

BOOK REVIEW

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 BY TAMSIN PHILLIPA PAIGE (BRILL NIJHOFF, 2019) 343 PAGES. PRICE EUR151.00 (HARDBACK) ISBN 9789004391390.

Tamsin Phillipa Paige offers us a new legal perspective on a fundamental yet under-studied topic of public international law. In *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*, Paige queries the meaning of a 'threat to the peace'.¹ This concept is key to triggering United Nations Security Council ('UNSC') mandates under Chapter VII of the *Charter of the United Nations*.² Chapter VII mandates are UNSC actions binding on all UN member states as a matter of international law.³ Therefore, from a legal perspective, these are central UNSC activities, with higher on-the-ground stakes as well.

A 'threat to the peace' is only one of three triggers for Chapter VII action. The other two are a 'breach of the peace' and an 'act of aggression'.⁴ These two, Paige argues, have clearer thresholds, and are easily ascertainable crossings of the proverbial Rubicon.⁵ What a 'threat to the peace' means, however, is fluid and open to interpretation.⁶ Ordinarily, she suggests, this concept is labelled as too political and therefore eludes systematisation.⁷ But she tackles the challenge with great gusto and offers new and useful insights.

The book shines in the wealth of granularity it offers. Paige divides the book into three main parts. Part One is a discussion of theory and methodology.⁸ Part Two offers an abundance of 22 case studies, organised by situations in which the UNSC considered the issue of 'threat to the peace' between 1946 and 2013.⁹ These case studies include a blend of localised situations and 'delocalised' substantive matters.

The localised situations are: Spain under Franco (1946); Palestine (1948); Portuguese colonialism in Africa (1963); apartheid in South Africa (1963–77); the Vietnamese invasion of Cambodia under the Khmer Rouge (1978–79); the US–Iran hostage crisis (1979); the occupation of Namibia by South Africa

¹ Tamsin Phillipa Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' under Article 39 of the UN Charter* (Brill Nijhoff, 2019) ('*Petulant and Contrary*').

² *Charter of the United Nations* arts 39–51.

³ *Ibid* art 25.

⁴ 'The Security Council shall determine the existence of any *threat to the peace, breach of the peace, or act of aggression* and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security': *ibid* art 39 (emphasis added).

⁵ Paige, *Petulant and Contrary* (n 1) 1.

⁶ *Ibid* 1–2.

⁷ *Ibid* 11–12.

⁸ *Ibid* 11–42.

⁹ *Ibid* 45–223.

(1981–83); Iraq’s repression of its civilian population (1991); the wars of dissolution of Yugoslavia (1991); the Haitian coup (1991–93); the bombing of Pan Am Flight 103 and the extradition of some of its suspected perpetrators (1992); the Rwandan genocide (1993–94); Afghanistan (1999); East Timor (1999); the war against Iraq, particularly the use of force by the United Kingdom and United States (2003); piracy in the Horn of Africa (2005–13); and the civil war in Syria (2013).

The broader situations are: the small arms trade (2013); the AIDS epidemic in Africa (2005); the non-proliferation of weapons of mass destruction (2002–06); sexual violence in war (2008–10); and chemical weapons (2013). Most of these broader situations (and, for that matter, many of the more localised situations as well) are still ongoing, but Paige chooses 2013 as the cut-off date for the materials, which explains the reference dates indicated here. These time constraints are needed in any sort of analysis, and thus unavoidable. While they present only partial pictures in many instances, they also help us centre those early stakes and can provide us with broader imaginative possibilities by focusing attention on the contingencies at critical early junctures.

Each of the chapters in Part Two follows the same structure: an examination of the relevance of the situation for the book and its argument; a contextualisation of the case study; an examination of the actions of the five permanent members of the UNSC (the ‘P5’ — China, France, Russia, UK and US); and a summary. This structure allows for comparability of the case studies in helpful ways, as the reader knows what they are reading towards and how the discussion is going to unfold. While I agree with Paige that the repetitive structure was the right structural choice for the book, I also wish it had been deployed in ways to drive analytical angles and insights more strongly. For instance, instead of merely referring to ‘Justificatory Discourse of the P5’ as a heading, it might have been even better to tell the reader more about what the overall tone or outcome of that discourse was in that instance already from the heading.

For this reviewer, one of the particularly fascinating things about Paige’s analysis is that most of these are situations that we often discuss in relation to other fora, with UNSC debates being footnotes or playing relatively minor parts.¹⁰ By centring the UNSC debates, Paige achieves a compelling retelling of these stories from fresh perspectives that underscores certain political stakes that often get lost in broader, multifaceted debates. While multifaceted narratives are important and generally closer to accurate accounts of ‘the truth’, these accounts, through a single prism, shed important light on and add much-needed nuance to what otherwise becomes a clichéd, throwaway remark in the broader histories, simply indicating that the UNSC ‘acted’ or ‘was paralysed’ or ‘could not reach consensus’. Paige’s closer examination of debates within the UNSC reaches the same conclusion we already knew, but also illuminates the stakes of those debates precisely by adding granularity to them.

¹⁰ See, eg, John Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Jacana Media, 2018); Ian Martin, *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention* (Lynne Rienner Publishers, 2001); Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Cornell University Press, 2002).

Part Three uses this same material and retells the book's stories from a very different perspective: that of each of the P5.¹¹ These chapters revisit the granularity of the case studies and (re)focus on the book's main task: to identify patterns of behaviour of the P5 in what they articulate as criteria in determining whether a 'threat to the peace' exists, with its ensuing legal, political and often even military consequences. While the P5 choice may seem rather predictable from the perspective of international law and politics analysis coming from the Global North, Paige justifies it here (convincingly, in this reviewer's view) because it is the P5 that are perennial presences in the UNSC and have the fabled veto power.¹² Therefore, on the first issue, focusing on these countries gives readers a longer *durée* to examine. From an international law perspective, the focus on the P5 also lends some stability to the work of the UNSC and leverages its institutional memory. And the fact of the veto power means that, as far as the UNSC is concerned, no action happens without the concurrence of each of the P5, which means that examining their actions is more important than the actions of non-permanent members.

The book makes a significant contribution to international legal scholarship through its granularity, which also informs its methodological contribution. Specifically, the book prioritises narrative, which is useful in understanding how patterns emerge even in the chaos of international security law (if only one expends the time and energy to look at the narratives closely enough). Narrative is also an important move from the perspective of queer approaches to (international) law, where Paige is a leading voice.¹³

Paige's distinctive authorial voice comes through clearly in the book. The book leverages terrific data to paint a picture useful on its own, and more so given the growing importance of the topic. As more and more things are 'securitised', or placed firmly under the gaze of the UNSC, it is useful to understand what empirically helps us cross that Rubicon to trigger binding action by the UNSC. While the framing effects of increasing reliance on the UNSC and treatment of topics as 'threats to security' vary in their quality, reach and desirability, it is still the case that this trend, which had only barely started in late 2013 (the cut-off for the book's dataset), has only gained momentum.

In particular, there is growing momentum on the securitisation of broader situations in areas as diverse as terrorism,¹⁴ climate change,¹⁵ women's rights,¹⁶

¹¹ Paige, *Petulant and Contrary* (n 1) 227–76.

¹² Ibid 18–19.

¹³ See, eg, Tamsin Phillipa Paige, 'The Maintenance of ~~International Peace and Security~~ Heteronormativity' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2018) 91.

¹⁴ See, eg, Eric Rosand, 'Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism' (2003) 97(2) *American Journal of International Law* 333.

¹⁵ See, eg, Francesco Sindico, 'Climate Change: A Security (Council) Issue' (2007) 1 *Carbon and Climate Law Review* 29.

¹⁶ See, eg, Catherine O'Rourke and Aisling Swaine, 'CEDAW and the Security Council: Enhancing Women's Rights in Conflict' (2018) 67(1) *International and Comparative Law Quarterly* 167.

children's rights,¹⁷ cultural heritage,¹⁸ financial crime¹⁹ and others. It seems that the UNSC is increasingly mobilised not to resolve localised issues, but to address rather complex and world-encompassing matters — a type of context that is relatively under-explored in the book due to its timeline. Therefore, there is much to be learned from, and updated, in Paige's insights. Of particular interest, at least to this reviewer, is whether there are significant differences in the constructions of 'threat to the peace' across localised and broader issues, and whether the P5 are mindful that, when speaking to broader contexts, they are in fact acting as lawmakers rather than dispute settlers, which significantly shapes the stakes (and thus, potentially, the discourse) of their pronouncements on matters of international security.

For this reviewer, while the data is robust and a significant contribution in its own right, one might have done even more with it. Specifically, there could have been a lot more discussion of not only 'what' the P5 positions are and 'how' they are operationalised, but also 'why' these positions, and what they mean for how one should think of the UNSC and international law more broadly. Similarly, there could also have been more discussion of how the UNSC debates influenced, reflected or were set aside by legal developments elsewhere around the same situations, so one could get a clearer sense not only of what 'threat to the peace' means, but also how it shapes international law beyond the relatively narrow remit of the UNSC. That said, a reader must not be too greedy by asking for even more of a book that already contains so much insight. That all these questions are triggered by reading the volume is a positive testament to how compelling its narrative is.

It is also worth considering the role of non-permanent members more, particularly those coming from the Global South that are not at all represented in the P5. In this reviewer's view, as a scholar born and trained in the Global South, this book matters to a Global South audience because many such countries, especially countries like Brazil, are frequent players in the ten rotating UNSC seats. Therefore, for these countries in particular to understand what motivates their permanent counterparts — which inevitably influences the basic parameters of what is even imaginatively possible in the UNSC — it is critical to pursue international security law through the eyes of those most affected by this type of law and its violence (states and populations in the Global South). In other words, it is useful to better understand the motivations of (some of) the key players, who also create much of the institutional memory on which the UNSC, like any institution, invariably relies.

Further, if the UNSC is ever reformed and its permanent membership expanded, countries in the Global South like Brazil have already presented their intent to obtain one of those seats.²⁰ Membership reform would be terrific, but it

¹⁷ See, eg, Katrina Lee-Koo, "'The Intolerable Impact of Armed Conflict on Children': The United Nations Security Council and the Protection of Children in Armed Conflict" (2018) 10(1–2) *Global Responsibility to Protect* 57.

¹⁸ See, eg, Kristin Hausler, 'Cultural Heritage and the Security Council: Why Resolution 2347 Matters' (2018) 48 *Questions of International Law* 5.

¹⁹ See, eg, Nicholas Ryder, *Financial Crime in the 21st Century: Law and Policy* (Edward Elgar, 2011).

²⁰ Yehuda Z Blum, 'Proposals for UN Security Council Reform' (2005) 99(3) *American Journal of International Law* 632.

would still be reform, invariably relying on institutional memory of the substantive parameters of UNSC action. Should more countries become permanent members, they would react to a pre-existing framework, much like how decolonising countries around the world had to react to the broader UN framework they did not create and that still to some extent perpetuates colonial habits. To therefore shed light into the dark grooves of path dependencies that already shape and are likely to always shape any iteration of the UNSC, it is crucial to better react to (and perhaps even capture and reshape) the prerogative on violence that this body wields.

Lastly, in light of the ongoing situation on the invasion of Ukraine, and the paralysis of the UNSC given Russia's veto power,²¹ it is worth commenting on the importance of understanding P5 behaviour beyond the veto. To be sure, the book's analysis does not apply to the conflict in Ukraine, since that is a clear act of aggression, and therefore does not fall in the murky line of a 'threat to the peace'. At the very least, therefore, reading this book as the invasion of Ukraine continues is a reminder of how 'threats to the peace' are only one facet of the UNSC's powers, and that stakes in those areas vary (however strong they may feel to local populations). But it is also more, in that even understanding P5 behaviour in those murkier situations of 'threats to the peace' sheds light on the behaviour of states in how they frame the main objectives of the UNSC, and therefore their rallying cries to the international community. Self-determination, as Paige shows, is one of those cries, and one particularly deployed by Russia over time.²² It is thus disappointing that it is one of the key defensive mechanisms of international legality that Russia is choosing to ignore in invading Ukraine, and that UNSC paralysis is preventing this organ from playing the role it otherwise would have played.

The book engages with situations in which the veto was used, or at least threatened. These situations show the reader that, despite certain discursive commitments from states, they are not always internally consistent, nor do they always form a firm agenda of guiding principles for UNSC action.²³ Nevertheless, they do give readers a rough roadmap (or at least an actionable list) of principles and aspirations on which states can rely when calling upon the UNSC. They similarly inform the ways in which the United Nations General Assembly, when stepping into the void created by UNSC paralysis, can tap into discourses of legality, pragmatism and idealism that P5 states deploy as a blueprint for their own agendas as ultimately a more plural site for narration and resolution of international legal problems.

Paige's book is a much welcome addition to the literature on a key yet very under-understood topic of basic public international law. Its use of narrative and the rich base material make it an enlightening and compelling read. It will be a useful reference in the field, and hopefully the light it sheds on the past will not bind us to said past and its path dependencies, but rather compel us to more

²¹ Jelica Gordanić, 'The Ukraine Crisis 2022: An Alarm for the Reform of the UN Security Council?' (2022) 73(1186) *Review of International Affairs* 125, 125–6.

²² Paige, *Petulant and Contrary* (n 1) 263.

²³ *Ibid* 277–8.

intentional imaginings of what international law can be.

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