³ J Dhanapala, 'The United Nations Response to 9/11' (2007) 17 (1) *Terrorism and Political Violence* 17.

¹²⁴ UNSC Res 1373 (28th September 2001) UN Doc S/Res/1373, Operative paragraph 1.

¹²⁵ *Ibid.*, Operative paras 1, 1(c), 2(a) and 2(b).

¹²⁶ UNSC Verbatim Record (28th September 2001) UN Doc S/PV/4385.

¹²⁷ I Roele, 'Disciplinary Power and the UN Security Council Counter Terrorism Committee' (2014) 19 *Journal of Conflict and Security Law* 49.

¹²⁸ Cortright notes that post-Resolution 1373 there was a resounding uptake of international anti-terror conventions, signalling compliance with the UNSC's mandate of Resolution 1373. D Cortright, 'Can the UN battle terrorism effectively?' (2005) 133 (2716) *USA Today* 62.

¹²⁹ H Kramer, S Yetiv, 'The UN Security Council's Response to Terrorism: Before and After September 11th 2001' (2007) 122 (3) *Political Science Quarterly* 409.

although a number of states missed their first 90 day deadline for the submission of reports, 'most had, without doubt, made every possible effort'.¹³⁰ By the end of the first 18 month period 189 states had submitted at least one report with the Counter Terrorism Committee, signifying a broad level of state intent to engage with obligations under Resolution 1373.¹³¹

The relative triumph of Resolution 1373 provokes an immediate hope that the UNSC could introduce a resolution in regard to climate change with the same substantive obligations and a parallel level of uptake, or at least attempted uptake, throughout the UN community. Resolution 1373 as a model for a climate resolution appears to be exactly what is required and could galvanise the international community into action.¹³² The adoption of this model would also subvert some of the criticism concerning the type of response the UNSC could provide. The 1373 model is not punitive, avoiding automatic sanctions on states and does not authorise direct recourse to force beyond self-defence.¹³³ Its character is intended to facilitate a technical response to the threat as opposed to punishing states for not furnishing suitable anti-terror efforts.

There is little doubt, however, that a climate resolution following the 1373 model would be viewed with scepticism by those developing states because of the binding character inherent to it and the obligations it might force upon them.¹³⁴ A hard approach could prompt allegations of unfairness and neo-colonial aspiration from

¹³⁰ C Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8 *Journal of Conflict and Security Law* 289, 299.

¹³¹ *Ibid.*

¹³² C Penny, 'Greening the Security Council: Climate Change as an Emerging Threat to International Peace and Security' (2007) 7 *International Environmental Agreements* 35.

¹³³ Although self-defence is recognised in Resolution 1373 it does not dominate the substance of the text; instead focus is on preventative measures.

¹³⁴ E Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?' (2004) 28 *Fordham International Law Review* 542.

those without a place on the UNSC, and even from those on the Council but outside the permanent members. Following the 1373 model would likely provoke concern from the G77, forcing them to become more entrenched in their belief that climate change should remain outside the UNSC.¹³⁵ This would limit any resolution's uptake by states and reduce rates of compliance.¹³⁶ Any damage to dialogue and cooperation should be avoided and so Resolution 1373 is an inappropriate fit for the climate context.

The possibility of adopting a climate resolution tantamount to 1373 is further reduced because the permanent members would not countenance such binding provisions. Despite, in some instances, climate change triggering all of their thresholds for intervention, it is unlikely to provoke the requisite unity from them to go down the pathway of hard obligations, at least not until a climatic event creates a so far unseen level of harm. The UK and France might support such a move based on their relatively consistent recognition that climate change is a UNSC matter. Russia would oppose this move and use its veto to prevent a resolution of this character being adopted. China's position has softened over the years but it still views climate change as a problem internal to states and requiring individual responses.¹³⁷ The USA under its current administration has prioritised its economy and would seek to avoid any adoption of a text that would lead to action on its part, even the discretion orientated model of the Paris Agreement is too impacting on the American

¹³⁵ A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations' (2011) 23 *Global Change, Peace and Security* 315. Even if states did not see the benefit of Resolution 1373 directly they made efforts to comply with it: C Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8 *Journal of Conflict and Security Law* 289.

¹³⁶ A Boyle, J Hartmann, A Savaresi, 'The United Nations Security Council's Legislative and Enforcement Powers and Climate Change' in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 101.

¹³⁷ This was broadly the position laid out in 2019 by China: UNSC Verbatim Record (25th January 2019) UN Doc/S/PV/8451.

Administration's psyche.¹³⁸ An Article 39 activation enclosed in a hard law resolution is out of the question.

The second option is to populate an Article 39 resolution with soft language, exemplified through Resolution 2177. Its adoption was momentous because it was the first time a health crisis was able to activate Article 39, proving the UNSC is capable of stepping unexpectedly into new territory as long as the text of the intervention can be suitably crafted. Resolution 2177 was able to generate significant responses from the international community, proving this balance between Article 39 and a soft linguistic structure has utility.

The distinct nature of Resolution 2177 was immediately evident in the Preamble, where unlike its predecessor, Resolution 2176, it was able to identify Ebola as a threat to peace in its own right unrelated to other situational circumstances.¹³⁹ The fifth paragraph of the Preamble held without qualification that 'the unprecedented outbreak of the Ebola virus in Africa constitutes a threat to international peace and security'.¹⁴⁰ The lack of precision in regard to the geographic spread of the outbreak, only referencing the African continent, shows the UNSC was not limiting the scope of its intervention to precise circumstances. The basis for this recognition was likely the result of the expert briefings at the start of the meeting where the manner in which Ebola spreads was made clear to the UNSC, and its ability to cross borders was emphasised.¹⁴¹ It was argued that Ebola had to be addressed in a manner that reflected its specific characteristics, and not necessarily the traditional working methods of the UNSC. The permanent members were able to make this adjustment

¹³⁸ R Harrabin, 'Paris Agreement: Trump Confirms US will Leave Climate Accord' (BBC, 24th October 2019) <<https://www.bbc.co.uk/news/world-us-canada-50165596>> accessed 29th October 2019.

¹³⁹ Resolution 2176 centralised the Liberia situation and added the Ebola crisis onto this, reflecting a manner of non-response intervention. UNSC Res 2176 (15th September 2014) UN Doc S/Res/2176.

¹⁴⁰ UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble para 5.

¹⁴¹ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268.

to their approach, though inclusion of the word ‘unprecedented’ did likely appease some of them who wanted to ensure Ebola was not used to advance other previously discussed health issues, such as HIV.¹⁴² Despite this, the range of the UNSC’s ambition was clear when it called for the ‘immediate and coordinated international response to the Ebola outbreak’.¹⁴³

The subsequent Operative paragraphs were careful to strike a balance between generating an international response and not provoking a veto from one of the permanent members. Anything too similar to the rules-based approach of Resolution 1373 would have been too ambitious. The language of Resolution 2177 is reflective of a desire not to encroach upon state autonomy but to ensure the international community understood what was required. The Operative paragraphs feature directives such as ‘encourages’ ‘calls on’ and ‘urges’, language that can easily be construed as diplomatic and not obligatory.¹⁴⁴ This type of language is important in the climate context because it will allow states to retain their sovereign autonomy and not believe the permanent members are pushing them into a response. Equally the permanent members can retain the belief that there is no binding character inherent to the text.

In contrast to the flexible language of directives, the content of the operative paragraphs was not tentative and instead provided clear instructions as to what was necessitated by the situation. The fifth Operative Paragraph asked Member States to provide ‘qualified, specialised and trained personnel and supplies’.¹⁴⁵ The seventh Operative paragraph called for the delivery of ‘deployable medical capabilities such as field hospitals with qualified and sufficient expertise, staff and supplies, [and]

¹⁴² HIV/AIDs was discussed by the UNSC in 2000 but not under Article 39, UNSC Res 1308 (17th July 2000) UN Doc S/Res/1308.

¹⁴³ UNSC Res 2177 (18th September 2014) UN Doc S/Res/2177, Preamble para 13.

¹⁴⁴ In Resolution 2177 the directive ‘encourages’ features three times; the directive ‘calls on’ features seven times; the directive ‘urges’ features twice. Ibid.

¹⁴⁵ Ibid., Operative para 5.

laboratory services'.¹⁴⁶ Operative paragraph eight was concerned with capacity building and the 'training of health workers at the national and international level'.¹⁴⁷ This linguistic balance meant that Resolution 2177 was clear in its expectation, but able to avoid interfering with state sovereignty and so sidestep any potential veto. It was also able to give the international community a clear sense of direction, something that would be useful in the climate context.¹⁴⁸

The manner in which Resolution 2177 sought to engage the international community is extremely positive. It avoided a punitive character and was able to facilitate a supportive role for those able states. The focus on health shows the UNSC can move away from military orientated situations. There is also no hegemonic character reflected in the text of Resolution 2177, it does not offer any inequity that would allow the developing world to take issue with it. The soft tone of its directives also means that it is not obligatory in nature, and so would not interfere with sovereign autonomy. It is able to avoid many of the arguments that were levelled at the UNSC in the beginning of this chapter.

The chance of a climate resolution being adopted is greatly increased by following the model set through Resolution 2177. The USA and China might be able to support this move, or at least abstain from voting based on the fact it would not be forcing them to take internal actions. Even Russia's recalcitrance would struggle to argue against such a resolution, and it may be hesitant to use its veto in the face of a united international community that included other permanent members. There is no guarantee that they would take a positive stance on a climate resolution designed with this soft character, but the possibility exists that with the right leadership and diplomacy they could unite behind a compromise.¹⁴⁹

¹⁴⁶ Ibid., Operative para 7.

¹⁴⁷ Ibid., Operative para 8.

¹⁴⁸ The Paris Agreement fails to offer state parties any precise direction as to what they should do to mitigate climate change.

¹⁴⁹ The leadership and diplomatic efforts of the USA were crucial in the adoption of Resolutions 1373, 1540 and 2177.

The USA will not take on this role and neither will China or Russia. That leaves France and the UK, both of which have a much better record on climate change than the other permanent members. Combined with the newly stated aspiration of France and the UK to become carbon neutral by 2050, these two states offer leadership potential on the climate threat.¹⁵⁰ They both have an economic capacity that will allow them to take on the administrative tasks of driving the UNSC forward and they could easily extend this to the implementation of its provisions. Any action on their part could also act as a foil to expose the restrictive stances of the other permanent members, inadvertently putting pressure on them to respond more urgently.¹⁵¹ If these two states can engage in a strong round of diplomacy they might be able to generate international support in the same way the USA has done so in the past. There are no guarantees, but there is hope that the UK and France could convince the other permanent members to support this move or at least abstain from voting.

The question that remains is whether or not Resolution 2177 was able to achieve distributional benefits? In other words, can a soft Article 39 resolution solve the problem that it was intended to address? To comprehend the success of Resolution 2177 we must begin with an understanding of the situation prior to its inception. The WHO, responsible for coordinating international health and responding to crises, was, in the context of Ebola, negligent from the start, right up until the point where then Director-General Chan decided to securitise the issue through appeal to the

¹⁵⁰ B Felix, 'France Sets 2050 Carbon-neutral Target with New Law' *Reuters* (27th June 2019) <<https://www.reuters.com/article/us-france-energy/france-sets-2050-carbon-neutral-target-with-new-law-idUSKCN1TS30B>> accessed 30th October 2019; Anonymous, 'UK Becomes First Major Economy to Pass Net Zero Emissions Law' (Department for Business, Energy and Industrial Strategy, 27th June 2019) <<https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>> accessed 29 October 2019.

¹⁵¹ This is based on a similar logic applied to the veto use, which suggests permanent members are encouraged by one another. E Luck, *UN Security Council Practise and Promise* (1st edition, Routledge 2006).

UNSC.¹⁵² The WHO was late in identifying that the situation was in fact Ebola, taking nearly four months from the first case in late December 2013 to confirmed identification on 23rd March 2014.¹⁵³ Although this could be defended on the grounds that disease identification takes time, the follow-up failing of the WHO to not declare a public health emergency of international concern until 8th August 2014 is indefensible.¹⁵⁴ Its sluggish handling of the situation meant there was a lack of resources on the ground to stem the spread and consequently Ebola intensified in those states most affected, becoming an epidemic.¹⁵⁵

The link between the UNSC passing Resolution 2177 and the up-scaled response on the ground is difficult to quantify with precision because the UNSC itself was not responsible for delivering the increase in resources. However, in July and August 2014 those states most affected were consistently low on resources, experiencing an ever-exacerbating situation. Given that from September 2014 onwards this situation began to improve, the involvement of the UNSC can reasonably be attributed as the cause of this renewed response. The WHO references how the ‘international community responded to the appeals for help from the UN’.¹⁵⁶ Examining the circumstances pre-and post-UNSC intervention it will be shown that Resolution 2177

¹⁵² Dr. Chan appeared before the UNSC at meeting 7268, UNSC Verbatim Record (18th September 2014) UN Doc/S/PV/7268.

¹⁵³ Anonymous, ‘Origins of the 2014 Ebola Epidemic’ (WHO, Emergencies preparedness, response, January 2015) <<http://www.who.int/csr/disease/Ebola/one-year-report/virus-origin/en/>> accessed 25th July 2018.

¹⁵⁴ The WHO has the power to declare a Public Health Emergency of International Concern under Article 12 of the International Health Regulations. Anonymous, ‘Statement on the 1st Meeting of the IHR Emergency Committee on the 2014 Ebola Outbreak in West Africa’ (Media Centre, WHO Statement, 8th August 2014) <<http://www.who.int/mediacentre/news/statements/2014/Ebola-20140808/en/>> accessed 25th July 2018.

¹⁵⁵ Anonymous, ‘Ebola Virus Disease Outbreak – West Africa’ (WHO, Disease Outbreak News, 4th September 2014) <http://www.who.int/csr/don/2014_09_04_Ebola/en/> accessed 25th July 2018.

¹⁵⁶ Anonymous, ‘Partners in the Ebola Response’ (WHO, Emergencies preparedness, response) <<http://www.who.int/csr/disease/Ebola/partnerships/en/>> accessed 11th October 2018.

was vastly successful in galvanising the international community from a condition of indifference to one of positive action.

Throughout most of 2014 the Guinea healthcare system was not equipped to respond with urgency to the suspected cases of Ebola.¹⁵⁷ After heavy support and investment from the international community Guinea was able to introduce rapid detection and epidemiological investigation teams to operate and stem the spread.¹⁵⁸ In August 2014 Liberia was suffering a distinct lack of Ebola Treatment Units (ETUs) with only two in operation, holding a total of forty beds.¹⁵⁹ There was also a deficit of trained healthcare and hygiene professionals, as well as a lack of PPE and chlorine disinfectant, all of which contributed to Ebola spreading.¹⁶⁰ By 8th November 2014 there were nine fully equipped and staffed ETUs in Liberia and 697 beds available, representing a sharp incline in resources.¹⁶¹

In Sierra Leone the number of beds introduced between September 2014 and January 2015 totalled 2,971 across twelve districts.¹⁶² Kurcharski et al. estimate this prevented 57,000 cases of Ebola, averting 40,000 deaths based on a 70% mortality rate.¹⁶³ In terms of safe burial teams trained in handling bodies infected with Ebola

¹⁵⁷ Anonymous, 'Ground zero in Guinea: the Ebola Outbreak Smoulders – Undetected – For More Than 3 Months' (WHO, Emergencies preparedness, response, June 2014) <<http://www.who.int/csr/disease/Ebola/Ebola-6-months/guinea/en/>> accessed 11th October 2018.

¹⁵⁸ Anonymous, 'Liberia and Guinea Discharge Final Ebola Patients in Latest Flare-up and Begin 42 Days of Heightened Surveillance' (WHO, News, 2nd May 2016) <<http://www.who.int/en/news-room/feature-stories/detail/liberia-and-guinea-discharge-final-Ebola-patients-in-latest-flare-up-and-begin-42-days-of-heightened-surveillance>> accessed 11th October 2018.

¹⁵⁹ A Awardy, 'Evolution of Ebola Virus Disease from Exotic Infection to Global Health Priority, Liberia Mid-2014' (2015) 21 (4) *Emerging Infectious Diseases* 578.

¹⁶⁰ Ibid.

¹⁶¹ T Nyenswah et al., 'Ebola Epidemic – Liberia, March – October 2014' (2014) 63 (46) *MMWR* 1082.

¹⁶² A Kurcharski et al., 'Measuring the Impact of Ebola Control Measures in Sierra Leone' (2015) 112 (46) *PNAS* 14366.

¹⁶³ Ibid.

the number went from less than ten in Liberia in August 2014, to more than fifty-four by 6th October 2014.¹⁶⁴ Looking at the laboratory testing of Ebola specimens, the number of weekly tests in July 2014 was less than fifty due to a lack of facilities and staff; but by late September this number had increased to seven hundred, indicating another sharp rise in the facilities and capacity to carry out such activities.¹⁶⁵

These snapshot figures and their timing are used here to argue that the only reason for this up-scale in the response was because of a massive increase in WHO capability as a result of greater international support, and wider state support provided directly to those suffering.¹⁶⁶ Up until the point of the UNSC securitising the situation the international community had largely failed to respond. The increased resources and overall responses indicate that although Resolution 2177 was not based on hard obligations it was able to percolate through to the international community and stimulate action. Without this intervention it is doubtful whether Ebola would have been brought under control in the timeframe achieved, if at all.

The UNSC's securitisation of Ebola through Resolution 2177 was pivotal in generating the required international response, which then translated to a significant ground-level fightback. The soft character of Resolution 2177 housed within the confines of Article 39 was highly successful and so there is scope to claim that the securitisation of a subject in this way comes with distinct benefits even when hard obligation is absent. There is no reason to believe that similar distributional benefits would not manifest in the context of climate change, were the same type of resolution adopted. The argument even exists that the Ebola outbreak of 2014 was not in reality the international emergency that it was constructed to be, allowing the possibility that the globally understood climate catastrophe could generate even greater

¹⁶⁴ T Nyenswah et al, 'Ebola Epidemic – Liberia, March – October 2014' (2014) 63 (46) MMWR 1082.

¹⁶⁵ Ibid.

¹⁶⁶ The UK, for instance, provided beds directly to Sierra Leone between September 2014 and January 2015.

international engagement than was seen in this example.¹⁶⁷ The securitisation of climate change via the balanced model of an Article 39 resolution crafted with soft language offers the most viable way to proceed. In the attempt to balance the interests of the climate framework against those of the permanent members, this approach to drafting a climate resolution will be taken forward in the final subsection of this chapter.

C. Focus of a Climate Resolution

This subsection will explore the focus of a climate resolution through the context of a complementary function. The intention is not to advocate a perfect intervention that will see the UNSC solve the climate problem, but to offer a possible response that might improve the apathetic status quo. It will begin by drawing a distinction between adaptation and mitigation. Attention will then turn to the content of a climate resolution, before looking at what it should not include.

Adaptation means taking steps to cope with climatic impact.¹⁶⁸ It is the ‘process of adjustment to actual or expected climate and its effects’.¹⁶⁹ The idea of adapting to climatic impact was introduced in 1992 through the UNFCCC, which called for states to ‘Cooperate in preparing for adaptation to the impacts of climate change’.¹⁷⁰ It did not assume a central position at the time because efforts prioritised mitigation.¹⁷¹ There is now a vast concentration of greenhouse gases in the atmosphere and climatic impacts are being felt around the globe, the need to adapt to the immediate

¹⁶⁷ C McInnes, ‘Crisis! What Crisis? Global Health and the 2014–15 West African Outbreak’ (2015) 37 *Third World Quarterly* 380.

¹⁶⁸ J Laukkonen et al., ‘Combining Climate Change Adaptation and Mitigation Measures at the Local Level’ (2009) 33 *Habitat International* 287.

¹⁶⁹ IPCC, ‘Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation’ (2012), 5.

¹⁷⁰ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 4(e).

¹⁷¹ L Verchot et al., ‘Climate Change: Linking Adaptation and Mitigation Through Agroforestry’ (2007) 12 *Mitigation, Adaptation and Strategic Global Change* 901.

circumstances has become more readily recognised. As one research team put it, the 'realization of the inevitability of climate change has reinvigorated adaptation research'.¹⁷²

The nature of the UNSC fits well with adaptation because to some extent they are both reactive. Adaptation does not intend to introduce pre-emptive measures, instead focussing on the occurrence of a climatic situation. The UNSC has throughout most of its history been reactive, and by responding to developing situations it usually (but not exclusively) deals with international peace and security after a disturbance has taken place.¹⁷³ Three broad options for an adaptation response exist: creating early warning systems;¹⁷⁴ responding to climatic emergencies;¹⁷⁵ and broadening the mandate of peace missions.¹⁷⁶ Although there is merit to arguing that these responses will have a soft impact in terms of habituating the permanent members to handling climate change, the reality remains that they will achieve nothing in relation to the principal gaps found within international climate law. A UNSC intervention via adaptation will not stop the problem of climate change and will only be able to address the recurring consequences. Focussing on adaptation

¹⁷² L Berrang-Ford, J Ford, J Paterson, 'Are We Adapting to Climate Change?' (2011) 21 *Global Environmental Change* 25, 25.

¹⁷³ See Chapter Two for a thorough examination of this.

¹⁷⁴ In the UNSC's 2007 debate on climate change, Belgium called for the UN to 'intensify its early warning efforts', UNSC Verbatim Record (17th April 2007) UN Doc S/PV/5663, 6; C Ku, 'The UN Security Council's Role in Developing a Responsibility to Respond to the Climate Change Challenge' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 162.

¹⁷⁵ K Conca, J Thwaites, G Lee, 'Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop?' (2017) 17 (2) *Global Environmental Politics* 1; Malone talks about the UNSC adopting a remedial role to 'deal with the effects of a single incident'. L Malone 'Green Helmets: A Conceptual Framework for Security Council Authority in Environmental Emergencies' (1996) 17 *Michigan Journal of International Law* 515, 531.

¹⁷⁶ L Elliot, 'Expanding the Mandate of the UN Security Council to Account for Environmental Issues' Working Paper, United Nations University, Shibuya, Japan; O Brown, A Hammill, R McLeman, 'Climate Change as the New Security Threat: Implications for Africa' (2007) 83 *International Affairs* 1141.

would be better situated at the level of a non-response intervention, and to some extent, as Resolutions 2423 and 2429 show, the UNSC might already be treading this path, rendering little need to further advance it here.¹⁷⁷ Adaptation remains an important task, but we must be focussed on stopping climate change, not merely adapting to it, and for this reason its relevance to this thesis ends here.

Mitigation refers to strategies that ‘aim to reduce the impact of climate change’.¹⁷⁸ Mitigation also has the UNFCCC as its point of origin, holding parties should take action to ‘prevent or minimize the causes of climate change and mitigate its adverse effects’.¹⁷⁹ The UNFCCC goes on to promote ‘measures to mitigate climate change by addressing anthropogenic emissions’.¹⁸⁰ This latter provision reflects the cornerstone of the framework that has attempted to reduce global emissions and halt climate change. A mitigation role for the UNSC is less akin to its typical pattern of behaviour. It would require the UNSC to respond thematically, which it has only done on a small number of occasions, most notably through the introduction of Resolutions 1373 and 1540. The existence of these resolutions provides enough precedent to show the permanent members can take a forward-thinking approach and centralise pre-emptive responses, allowing the possibility that climate mitigation is not out of the question.

The UNSC is becoming more practised in handling climate change and although no substantial link to Article 39 has been made, the decision to include more frequent reference to it shadows the experience of other subjects now within its remit.¹⁸¹ To

¹⁷⁷ UNSC Res 2423 (28th June 2018) UN Doc S/Res/2423; UNSC Res 2429 (13th July 2018) UN Doc S/Res/2429.

¹⁷⁸ J Laukkonen et al., ‘Combining Climate Change Adaptation and Mitigation Measures at the Local Level’ (2009) 33 *Habitat International* 287, 288.

¹⁷⁹ United Nations Framework Convention on Climate Change (adopted 9th May 1992, entered into force 21st March 1994) 1771 UNTS 107, Article 3(3).

¹⁸⁰ *Ibid.*, Article 4(1)(b).

¹⁸¹ Resolution 2349 recognised the ‘adverse effects of climate change and ecological changes among other factors on the stability of the region’, UNSC Res 2349 (31st March 2017) UN Doc S/Res/2349, Operative para 26; Resolution 2408 provides a

take the next step and recognise climate change as within the scope of Article 39 would be bold, but not unprecedented.¹⁸² It is argued here that a climate change resolution should begin by including a Preambular paragraph that pronounces: *the Security Council determines that the threat of climate change and its consequences constitutes a threat to international peace and security*. If it can centralise climate change as a threat to international peace and security in this way a resolution will come with the requisite gravitas to draw international attention and elevate climate change to the highest security platform, capitalising on the benefits of securitisation and, importantly, opening up further options for the UNSC to pursue.

The UNSC would have the option to introduce new obligations or to reinforce existing ones. The complementary function argued for in this section would largely preclude the adoption of new climate obligations. Trying to introduce a new climate mandate would also invoke the discomfort of the permanent members that have all stated their support for the UNFCCC. Moreover, the activation of Article 39 argued above is already aspirational, if a draft resolution contained further far-reaching content it would surely invoke international condemnation and provoke a veto. The content of a climate resolution should be drawn from the UNFCCC, and predominantly the Paris Agreement. Taking the objectives of Paris and rehousing them in the pinnacle security apparatus of Article 39 could provide an injection of energy into ICL. This approach would not grant the UNSC a mandate beyond that which states have specifically agreed through convention, extinguishing some opposition to this move.

direct recall to Presidential Statement 2011/15 where the UNSC expressed that the adverse effects of climate change may ‘aggravate certain existing threats to international peace and security’, UNSC Res 2408 (27th March 2018) UN Doc S/Res/2408 and UNSC Presidential Statement 2011/15 (20th July 2011) UN Doc S/PRST/2011/15, para 7; Resolution 2423 notes ‘the security implications of the adverse effects of climate change’, UNSC Res 2423 (28th June 2018) UN Doc S/Res/2423, para 68.

¹⁸² Resolution 2177 evolved significantly from its predecessor Resolution 2176, to find the Ebola outbreak as a threat to peace in its own right.

The adoption of this approach should not mean the UNSC is bound to simply copy and paste the provisions of the Paris Agreement. A complementary role can be achieved by comparing the ambition of the Paris Agreement to the means with which it seeks to achieve its objective. A climate resolution could target the gap between the objective to hold temperatures below a 2.0°C increase and the INDCs that are proving unable to match this ambition. At the moment this obligation is discretion orientated, but the Paris Agreement is built on the intention for INDCs to match the ambition of the convention, and so an unintentional gap in the framework exists. The UNSC could introduce provisions that reflect the purpose of the Agreement by calling for states to submit ambitious INDCs that are able to match the objectives of Paris. This was the approach taken within Resolution 1540 that sought to use the objective of the non-proliferation regime to drive its provisions and plug the unintended gaps that had developed.¹⁸³ Treading this line would allow a resolution to offer specific support to ICL, providing a tangible benefit beyond those inherent to securitisation.

Taking this approach might invoke the argument previously made by some permanent members that the UNSC lacks the appropriate climate expertise. Populating a climate resolution might pose legitimate problems for the UNSC. To circumvent these possibilities the IPCC should be called upon to present before the UNSC on the threat of climate change and the intervention required to support the mitigation efforts of ICL. This would reflect the same function undertaken by the WHO in the lead up to Resolution 2177.¹⁸⁴ Bringing the IPCC before the UNSC would not only provide an expert lead for members to follow, but it would also offer an outlet for IPCC findings. On 6th October 2018 the IPCC released a comprehensive

¹⁸³ Its gap-plugging intention was based not on the content of the non-proliferation regime but on its overriding objectives, which had been agreed and supported by state parties. UNSC Res 1540 (28th April 2004) UN Doc S/Res/1540.

¹⁸⁴ Dr Chan Director General of the WHO, Dr Nabarro Senior United Nations Systems Coordinator for Ebola, and Mr Niamah of Médecins Sans Frontières all provided expert briefings before the UNSC. UNSC Verbatim Record (18th September 2014) UN Doc/S/PV/7268.

report on the threat of climate change.¹⁸⁵ It was able to generate significant global attention, appearing on the front pages of international newspapers.¹⁸⁶ However, it had no means with which to stimulate uptake of its recommendations and is instead reliant on state parties heeding its message through implementation of their discretionary-based Paris commitments. The UNSC could offer the IPCC a forum in which to give its findings an injection of vigour, and the IPCC could offer the UNSC a sound factual base to draw from when populating its Preambular and Operative paragraphs.

The linguistic construction of a climate resolution will be crucial to whether the permanent members decide to withhold their veto. It would have to be linguistically soft and directives such as 'calls upon', 'encourages' and 'urges' would be required at the start of each paragraph. The content of these paragraphs, however, does not have to remain vague and the UNSC could recommend specific actions. Examples could include: 'the Security Council calls on all states to comply with their Paris Agreement obligations by committing to robust INDCs that match the 2°C objective'; 'the Security Council urges all states to take action appropriate to their circumstances'; 'the Security Council encourages the development of renewable energy sources'; 'the Security Council urges states to find ways to reduce their carbon dependency and support others to do the same'. Adopting these or similar provisions, a climate resolution would be able to complement ICL without stepping beyond the mandate of that already agreed through convention. This balanced approach would send a powerful message from the UNSC, while not directly interfering with state priorities, thus increasing its chance of avoiding a veto.

The next option is to consider if the UNSC can offer a role in terms of capacity building. The 2018 IPCC Report ends by highlighting the importance of strengthening

¹⁸⁵ IPCC Report, 'Global Warming of 1.5 °C: Summary for Policy Makers' (2018).

¹⁸⁶ J Watts, 'We have 12 Years to Limit Climate Change Catastrophe, Warns UN' *The Guardian* (8th October 2018) <<https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report>> accessed 11th October 2018.

the capacities of all states, in particular those of developing states at the national and local levels.¹⁸⁷ The UNSC has in the past proven itself extremely adept in facilitating global cooperation and capacity development on an international concern. The Counter Terrorism Committee (CTC) and subsequent Counter Terrorism Executive Directive (CTED) have proven to be highly useful in helping to develop cooperation and capacity building among nation states. The CTED specifically has been responsible for sending expert officials to Member States to provide technical assistance in the achievement of Resolution 1373 obligations.¹⁸⁸ The CTC is considered a success because of its transparent nature and ability to collect reports from all Member States in one place, creating what Cortright calls ‘the largest body of information about worldwide counterterrorism’.¹⁸⁹ There is no reason why the UNSC cannot repeat this model and introduce a Counter Climate Change Committee charged with the exact same purpose.

It is possible such a committee would only be able to reflect the current UNFCCC structures.¹⁹⁰ It is also distinctly possible that a committee of this nature chaired by the right person could achieve a more succinct set of targets pertaining to information sharing and technology transfer than the already encumbered UNFCCC mechanisms are able to accomplish. Sir Jeremy Greenstock of the UK, who chaired the CTC, has been personally commended for his ‘effective and dynamic’ leadership, indicating the power of selecting the right person to chair such a Committee.¹⁹¹ Smaller bodies with a more precise mandate can in certain instances achieve more than over-populated dispersed institutions trying to balance multiple priorities. A

¹⁸⁷ IPCC Report, ‘Global Warming of 1.5 °C: Summary for Policy Makers’ (2018) 30.

¹⁸⁸ H Kramer, S Yetiv, ‘The UN Security Council’s Response to Terrorism: Before and After September 11th 2001’ (2007) 122 (3) *Political Science Quarterly* 409, 423.

¹⁸⁹ D Cortright, ‘Can the UN Battle Terrorism Effectively?’ (2005) 133 (2716) *USA Today* 62, 62.

¹⁹⁰ A Boyle, J Hartmann, A Savaresi, ‘The United Nations Security Council’s Legislative and Enforcement Powers and Climate Change’ in S Scott, C Ku (eds), *Climate Change and the UN Security Council* (1st edition, EE 2018) 101.

¹⁹¹ J Dhanapala, ‘The United Nations Response to 9/11’ (2007) 17 (1) *Terrorism and Political Violence* 17, 19.

Counter Climate Change Committee could be charged with the discrete task of gathering capacity reports and sharing good practice. It might even have the effect of simplifying some of the overtly complex machinery of international climate law.¹⁹² Again, nothing in the UNSC endeavouring to fulfil such a role would be offensive to those possessing the power of veto, and if past evidence is to be believed such a role could be highly useful to the climate change framework. However, the expertise of the UNSC to undertake such a role might be questioned by the permanent members and so any such committee would have to be carefully designed.

Beyond the inclusion of provisions that intend to support the Paris Agreement, the possibility exists that Article 41 might be activated to introduce a sanctions regime to enforce compliance.¹⁹³ As discussed earlier in this chapter, the implementation of sanctions comes with a number of problems. Their ability to improve a situation is debatable. They do not foster a sense of community or multilateralism. In the climate context it is not clear what sanctions would seek to achieve. Would they target states with particularly poor INDCs, in which case much of the international community would have to be targeted. Or would they target specific climate offenders, in which case half of the international community would have to be targeted. The content of sanctions would also struggle to help the climate framework because of their pressurising nature that might further set back the capacity of states to take climate action. To completely preclude the possibility of sanctions, it is almost certain that any resolution providing a means of enforcement via Article 41 would incur a veto from at least one of the permanent members. Therefore, although part of the benefit of Article 39 is to allow access to this measure, it must remain an abstract possibility not intended for implementation. It is also worth reinforcing that Article 42 measures involving the use of force should be completely ruled out. If the UNSC is to engage climate change and complement the Paris Agreement, it must be through the guise of support and development avoiding all punitive measures.

¹⁹² R Keohane, D Victor, 'The Regime Complex for Climate Change' (2011) 9 (1) Perspectives on Politics 7.

¹⁹³ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 41.

There is no guarantee this complementary intervention would be supported by the permanent members, despite it reflecting their long-standing submissions of support for the UNFCCC without intruding on state autonomy. The UK and France would have to take on a leadership role, capitalising on their progressive stances. The onus would be on them to convince the other permanent members to unite behind the adoption of a resolution. They would need to compromise on the linguistic choices of the provisions to convince China and the USA that no internal obligations would be created. The negotiations that took place between the USA and China on the content of Resolution 1540 showcase that they can compromise even when their perspectives differ significantly.¹⁹⁴ If the UK and France were successful in this task, pressure would mount on Russia to acquiesce to the resolution. Convincing Russia to take this course of action would be an uphill battle. Yet, it represents no greater challenge than that which is already being faced by ICL. There is no reason to discount this course of action because of the robust diplomatic hurdles that would have to be overcome.

This model of response balances the arguments against involving the UNSC with those that advocate for a climate change intervention. The path charted is not a perfect response to the climate problem, but it offers some potential through the impact it may have on the international community. The activation of Article 39 accompanied by some non-binding but precise provisions may have a significant influence on states. It is not punitive or hegemonic and must stay this way to avoid the legitimate concerns expressed earlier. Instead, it is based on a need to galvanise an international response to an international security threat. Reflecting on the current character of the UNSC and the desperate need to find a way to enhance the international response to climate change this route proposes a reasonable and balanced pathway forward. It offers a complementary approach to securitise climate

¹⁹⁴ M Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13 *Journal of Conflict and Security Law* 303.

change within the meaning of Article 39 that is steeped in pragmatism and possibility.

V. The Effectiveness of a Complementary Resolution

This last section intends to consider whether or not involving the UNSC in climate change through the advocated complementary response would be effective or not. It will apply the three standards of effectiveness introduced in Chapter Two (legal, behavioural, problem-solving), before offering reflections on why we must persist with this pathway.

Beginning with legal effectiveness, this standard refers to the extent that a problem can be transplanted into a legal regime.¹⁹⁵ The UNSC is not a legislator, but its output has been afforded a character akin to that of legislation through the UN Charter.¹⁹⁶ It has also crafted resolutions tantamount to legislation.¹⁹⁷ If the permanent members can be convinced to adopt a resolution on climate change then the legal standard will have been achieved. The near universal membership of the UN also means that every member state will have to abide by such a resolution, increasing the degree of legal effectiveness that could be attached to it. However, the legal standard is limited by its focus on the creation of law and does not consider the purpose for which that regime was created or the means in which it seeks to achieve it. For this, we need to consider other measures of effectiveness.

¹⁹⁵ O Young, *'International Governance: Protecting the Environment in a Stateless Society'* (1st edition, Cornell University Press, 1994) Ch.6.

¹⁹⁶ Charter of the United Nations (24th October 1945) 1 UNTS XVI, Article 25.

¹⁹⁷ P Szasz, 'The Security Council Starts Legislating' (2002) 96 (4) *The American Journal of International Law* 901; S Talmon, 'The Security Council as World Legislature' (2005) 99 *The American Journal of International Law* 175; M Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13 *Journal of Conflict and Security Law* 303; E Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?' (2004) 28 *Fordham International Law Review* 542.

Behavioural effectiveness refers to the extent that a regime can alter the behaviour of those subjected to it towards meeting its stated objective.¹⁹⁸ Applying this standard means much more focus is placed on the content of a climate resolution. There is little doubt that the tone of a climate resolution would be crucial to its adoption. The linguistic structure would have to be reflective of Resolution 2177 and avoid anything remotely similar to the hard character of Resolution 1373. This immediately brings into question the ability of a complementary resolution to alter the behaviour of those subjected to it. The possibility of obligations that mandate behavioural changes is one of the key arguments against involving the UNSC, and so it is almost certain that the provisions with a resolution would avoid language that impinges upon the autonomy of states.¹⁹⁹ If the language of a resolution is going to be advisory in much the same way as the Paris Agreement is construed as containing soft provisions, does this preclude behavioural effectiveness?

The short answer is we do not actually know what behavioural changes, if any, will follow a climate resolution. What we do know is that Resolution 2177 was carefully constructed to avoid hard obligations and, as demonstrated above, it was able to inspire a vast increase in international effort. In other words, it was able to encourage a renewed set of behaviours from the international community absent mandatory language. The securitisation of an issue through the world's most elevated security institution may be enough to prompt state-level action irrespective of the mandatory or non-mandatory nature of the legal instrument. This possibility opens up lines of future research, and it would be useful to determine if there exists a difference in state uptake between those resolutions that necessitate action and those that hope to encourage behavioural alterations. It may be the case that the UNSC's position as the world's premier security institution would have an impact on

¹⁹⁸ O Young, *International Governance: Protecting the Environment in a Stateless Society* (1st edition, Cornell University Press, 1994) Ch.6.

¹⁹⁹ A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations' (2011) 23 *Global Change, Peace and Security* 315.

state action irrespective of a climate resolution's construction, but this would have to be tested in further research.

The problem-solving standard refers to the degree that a response can solve a problem.²⁰⁰ Would a complementary climate resolution offer more in this regard than is currently being achieved by the Paris Agreement? The answer is again unknown because we do not know how the international community will react to such a resolution. However, the Paris Agreement, even if implemented in full, is unlikely to resolve the climate crisis. As was shown in Chapter Two it is failing to slow the problem of emissions, necessitating that we consider more exceptional measures. Thus, even though it is unknown whether a complementary climate resolution would exhibit problem-solving effectiveness, there exists a potential that must be explored given the ineptitude of the current response.

However, even where the UNSC takes a hard approach, like that seen in response to terrorism and proliferation, its ability to solve problems may be questioned.

Terrorism persists despite Resolution 1373.²⁰¹ Resolution 1540 was unable to inspire unanimous compliance because some states simply did not have the capacity to meet the requirements set out.²⁰² This brings into question whether the UNSC is suitably effective at solving problems. Despite the continued existence of terrorism, the level of impact it has been able to achieve per attack has not replicated that seen in 2001. The proliferation of WMDs by non-state actors to terror groups has been greatly disrupted and this may be because of the efforts of states to comply with

²⁰⁰ O Young, *International Governance: Protecting the Environment in a Stateless Society* (1st edition, Cornell University Press, 1994) Ch.6.

²⁰¹ R Jackson, *Writing the War on Terrorism: Language, Politics and Counter Terrorism*, (1st Edition, Manchester University Press 2005); N White, 'Preventative Counter Terrorism and International Law' (2013) 18 (2) *Journal of Conflict and Security Law* 181.

²⁰² P Crail, 'Implementing the UN Security Council Resolution 1540' (2006) 13 *Non-Proliferation Review* 355.

Resolution 1540.²⁰³ This might allow the claim that these problems are to some extent being addressed in an ongoing manner. This raises the question as to what would have happened with regard to these two threats had the UNSC not securitised them. A counter-factual reasoning process might provide some answers to this question, but it is beyond the scope of this project, requiring extensive methodological apparatus.²⁰⁴ Nonetheless this is a line of research that could be explored in the future.

In regard to the Ebola outbreak, it is again impossible to say what would have happened had it not been securitised, but the evidence pre-and post-UNSC intervention does highlight its problem-solving potential. As was demonstrated earlier in this chapter, throughout 2014 the outbreak only worsened and despite the WHO and other organisations offering assistance through the ordinary modes of response, it was only when securitisation took place that the problem started to be addressed. The international community responded through the provision of resources directly to the states in question. Healthcare professionals and other related experts were deployed and the WHO received an influx of funding.²⁰⁵ This was inspired by a resolution that did not mandate action from the international community, indicating that the UNSC might offer problem-solving potential as part of its inherent character. Would this be reflected in the climate change context? It is hard to say because the problems are so distinct. But we do know that the Paris Agreement offers little problem-solving capacity, and this is reason enough to consider the potential of a complementary resolution to inspire greater international action.

²⁰³ I Khripunov, 'A Work in Progress: UN Security Council Resolution 1540' (Arms Control Association, May 2014) <https://www.armscontrol.org/act/2014_05/A-Work-in-Progress-UN-Security-Resolution-1540-After-10-Years> accessed 10th September 2020.

²⁰⁴ For a discussion on counter-factual reasoning method see: J Hovi, D Sprinz, A Underdal, 'The Oslo-Potsdam Solution to Measuring Regime Effectiveness: Critique, Response and the Road Ahead' (2003) 3 (3) *Global Environmental Politics* 74.

²⁰⁵ See Section IV, Subsection B for a full run down of the response that followed Resolution 2177.

However, it must be remembered that the complementary response is not being advocated as a means to to override the Paris Agreement. Instead it is argued that a climate resolution could be used to provide an injection of impetus to the Agreement. By capitalising on the potential of the UNSC to generate a renewed momentum, a complementary climate resolution could be a means in which to encourage states to engage with the Paris Agreement in a way they have so far chosen not to do, and thus improve its problem-solving capacity. In 2020 we stand on the edge of a precipice, one that threatens to overhaul the way life on earth exists. The UNSC may not offer a silver bullet in terms of effectiveness, but it offers potential. Importantly, it is potential that has yet to be tested in regard to this catastrophic threat, unlike the ordinary realm of international law, which, on its own, is failing to solve the problem. Thus, there is every reason to pursue a complementary climate resolution in the hope that it might galvanise the international community to provide a more effective climate response.

Conclusion

*'In conclusion, the last decade has shown an increased level of activity within the UNSC in the field of climate change.'*¹

I. Thesis Findings

This thesis has advanced six principal arguments. First, the theory of securitisation enables a switch in focus that removes the need to define Article 39 and instead allows us to examine how it is activated. By centralising the permanent members as the principle securitising actors on the UNSC it is possible to identify how they argue for the securitisation of threats and then use this knowledge as a way to consider if the same arguments relate to climate change.

Second, the current mechanisms intended to mitigate climate change are failing. The UNFCCC, Kyoto Protocol and Paris Agreement comprise a framework that has cultivated discord and frustration, precluding any measure of meaningful mitigation where emissions are concerned. The latest addition to this framework, the Paris Agreement, sought to extinguish some of the inherent points of dispute by centralising discretion. It went too far, and the complete autonomy of states to set their own climate agendas through Nationally Determined Contributions has created a void between the 2°C objective and the actions undertaken to meet it.

Third, through analysis of the UNSC's historical use of Article 39 it is possible to draw distinctions within the nature of the threats engaged. By providing a definition to the words *peace* and *security* it was identified that early interventions fall more clearly under the heading of peace while contemporary threats exhibit international security at their core. As such international security can be recognised as a referent object for the purposes of securitisation theory. Climate change is of a nature more akin to

¹ F Sindico, 'Climate Change and Security' (2017) 3 Carbon and Climate Law Review 187, 190.

international security than anything else, allowing comparisons to be drawn between it and these other contemporary threats engaged by the UNSC.

Fourth, the narratives and their underpinning thresholds and triggers that lead the permanent members to activate Article 39 were analysed. It was argued that five interrelated narratives (magnitude, transnational scale, collective interest, insufficient response, and urgency) are routinely centralised by the permanent members. If the right conditions manifest across and between these five narratives the permanent members can become convinced of the need to securitise a threat within the meaning of Article 39.

Fifth, applying these narratives to climate change revealed that only in certain instances could it be framed to prompt securitisation. Extreme weather events exacerbated by climate change were able to trigger all five narratives in a way that resonates with the reasoning of the permanent members. Those that seek the securitisation of climate change should frame their arguments accordingly if they wish to convince the permanent members of the need to intervene via Article 39.

Six, despite the securitisation parallels between climate change and the activation of Article 39 there exist legitimate arguments against taking this step. Acknowledging those arguments against climate change on the UNSC's agenda, and the particular perspectives of the permanent members, this thesis argued that a complementary response aimed at mitigation could realistically be centralised. A complementary response could offer an injection of vitality and may create an impetus that is currently absent from the realm of international climate law. Although it is not clear to what extent this will be effective at addressing the problem, there is room to believe there is at least potential for improvements, thus making it imperative to explore the securitisation of climate change before the UNSC while we still have the capacity to act.

II. Going Forward

These findings do not mean that climate change will miraculously become part of the UNSC's agenda. Rather, they offer a way in which proponents of climate security might seek to argue the transition of climate change into the remit of Article 39. The need for this shift is becoming more urgent with each day, and the status quo currently presiding must not be allowed to continue. While this research was coming to its conclusion COP25 took place and again the international community proved itself unable to move towards greater climate action.² The conference was marred by disagreement and defeat, with the only real show of commitment coming from campaigners.³ It is this continual breakdown that legitimises the research undertaken here. If we cannot in 2020 trust states to take the required action independently, we must look for ways to incite greater commitment. The securitisation of climate change through Article 39 provides a potential means in which to achieve this, that, importantly, has yet to be tried.

This thesis offers practical guidance for those that might seek to convince the UNSC of the need to intervene. In 2011 when Mr Steiner, then Director of UNEP, came before the UNSC to argue climate change as a threat he did so absent the knowledge cultivated here.⁴ His presentation was scientifically accurate but unable to draw upon the narratives that prompt intervention. He did not address the UNSC in response to a climatic emergency, and so his statement lacked a sense of urgency. The permanent members were unable to link the arguments made to visible harm, inadvertently reinforcing the idea that climate change was an abstract threat and not an immediately pending one. Mr Steiner's opening remarks that he was addressing

² A Chandrasekhar, 'The UN Climate Talks Ended in Deadlock. Is This Really The Best the World Can Manage?' *The Guardian* (21st December 2019)

<<https://www.theguardian.com/commentisfree/2019/dec/21/un-climate-talks-deadlock-cop25>> accessed 30th December 2019.

³ Anonymous, 'COP 25 Climate Talks Have "Failed the People" Activists Say' *The Japan Times* (15th December 2019)

<<https://www.japantimes.co.jp/news/2019/12/15/world/science-health-world/cop-25-climate-talks-failed-people-activists-say/#.XgojTS2cYxg>> accessed 29th December 2019.

⁴ UNSC Verbatim Record (20th July 2011) UN Doc S/PV/6587.

the UNSC from 'the 'perspective of the knowledge, the science and the expertise' were far removed from arguments related to magnitude, transnational scale, indiscriminate harm and urgency. His sedate reference to 'the significant and profound implications of climate change' was unable to pierce through the veil of self-interest that presides over the UNSC.⁵

If the UNEP, the WMO or the IPCC are able to come before the UNSC again they should do so in response to a climatic emergency that allows them to characterise the threat according to lives lost, scale of the harm, indiscriminate nature and the urgent need for collective responses. There is scope to believe that framing arguments accordingly can be successful in generating unity among the permanent members on the need for securitisation of a threat. In 2014 Dr Chan, then Director of the WHO, reasoned Ebola as a serious international security threat relying on arguments linked to lives lost, scale, wider impact, collective security and urgency. All of which were picked up by the permanent members and used to justify the activation of Article 39.⁶ There is no guarantee this will work in the climate context, but there is a desperate need to try. This thesis offers those fighting climate change a new approach to test in looking to advance the climate security agenda and the findings here will have most value when given practical application.

In terms of future research this thesis has offered up some avenues of further exploration. First, the approach of focussing on the permanent members as the securitising actors was only one way to proceed. It is possible that specific actors could have been isolated, which, although methodologically beyond this project, might have offered a way to develop more discrete knowledge on the power balance of the UNSC, and specifically between the permanent members. We already know

⁵ Ibid., 3; Reference to past natural disasters, such as Hurricane Mitch, were made but the impact these examples had on the UNSC was limited because of their existence in the past.

⁶ UNSC Verbatim Record (18th September 2014) UN Doc S/PV/7268.

that there exists a hierarchy between them;⁷ it would be useful to understand how this transfers into tangible action in the pursuit of a securitising agenda. A second and similar line of further investigation, this thesis has only analysed one half of the securitisation process. The acceptance of a securitising move by the non-permanent members was again beyond the methodological remit of this project, but it would be extremely useful to understand why they choose to acquiesce to the securitisation of a subject and whether or not they are able to exert some form of influence over the permanent members. This dynamic between the two groups on the UNSC could be explored in greater detail to understand how progress on particular matters is achieved. Both cases of further research seek to employ securitisation theory in slightly different ways to provide greater understanding on the working practices of the UNSC, which may in the long run help the climate security agenda to progress.

A last and more abstract line of thinking that has stemmed from this research is how the principles of administrative law might be useful to help advance the legitimacy of the UNSC. Its political motivations are able to produce absurd results, whereby two similar situations are not subject to the same level of intervention.⁸ This lack of consistency would not be acceptable in the context of administrative principles at the domestic level. Research already exists on the application of some such principles beyond the domestic realm to the UN,⁹ but in the quest to further legitimise the UNSC and enhance the achievement of its mandate a discrete application of the consistency principle might be useful. The narratives that lead to intervention

⁷ S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

⁸ D A Mahapatra, 'The Mandate and the (In)Effectiveness of the United Nations Security Council and International Peace and Security: The Contexts of Syria and Mali' (2016) 21 *Geopolitics* 43.

⁹ I Hurd, 'The UN Security Council and the International Rule of Law' (2014) 7 *The Chinese Journal of International Politics* 361; J Alvarez, 'International Organisations and the Rule of Law' (2003) 14 *NZPIL* 3; D Forsythe, 'The UN Security Council and Response to Atrocities: International Criminal Law and the P-5' (2012) 34 *Human Rights Quarterly* 840.

analysed here inadvertently attempt to address this deficit in consistency through the unintentional endeavour to hold the permanent members to their own standards of reasoning. This line of thinking reflects the administrative principles that are required to uphold the rule of law, something that should be explored further in regard to the UNSC. An explicit research agenda would be necessary to link the narratives here to the principle of consistency and usefully take this idea further.

III. Climatic Catastrophe

Sindico is correct in his assertion that the UNSC has been increasingly examined in recent years by those seeking to further the climate security agenda.¹⁰ Moreover, its own ventures into the realm of climate change have increased. This nexus must not be allowed to fade, and the research community should continue to build momentum and search for more ways to link the UNSC with climate mitigation. This research has endeavoured to traverse this pathway by offering a practical approach that might be useful to those seeking to further the securitisation of climate change.

It is possible that anyone reading this thesis may adopt the critique that it is encased in too much hope and aspiration; that there are too many obstacles which will prevent the UNSC positively intervening in climate change. While it is perfectly acceptable to identify these potential challenges, they should be matched against the very certain realities that are currently leading humanity ever closer to the climatic cliff edge. International climate law is routinely and consistently paralysed. The UNSC could respond to this problem with the positivity it has conjured in the past, where it has been able to lead on problematic subjects. There is no reason to believe it cannot do so once again. The challenges are great, but the threat of climatic harm is far greater.

¹⁰ F Sindico, 'Climate Change and Security' (2017) 3 Carbon and Climate Law Review 187.

The prospect of climatic tipping points like the complete melting of the polar ice caps or the destruction of the Amazon Rainforest are becoming less remote with each day that passes.¹¹ As climate destruction exacerbates, the chance of a ‘global cascade of tipping points’ becomes more probable, posing ‘an existential threat to civilization’.¹² It should also be clear that scientific analysis until fairly recently has been cautious, avoiding hyperbole and dramatization.¹³ Even the IPCC, which has been instrumental in contextualising and justifying the research here, has come in for criticism because of its tendency towards ‘reticence and caution, erring on the side of least drama’.¹⁴ These guarded findings are only the tip of the iceberg and it is now becoming clearer that we face a crisis that may turn the earth into a ‘less hospitable, hothouse’.¹⁵

The Australian wildfires of 2020 encapsulate this argument with terrifying clarity.¹⁶ The extent of the current spread is unprecedented and at the time of writing 24 people have died, 2000-plus homes have been destroyed and an immeasurable number of plants and animals have perished.¹⁷ Some merchants of doubt are downplaying these fires and casting scepticism on the impact climate change has had

¹¹ T Lenton et al., ‘Climate Tipping Points – Too Risky to Bet Against’ (2019) 575 Nature 592.

¹² Ibid., 594, 595.

¹³ D Spratt, I Dunlop, ‘What Lies Beneath’ (National Centre for Climate Restoration 2018).

¹⁴ Ibid., 40.

¹⁵ T Lenton et al., ‘Climate Tipping Points – Too Risky to Bet Against’ (2019) 575 Nature 592, 594.

¹⁶ D Marr, ‘Australia is Becoming a Nation of Dread – and the World Looks on With Pity and Scorn’ *The Guardian* (1st January 2020) <<https://www.theguardian.com/commentisfree/2020/jan/01/australia-is-becoming-a-nation-of-dread-and-the-world-looks-on-with-pity-and-scorn>> accessed 7th January 2020.

¹⁷ N Kommenda, J Holder, ‘Bushfires Have Swept Large Parts of Australia Since October, Leaving More Than 20 People Dead, Destroying Thousands of Homes and Devastating Wildlife’ *The Guardian* (7th January 2020) <<https://www.theguardian.com/australia-news/2020/jan/07/visual-guide-see-how-australias-bushfires-are-raging-across-the-country>> accessed 7th January 2020.

on this event.¹⁸ The scientific community, on the other hand, points out that Australia has experienced its ten hottest years on record since 2005, and these higher intensity fires are just one consequence of this hotter, drier Australia, with experts predicting more of the same to follow.¹⁹

The Australian wildfires are just one example among many climatic impacts devastating lives.²⁰ Climate change is an overwhelming threat that no state can escape irrespective of development.²¹ Those in positions of authority in and outside the UNSC must be convinced of the need to respond globally and with an earnestness that is currently absent throughout much of ICL. It is against this backdrop that this thesis was crafted, and the extreme possibility of an Article 39 intervention centralised as a reasonable and necessary step in the climate response movement.

In an ideal world it would not be necessary to call upon the UNSC to further the climate response. Part of the reason for recognising the arguments against this move in Chapter Six was to highlight that it is not universally positive. However, the link

¹⁸ G Henderson, 'Unhappy New Year but Fires Aren't the End of the World' *The Australian* (4th January 2020)

<<https://www.theaustralian.com.au/commentary/unhappy-new-year-but-fires-arent-end-of-the-world/news-story/2ef3423d389d2ef6be3bbbbb47e9151>> accessed 7th January 2020.

¹⁹ WMO, 'Australia Suffers Devastating Bushfires' (WMO, 7th January 2020)

<<https://public.wmo.int/en/media/news/australia-suffers-devastating-bushfires>>

accessed 7th January 2020; S Gibbens, 'Intense "Firestorms" Forming From Australia's Deadly Wildfires' *National Geographic* (6th January 2020)

<<https://www.nationalgeographic.com/science/2020/01/australian-wildfires-cause-firestorms/>> accessed 7th January 2020.

²⁰ WMO, 'State of the Climate 2018 Shows Accelerating Climate Change Impacts'

(WMO, 28th March 2019) <<https://public.wmo.int/en/media/press-release/state-of-climate-2018-shows-accelerating-climate-change-impacts>> accessed 5th January 2019.

²¹ D Dunne et al., 'In-depth Q&A: The IPCC's Special Report on Climate Change and Land' (The Carbon Brief, 8th August 2019)

<<https://www.carbonbrief.org/in-depth-qa-the-ipccs-special-report-on-climate-change-and-land>> accessed 5th January 2020.

between climate change and the UNSC has continued to advance because of the ineffectiveness of international climate law in comparison to the advancing threat. Through UNSC intervention we might have a chance of generating global momentum and securing the stabilisation of emissions in time to stave off climate change, which has intensified without falter over the last decades and will certainly continue on until irreversible catastrophes become the norm.²² As Geoffrey Palmer said, we must find ways to reach 'international agreement which will remove the peril of climate change'.²³ To that end, it is hoped this thesis has some value in progressing the climate security agenda before we lose control of the situation and experience a climatic shift that radically alters all life on earth.

²² WMO, '2019 Concludes a Decade of Exceptional Global Heat and High-impact Weather' (WMO, 3rd December 2019) <<https://public.wmo.int/en/media/press-release/2019-concludes-decade-of-exceptional-global-heat-and-high-impact-weather>> accessed 6th January 2020.

²³ G Palmer, 'An International Regime for Environmental Protection' (1992) 42 *Journal of Urban and Contemporary Law* 5, 18.

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