

# CLIMATE INSECURITY: THE PROMISE AND PERIL OF SECURITISING CLIMATE CHANGE BEFORE THE UNITED NATIONS SECURITY COUNCIL

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*There is virtually no doubt that climate change poses a security risk for many, if not all, regions and peoples of the planet. This scope makes it precisely the type of threat the United Nations Security Council ('UNSC') should be addressing. The pertinent question is, do we want the UNSC as it is currently constituted, to tackle climate change? It is an institution with vestiges of a hegemonic world order that empowers five states above all others. It is also politically fragile, influenced by national policies that can cause it to become gridlocked. Yet, it has some important successes, notably in the areas of terrorism and the proliferation of weapons of mass destruction ('WMDs'), both of which were handled as security threats in a pre-emptive manner. Thus, the UNSC has been situated as a potential means in which to galvanise the international climate response – which is found in the Paris Agreement and should not be afforded much success when measured against the continued increase in global emissions. This paper seeks to evaluate what promise, or peril, the UNSC offers through the securitisation of climate change.*

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## I INTRODUCTION

In 1992, Geoffrey Palmer said in relation to environmental law, '[a]s matters stand today, we lack many of the necessary rules and the means for devising them; we lack institutions capable of ensuring that the rules we have are effective'.<sup>1</sup> Focusing on climate change and the legal responses enacted, it might appear Palmer's statement is no longer relevant. After all, the *United Nations Framework Convention on Climate Change* ('UNFCCC') came into existence in 1992, followed by the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* ('*Kyoto Protocol*') and the *Paris Agreement*.<sup>2</sup> Punctuating these prominent milestones, the Conference of the Party ('COP') system, established under the UNFCCC, has paved the way for additional commitments at the

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<sup>1</sup> Geoffrey Palmer, 'New Ways to Make International Environmental Law' (1992) 86(2) *American Journal of International Law* 259, 259.

<sup>2</sup> *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 162 (entered into force 16 February 2005) ('*Kyoto Protocol*'); *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016).

international level, such as the *Glasgow Climate Pact*.<sup>3</sup> It appears the machinery to tackle climate change and introduce relevant rules does now exist.<sup>4</sup>

However, on closer inspection the situation is somewhat opaque. It is correct that we now have a dedicated climate framework that intends to provide the rules necessary to tackle this threat. Pointing to the *Kyoto Protocol* and *Paris Agreement*, specific international climate laws can be identified.<sup>5</sup> But the simple existence of this framework and subsequent rules should not be taken as a green light to move on from Palmer's concerns. The fact is emissions have continued to spiral,<sup>6</sup> and those states responsible have continued to obfuscate behind platitudes and political rhetoric.<sup>7</sup> Palmer's assertion in 1992 remains valid in 2022, and it must be acknowledged that we lack the international apparatus to devise rules that are effective when matched against the escalating threat of climate change.

Given this backdrop of international legal failure, it is imperative that we find ways in which to galvanise a more exacting response. One such possibility lies in the field of securitisation, and specifically within the idea of bringing climate change onto the agenda of the United Nations Security Council ('UNSC').<sup>8</sup> A discussion which began in 2007,<sup>9</sup> advances have been made in terms of the UNSC's interaction with the climate threat. That said, there is significant scope for further progress, chiefly because as things currently stand the UNSC has not activated its most powerful tool, art 39,<sup>10</sup> meaning full securitisation has yet to occur. The reasons for this are complex and geopolitical in nature but can be summarised aptly through the idea that climate change before the UNSC offers both promise and peril. Nevertheless, it is the argument of this paper that the securitisation of climate change through the UNSC should be explored as a possible means to stem the failings of international climate law ('ICL'). This paper will analyse what such a move might look like and how it could advance our international climate aspirations. It will first delineate the threat and consider the effectiveness of ICL as a response, with a focus on the *Paris Agreement*. Second, the parameters and potential of securitisation will be discussed. Third, the peril of the UNSC securitising climate change will be outlined. Finally, the possibility of

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<sup>3</sup> *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on Its Third Session, Held in Glasgow from 31 October to 13 November 2021: Addendum Part Two*, UN Doc FCCC/PA/CMA/2021/10/Add.1 (8 March 2022) Decision 1/CMA.3 ('*Glasgow Climate Pact*').

<sup>4</sup> See Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25(2) *Review of European Community and International Environmental Law* 142.

<sup>5</sup> See also Peter Christoff, 'Post-Kyoto? Post-Bush? Towards an Effective "Climate Coalition of the Willing"' (2006) 82(5) *International Affairs* 831; Raymond Cléménçon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?' (2016) 25(1) *Journal of Environment and Development* 3.

<sup>6</sup> *Climate Action Tracker* (Web Page, 2022) <<https://climateactiontracker.org>>, archived at <<https://perma.cc/LMU3-577T>>.

<sup>7</sup> See, eg, Adam Morton, 'UN Climate Talks: Australia Accused of "Cheating" and Thwarting Global Deal', *The Guardian* (online, 16 December 2019) <<https://www.theguardian.com/environment/2019/dec/16/un-climate-talks-australia-accused-of-cheating-and-thwarting-global-deal>>, archived at <<https://perma.cc/QU8V-N7DU>>.

<sup>8</sup> See Shirley V Scott, 'Securitizing Climate Change: International Legal Implications and Obstacles' (2008) 21(4) *Cambridge Review of International Affairs* 603.

<sup>9</sup> Francesco Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1(1) *Carbon and Climate Law Review* 29, 29.

<sup>10</sup> *Charter of the United Nations* art 39 ('*UN Charter*').

securitising climate change before the UNSC will be explored, providing a pragmatic but promising pathway to intervention.

## II THE INEFFECTIVE *PARIS AGREEMENT*

There exists little doubt within the scientific community that the composition of the atmosphere has and continues to be altered by anthropogenic behaviour,<sup>11</sup> the consequence of which is a warming planet, leading to climate change. Since 1880, the earth's temperature has increased by 0.08°C per decade, which is an overall increase of approximately 0.86°C.<sup>12</sup> The latest report from the Intergovernmental Panel on Climate Change ('IPCC') provides a number of startling realities that have already been observed following this increase in temperature and changes to the global climate.<sup>13</sup> The report finds that '[w]idespread, pervasive impacts to ecosystems, people, settlements, and infrastructure have resulted from observed increases in the frequency and intensity of climate and weather extremes'.<sup>14</sup> It goes on to find that climate change has caused 'substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open marine ecosystems'.<sup>15</sup> Moreover, food and water security has been undermined, reducing 'efforts to meet Sustainable Development Goals',<sup>16</sup> while the physical and mental health of people globally has been 'adversely affected'.<sup>17</sup> Monitored vertebrate populations have declined by more than 68% since 1970 due to the relentless development of humanity, which directly fuels climate change and exacerbates the scale of the problem from top to bottom.<sup>18</sup> We must be clear, climate change is not only the greatest threat humanity has ever faced but it has the capacity to irreversibly change the face of the planet.

There should also be an understanding that humanity cannot simply sidestep the impacts of climate change. A heated atmosphere means greater glacial melt each year, to the point where seasonal freeze–thaw processes may see arctic ice not refreeze.<sup>19</sup> Fresh water deposits into the global oceans will see a steady increase in sea levels. The minor consequence of this will be an escalation in coastal erosion and a loss of land; the major impact will be the complete submersion of small islands states.<sup>20</sup> Tuvalu is taking this risk so gravely that it

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<sup>11</sup> IPCC, *Summary for Policymakers* (Report, 2018).

<sup>12</sup> Rebecca Lindsey and Luann Dahlman, 'Climate Change: Global Temperature', NOAA (Web Page, 18 January 2023) <<https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>>, archived at <<https://perma.cc/Z68A-RHFL>>.

<sup>13</sup> See generally IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Report, 2022) 5–33 ('*Climate Change 2022*').

<sup>14</sup> *Ibid.* 9.

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

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.* 11.

<sup>18</sup> WWF, *Living Planet Report 2020: Bending the Curve of Biodiversity Loss* (Report, 2020) 16, 20.

<sup>19</sup> B Wouters et al., 'Early 21<sup>st</sup> Century Mass Loss of the North-Atlantic Glaciers and Ice Caps' (2016) 18 *Geophysical Research* 1579.

<sup>20</sup> 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: see UNEP *Global Environment Outlook: Small Island Developing States Outlook* (Report, 2014) 4 <<https://wedocs.unep.org/handle/20.500.11822/9293>>, archived at <<https://perma.cc/WGL5-5B4Y>>.

has begun building an electronic version of the entire island to be placed in the Metaverse, guaranteeing its cultural survival, ensuring future generations can see the island as it once was.<sup>21</sup> Oceanic composition will also effect global currents, which will have severe impacts at the continental level.<sup>22</sup> Some regions of the world are already beginning to experience unprecedented flooding and changes to their local hydro systems.<sup>23</sup> Australia, for example, is beginning to experience floods and bush fires that have forced the evacuation of tens of thousands of people in the eastern regions.<sup>24</sup> It is even possible that the South Pacific's climate may have irreversibly altered.<sup>25</sup> Yet, this is by no means isolated to Australia and the southern pacific states, and many regions of the world are beginning to experience the same level of extreme weather.<sup>26</sup> Climate change is coming, and no amount of denial will alter its trajectory.<sup>27</sup>

Yet, we know all of this, and it sits as the motivation for the international legal framework on climate change. Originating in 1992, the *UNFCCC* remains today, underpinning the later agreements intended to address climate change. The *UNFCCC* seeks to achieve the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.<sup>28</sup> This framework convention was followed in 1997 by the *Kyoto Protocol*, that attempted to introduce hard obligations to solve the climate threat by meeting the *UNFCCC*'s objective.<sup>29</sup> This approach, although not overly ambitious through the targets created,<sup>30</sup> was a resounding failure.<sup>31</sup> Within the period 1990 to 2013, global output of CO<sub>2</sub> rose by 60%, seriously undermining any level of effectiveness that might be attributed to the Protocol,<sup>32</sup> with some

<sup>21</sup> Beatriz Valero de Urquia, 'Tuvalu Turns to the Metaverse to Guarantee Islands' Survival', *E&T: Engineering and Technology* (online, 18 November 2022) <<https://eandt.theiet.org/content/articles/2022/11/tuvalu-turns-to-the-metaverse-to-guarantee-islands-survival/>>, archived at <<https://perma.cc/K9KT-7ZTY>>.

<sup>22</sup> United Nations Environment Programme, *Global Environment Outlook 6: Healthy Planet Healthy People* (Report, 2019) <<https://wedocs.unep.org/handle/20.500.11822/27539>>, archived at <<https://perma.cc/Y38N-6XUW>>.

<sup>23</sup> See Katherine Morton, 'Climate Change and Security at the Third Pole' (2011) 53(1) *Survival* 121.

<sup>24</sup> 'Australia: After the Bushfires Came the Floods' *UN Environment Programme* (Web Page, 17 March 2022) <<https://www.unep.org/news-and-stories/story/australia-after-bushfires-came-floods>>, archived at <<https://perma.cc/2MAB-J2DK>>.

<sup>25</sup> See *ibid.*

<sup>26</sup> See World Meteorological Organization, *2021 State of Climate Services: Water* (Report, 2021) 7 <[https://library.wmo.int/doc\\_num.php?explnum\\_id=10826](https://library.wmo.int/doc_num.php?explnum_id=10826)>, archived at <<https://perma.cc/H5GA-X8PW>>.

<sup>27</sup> Ketan Joshi, 'In Australia's Climate Wars, Delay and Deception are the New Denial', *The Guardian* (online, 30 December 2021) <<https://www.theguardian.com/commentisfree/2021/dec/30/in-australias-climate-wars-delay-and-deception-are-the-new-denial>>, archived at <<https://perma.cc/CC3C-BEUG>>.

<sup>28</sup> *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) art 2 ('*UNFCCC*').

<sup>29</sup> *Kyoto Protocol* (n 2) art 3(1).

<sup>30</sup> See TML Wigley, 'The Kyoto Protocol: CO<sub>2</sub>, CH<sub>4</sub>, and Climate Implications' (1998) 25(13) *Geophysical Research Letters* 2285.

<sup>31</sup> See Bert Bolin, 'The Kyoto Negotiations on Climate Change: A Science Perspective' (1998) 279(5349) *Science* 330.

<sup>32</sup> Tariq Khokhar, 'Chart: Global CO<sub>2</sub> Emissions Rose 60% between 1990 and 2013', *World Bank Blogs* (Blog Post, 21 April 2017) <<http://blogs.worldbank.org/opendata/chart-global-co2-emissions-rose-60-between-1990-and-2013>>, archived at <<https://perma.cc/CV9P-JV3J>>.

calling it ‘largely obsolete’.<sup>33</sup> While the *Kyoto Protocol* may have been a genuine attempt to use hard law to solve the climate crisis, it was not an effective mechanism and climate change has continued to exacerbate.<sup>34</sup>

As a result, the *Paris Agreement* now sits at the forefront of international climate law,<sup>35</sup> and is predicated on the principle of ‘common but differentiated responsibilities and respective capabilities, in the light of different national circumstances’.<sup>36</sup> There is of course a sound foundation for this approach; some states are infinitely more developed than others, and consequently responsible for climate change, and so efforts at emissions reduction should reflect this. However, this underlying principle remains too vague, giving developed states a free pass to avoid robust climate action. Instead, the *Paris Agreement* should have been more forceful and cast them into clearly defined leadership roles tackling climate change from the front. Leadership, technology sharing and capacity development are activities that should be characterised as the actions of responsible states accepting their part in what is now a vital reaction to a global catastrophe.

Yet, the *Paris Agreement* does not set emission reduction targets for states, a consequence stemming from the failure of the *Kyoto Protocol*’s attempt to do so. Instead, art 2 leads with the broad objective to prevent a 2°C temperature increase, with aspirations to avoid a 1.5°C rise above pre-industrial levels.<sup>37</sup> To achieve this ambition the *Paris Agreement* requests that states party independently establish and submit a ‘nationally determined contribution’ (‘NDC’) plans to reduce their emissions.<sup>38</sup> In other words, the *Paris Agreement* simply asks its signatories to set their own behavioural alterations to meet its overall objective. Given the near universal ambition of perpetual economic growth, the success of a climate framework based almost exclusively on state discretion was always going to be unlikely. Evidence is now starting to appear that the cumulative total of actual emission reductions from NDC’s is not able to equate to a global effort capable of resulting in the 2°C aspiration.<sup>39</sup> Even if each state’s NDC is upheld the overall objective of the *Paris Agreement* will not be attained. States have chosen to submit NDCs that are not significantly robust in terms of emissions reduction, instead reflecting efforts that do not interfere with continuous economic growth. This is something that can be exemplified by examining the NDC of Australia.<sup>40</sup>

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<sup>33</sup> Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (Cambridge University Press, 2<sup>nd</sup> ed, 2018) 181.

<sup>34</sup> For a more thorough examination of these conventions, see Ash Murphy, ‘International Climate Law: Recapping, Reviewing and Exposing State Responses to Climate Change’ (2021) 2 *Keele Law Review* 25.

<sup>35</sup> For a comprehensive review of ICL, see *ibid.*

<sup>36</sup> *Paris Agreement* (n 2) art 2(2).

<sup>37</sup> *Ibid* art 2(1)(a).

<sup>38</sup> *Ibid* art 4.

<sup>39</sup> ‘CAT Emissions Gaps’, *Climate Action Tracker* (Web Page, 10 November 2022) <<https://climateactiontracker.org/global/cat-emissions-gaps/>>, archived at <<https://perma.cc/A4HA-APY7>>.

<sup>40</sup> Australia was selected as an example because of its persistent climate recalcitrance in recent years at the political level, but many states could also have been chosen.

Within its initial NDC, Australia originally pledged to ‘reduce greenhouse gas emissions by 26–28 per cent’.<sup>41</sup> However, this target was strengthened in 2022 to achieve a 43% reduction before 2030.<sup>42</sup> Yet, using 2005 and not 1990 as the base level to reduce emissions by greatly reduces the aspiration attached to this objective and likely means the NDC will remain unable to contribute to meeting the overall 2°C objective of the *Paris Agreement*.<sup>43</sup> Delving deeper into Australia’s original NDC, paragraph two referenced a ‘direct action policy’ that would aid businesses and communities to ‘reduce emissions’.<sup>44</sup> The detail was absent, and throughout there was little clarification as to how these policies would work. Reference was made to ‘additional policy measures in place to promote the deployment of renewable energy’.<sup>45</sup> Again, no detail as to what this meant and how it would support the renewable energy sector was provided.<sup>46</sup> Instead this point masked the reality that 84% of Australia’s electricity comes from coal burning.<sup>47</sup> The NDC did point out that only approximately 23% of Australia’s energy will come from renewable sources,<sup>48</sup> highlighting the inadequate level of action that was being taken on energy provision and emission reductions. Claiming to put ‘Australia on a stable pathway towards longer term emissions reductions’,<sup>49</sup> the initial NDC remained a document of rhetoric absent detail and when considering the wider economic policies in operation it was always unlikely to help stave off climate change.

Australia pitched itself as a ‘leading global resources provider’ within the NDC, showcasing exactly where its priorities were at the time.<sup>50</sup> Although, it is worth pointing out that Australia’s 2022 election result will mean a change of government, and optimism is cautiously present that this may prompt a revolution in climate policy.<sup>51</sup> Indeed, the recently updated NDC submission provides greater commitment and seemingly places Australia onto a more impacting pathway. Yet,

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<sup>41</sup> Commonwealth of Australia, ‘Australia’s Intended Nationally Determined Contribution to a New Climate Change Agreement’ (August 2015) para 3 <<https://www4.unfccc.int/sites/submissions/INDC/Published%20Documents/Australia/1/Australia%20Intended%20Nationally%20Determined%20Contribution%20to%20a%20new%20Climate%20Change%20Agreement%20-%20August%202015.pdf>>, archived at <<https://perma.cc/Y3QU-VEFD>> (‘2015 NDC’).

<sup>42</sup> Commonwealth of Australia, ‘Australia’s Nationally Determined Contribution Communication 2022’ (2022) 3 <<https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf>>, archived at <<https://perma.cc/H59T-YVNK>>.

<sup>43</sup> See ‘EU’, *Climate Action Tracker* (Web Page, 5 November 2022) <<https://climateactiontracker.org/countries/eu/>>, archived at <<https://perma.cc/E4VB-UGXZ>>.

<sup>44</sup> ‘2015 NDC’ (n 41) para 2.

<sup>45</sup> *Ibid* para 8.

<sup>46</sup> See Sophie Vorrath, ‘Coalition CO2 Target: Scientists, Analysts, Financiers, Islands Unimpressed’, *Renew Economy* (online, 11 August 2015) <<https://reneweconomy.com.au/coalition-co2-target-scientists-analysts-financiers-islands-unimpressed-65282/>>, archived at <<https://perma.cc/2NDH-FGCM>>.

<sup>47</sup> Paul Wolfram, Thomas Wiedmann and Mark Diesendorf, ‘Carbon Footprint Scenarios for Renewable Electricity in Australia’ (2016) 124 *Journal of Cleaner Production* 236, 236.

<sup>48</sup> ‘2015 NDC’ (n 41) para 8..

<sup>49</sup> *Ibid* para 7.

<sup>50</sup> *Ibid*.

<sup>51</sup> Smirti Mallapaty, ‘Australians Vote for Stronger Climate Action’, *Nature* (Web Page, 23 May 2022) <<https://www.nature.com/articles/d41586-022-01445-0>>, archived at <<https://perma.cc/4GPJ-DLU2>>.

it remains to be seen whether this will translate to domestic policy, and Australia's reliance on the export of fossil fuels and its own energy demands may act to caution optimism of a climate revolution. For now, Australia reflects with clarity the position of many states around the world that are not prepared, through will, circumstance or development, to take action on climate change.

An examination of states across the development spectrum would almost certainly reveal the limited ambition attached to reduction targets.<sup>52</sup> Despite the 'widespread adverse impacts and related losses and damages to nature and people' from climate change,<sup>53</sup> governments continue to obfuscate and provide platitudes instead of impactful policies.<sup>54</sup> The NDC model of reducing emissions found in the *Paris Agreement* allows governments to avoid having to face up to their responsibilities. Although motivated by equitable reasoning, the NDC system is proving ineffective in the face of persistently rising emissions, by giving states the discretion to avoid taking proportionate action.<sup>55</sup> The average global temperature is forecast to increase between 3°C and 5°C by the year 2100,<sup>56</sup> largely because of states not recognising the gravity of the threat. Continuing with the narrative that international climate law remains a credible response is irresponsible, and it is now imperative that we find ways to cultivate more rigorous international commitments before an irreversible tipping point is crossed.<sup>57</sup>

### III SECURITISATION AND SECURITISATION THEORY

Considering the devastation climate change is already delivering, and the certainty that it will only exacerbate as emissions escalate,<sup>58</sup> continuing with the *Paris Agreement* in isolation is untenable. It is at this point securitisation offers some potential, acting as a possible means in which to achieve a reset to how we interpret and respond to the climate threat. Securitisation refers to a matter coming to be understood as part of the security agenda, whereas securitisation theory refers to the process in which this transition takes place.<sup>59</sup> In other words, securitisation is the result, and securitisation theory refers to analysis of the steps taken to achieve it. Unavoidably entwined, it can be difficult to separate what is being referred to when discussing securitisation as an all-encompassing term. To avoid this problem, this section will first lay out what securitisation theory is and its

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<sup>52</sup> The EU aims for a 55% reduction in greenhouse gas emissions by 2030, which is an increase of 15% on its first target; Canada offers to reduce emissions by 40–45%; Brazil intends to reduce its emissions by 37% before 2025 and 43% by 2030; Mexico sets an unconditional reduction of 25% and a conditional reduction of up to 40% if international support is provided. This data comes from NDC documents submitted to the Secretariat of the *Paris Agreement*.

<sup>53</sup> *Climate Change 2022* (n 13) 9.

<sup>54</sup> See generally *Climate Change 2022* (n 13).

<sup>55</sup> See also 'CO<sub>2</sub> Records', *CO<sub>2</sub>.Earth* (Web Page, 19 February 2023) <<https://www.co2.earth/co2-records>>, archived at <<https://perma.cc/6FHK-CSGW>>..

<sup>56</sup> '2019 Set to Be the 2<sup>nd</sup> or 3<sup>rd</sup> Warmest Year on Record', *World Meteorological Organization* (Web Page, 20 December 2019) <<https://public.wmo.int/en/media/news/2019-set-be-2nd-or-3rd-warmest-year-record>>, archived at <<https://perma.cc/3HPV-HA26>>.

<sup>57</sup> See generally Timothy M Lenton et al, 'Climate Tipping Points: Too Risky to Bet Against' (2019) 575 *Nature* 592.

<sup>58</sup> See David Spratt and Ian Dunlop, *What Lies Beneath: The Understatement of Existential Climate Risk* (Report, 2018) 13.

<sup>59</sup> See Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers, 1998) 23.

relevance, before discussing the benefits of achieving securitisation and why it might have utility in the climate context.

Securitisation theory was developed in the field of international relations by the Copenhagen School to understand the process through which certain issues are constructed as security matters, enabling ‘extraordinary means’ to be implemented to confront them.<sup>60</sup> Securitisation theory challenges the traditional understandings of security in that it refutes the idea that security issues are naturally or objectively existential.<sup>61</sup> Instead, it claims 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.<sup>62</sup> In other words, issues do not intrinsically possess an identifiable security characteristic. 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.<sup>63</sup>

According to its architects, the process of securitisation is comprised of two stages.<sup>64</sup> 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.<sup>65</sup> A securitising actor carries out the speech act, typically through an oral statement or written submission.<sup>66</sup> 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.<sup>67</sup> Once an audience has accepted a securitising act and transferred rule or policy making to the security agenda, the object in question is judged to be securitised.<sup>68</sup>

Some of the confusion between whether reference is being made to securitisation or securitisation theory stems from the actor or actors providing a speech act. Essentially, speech acts which frame an issue as a security matter are part of what would be useful in achieving a reset to how a problem is framed. But without an audience accepting these speech acts and being at least passively prepared to let securitisation take place, the initial speech is not in actuality an example of securitisation being achieved. It merely remains part of the transitional process. Yet, in the context of achieving this reset in attitude, it is useful to consider that a speech act iterated publicly will potentially have a wider impact on societal attitudes, even if securitisation is not achieved. Hence the lines become blurry.

In the context of the UNSC, although speech acts linking climate change to security can be identified, securitisation has not yet been achieved. This is because the audience has yet to acknowledge it in a way that would see climate change

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<sup>60</sup> Ibid 26.

<sup>61</sup> Ibid 21.

<sup>62</sup> Ibid 33–4.

<sup>63</sup> Ibid 21–2.

<sup>64</sup> See generally Barry Buzan and Ole Wæver, ‘Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory’ (2009) 35 *Review of International Studies* 253.

<sup>65</sup> Buzan, Wæver and de Wilde (n 59) 26.

<sup>66</sup> President Bush’s speech on the ‘axis of evil’ is an example of a speech act: see Buzan and Wæver (n 64) 273.

<sup>67</sup> Buzan, Wæver and de Wilde (n 59) 25.

<sup>68</sup> See generally *ibid*.



transition from a political to a security issue. Although this paper views the activation of art 39 as the definitive signal of full securitisation, it acknowledges the process is underway, with some interpreting this as 'partial securitisation'.<sup>69</sup>

This brings us to the question of who might occupy the roles of securitising actor and audience on the UNSC. There is no predetermined means with which to assign these roles, and individual studies could be calibrated to look at varying dynamics. For instance, a state with a particular interest in a matter being securitised, with a history of making speech acts and proposing resolutions to realise this goal, could be cast as a securitising actor.<sup>70</sup> The remaining members of the UNSC may act as the audience by virtue of their decision to vote in favour of the resolution or not. Looking at very limited circumstances and analysing the submissions made by the states on the UNSC could illuminate exactly who adopts which role, and what arguments were made by the securitising actor which were then accepted by the audience.

Another possibility lies in reflecting the constitutive nature of the UNSC and situating the power dynamic as the means by which to decide who are the actors and the audience. One interpretation of this approach would be to cast the permanent members, with the veto power, as the securitising actors. Their interpretation of international security matters has led to the UNSC's mandate broadening into the field of terrorism,<sup>71</sup> WMDs<sup>72</sup> and, in limited circumstances, health.<sup>73</sup> Once they decide to argue that these matters should be securitised and made part of the UNSC's mandate, the audience automatically becomes the remaining ten non-permanent members.

These are just some of the more obvious ways to assign the roles of actor and audience, and each study may take its own direction. This paper does not intend to undertake a study employing securitisation theory, and so no decision needs to be made as to who occupies the roles of actor and audience. That being the case, this paper offers a broad overview of securitisation that, it is hoped, will encourage further projects to apply the theory more acutely to the UNSC.

This brings us to the second half of this section; why seek the securitisation of an issue, and more specifically why would states seek to securitise a matter before the UNSC? The architects of the theory suggest that securitisation 'on the international level ... means to present an issue as urgent and existential, as so important that it should not be exposed to the normal haggling of politics but should be dealt with decisively'.<sup>74</sup> This indicates that once an issue transcends to the security agenda it acquires the character necessary for actors to bypass the usual machinery of political intransigence. Speed essentially becomes an important benefit of securitisation, which is reinforced by contrast with the often

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<sup>69</sup> See Katie Peters, 'Disasters, Climate Change and Securitisation: the United Nations Security Council and the United Kingdom's Security Policy' (2018) 42(S2) *Disasters* S196.

<sup>70</sup> It is possible to suggest that early in the UNSC's handling of climate change, the UK could be interpreted as a securitising actor due to its leadership in bringing the issue to the forum: see Sindico (n 9) 30.

<sup>71</sup> SC Res 1368, UN Doc S/RES/1369 (12 September 2001).

<sup>72</sup> SC Res 1540, UN Doc S/RES/1540 (28 April 2004) ('*Resolution 1540*').

<sup>73</sup> SC Res 2177, UN Doc S/RES/2177 (18 September 2014) ('*Resolution 2177*').

<sup>74</sup> Buzan, Waever and de Wilde (n 59) 29.

very slow pace that conventions are brought to life.<sup>75</sup> Thus, there is a pragmatic benefit to securitisation that allows a faster response to an advancing threat.

The UNSC has in the past shown itself able to operate with tremendous haste. It took less than 24 hours from the 9/11 attacks to declare terrorism a threat to international peace and security under art 39.<sup>76</sup> Just 16 days later a comprehensive response, tantamount to legislation, designed to prevent further attacks was adopted.<sup>77</sup> However, in the context of the 2014 Ebola outbreak, there was a significant lead up to intervention through *Resolution 2177*.<sup>78</sup> Nonetheless, once a decision to intervene was agreed upon the subsequent response was rapid from a legislative perspective.<sup>79</sup> Yet, this does raise the question of situational divergence.

Something allowed the actors making decisions on these two issues to interpret the threats as existential at differing points, and it is perhaps visibility. The events of 9/11 were impossible to deny, and the level of threat was clear. The Ebola outbreak was to some extent a much less visible threat, up until the point where 5000 people had died it could be ignored at the international level.<sup>80</sup> Hence, perceptibility of harm may be a contributing factor in the securitisation of an issue. The COVID-19 pandemic reflects this somewhat, in that the UNSC has not recognised it as an art 39 threat, perhaps in part because of the fluctuating visibility of the harm.<sup>81</sup> This potentially allows COVID-19 to be interpreted by some actors as a non-existential threat. Securitisation then appears to be dependent on circumstances and their subjective interpretation by those involved in the process.<sup>82</sup>

Securitisating something tends to come with the ability of allowing political actors to take whatever steps they see fit to address the problem. This was fundamental to the theory's original architects, and something that remains of significance throughout the literature.<sup>83</sup> Adopting the premise that the UNSC only securitises something once art 39 has been activated, this idea of a response limited only by the intentions of the actors involved is reinforced. The permanent members of the UNSC must agree due to their possession of a veto power, but once consensus is reached there is little they cannot mandate.<sup>84</sup> They may even go as far as to authorise the use of force to maintain or restore international peace and security.<sup>85</sup> Of course, the UNSC is in theory limited by the purposes of the *Charter*

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<sup>75</sup> See generally Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press, 2010).

<sup>76</sup> SC Res 1368 (n 71).

<sup>77</sup> See SC Res 1373, UN Doc S/RES/1373 (28 September 2001) ('*Resolution 1373*').

<sup>78</sup> SC Res 2177 (n 73).

<sup>79</sup> See, eg, *ibid*.

<sup>80</sup> See Adam Kamradt-Scott, 'WHO's to Blame? The World Health Organization and the 2014 Ebola Outbreak in West Africa' (2016) 37(3) *Third World Quarterly* 401.

<sup>81</sup> Monitoring by the WHO prioritises the detection of variants that have been classified as 'Variants of Concern' or 'Variants of Interest': 'Tracking SARS-CoV-2 Variants', *World Health Organization* (Web Page, 24 February 2023) <<https://www.who.int/activities/tracking-SARS-CoV-2-variants>>, archived at <<https://perma.cc/XH36-H94Q>>.

<sup>82</sup> Thierry Balzacq and Stefano Guzzini, 'Introduction: "What Kind of Theory — If Any — Is Securitisation?"' (2014) 29(1) *International Relations* 97, 98–9.

<sup>83</sup> See, eg, Holger Stritzel, 'Towards a Theory of Securitization: Copenhagen and Beyond' (2007) 13(3) *European Journal of International Relations* 357, 358.

<sup>84</sup> See, generally, *UN Charter* (n 10).

<sup>85</sup> *Ibid* art 42.

of the United Nations ('UN Charter'),<sup>86</sup> but the activation of art 39 would inevitably come with the agreement that peace and security was threatened, meaning the scope of potential measures would be wide. Thus, securitising a threat before the UNSC may open the door to the type of response that has proved impossible through the conduit of international law.

But intrinsic to securitisation opening the door to such measures is the belief and support from the audience that they are in fact necessary. What securitisation does, beyond the palpable benefits, is offer the intangible advantage of acting as a rallying call to arms. It does so not just at the political and legal levels, but through the different tiers of society. It frames an issue as no longer something that can be treated as political, demanding interpretation according to security, which is underpinned by tones of survival.<sup>87</sup> The audience and actors working together in tandem against a threat sends a powerful message that changes societal interpretation of an issue, but also relies upon this societal change to justify the new measures being taken. Again, the UNSC's handling of international terrorism reflects this change in interpretation clearly. Prior to 9/11, terrorism had been addressed through international law, perhaps because the limited scale of past attacks resulted in the perception that terrorism was a political issue.<sup>88</sup> What the world witnessed on 9/11 was a threat no longer capable of being confined to political dispute; instead the threat had become about self-defence.<sup>89</sup> Securitising it through art 39 was not just an equivalent response but it was a call to galvanise the international community into action — one that was successful.<sup>90</sup>

In the climate change context this is precisely what is required. We must alter our interpretative lens, recasting it from a political issue to an existential threat. Securitisation will aid in achieving this ambition, and not just at the level of the UNSC but throughout the international community. This could open the door for more exacting measures that have so far proven impossible through international law but are pertinent given the relentless onset of climatic harm across the globe.<sup>91</sup>

The legalities of the *UN Charter* are also worth examining with regard to the UNSC's stance on the climate threat and the arguments for securitisation. Under art 24, primary responsibility for the maintenance of international peace and security is conferred upon the UNSC,<sup>92</sup> within the noted parameters that it 'act in

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<sup>86</sup> Ibid art 25.

<sup>87</sup> See, eg, Felix Ciută, 'Security and the Problem of Context: A Hermeneutical Critique of Securitisation Theory' (2009) 35(2) *Review of International Studies* 301, 306.

<sup>88</sup> Hilde Haaland Kramer and Steve A Yetiv, 'The UN Security Council's Response to Terrorism: Before and After September 11, 2001' (2007) 122(3) *Political Science Quarterly* 409, 412.

<sup>89</sup> Carsten Stahn, 'Terrorist Acts as "Armed Attack": The Right to Self-Defense, Article 51(½) of the *UN Charter*, and International Terrorism' (2003) 27(2) *Fletcher Forum of World Affairs* 35.

<sup>90</sup> The success of the UNSC response to 9/11, including the passing of UNSC Resolution 1373, is discussed generally in Curtis A Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8(2) *Journal of Conflict and Security Law* 289.

<sup>91</sup> World Meteorological Organization, 'State of the Climate in 2018 Shows Accelerating Climate Change Impacts', (Press Release, 28 March 2019) <<https://public.wmo.int/en/media/press-release/state-of-climate-2018-shows-accelerating-climate-change-impacts>>, archived at <<https://perma.cc/V9VA-EMC9>>.

<sup>92</sup> *UN Charter* (n 10) art 24(1).

accordance with the Purposes and Principles of the United Nations'.<sup>93</sup> Taking the view that this responsibility is a duty charged upon the UNSC, it is possible to argue that a failure to act in the face of threats to international peace and security is a derogation — one that significantly damages its credibility when it fails to act against blatant threats. Island states already experiencing the worst climatic impacts clearly see a vital and necessary role for the UNSC.<sup>94</sup> At the 2019 Council meeting on climate change, the representative for the island state Trinidad and Tobago said, 'probably most fundamental, is the determination of the long-term role of the Security Council and its engagement on this issue [of climate change]'.<sup>95</sup> States joining the UN system submit a portion of sovereignty in the expectation that they will enjoy collective security administered by the UNSC.<sup>96</sup> The island states suffering climatic harm view the UNSC as having a duty to exercise its authority on the threat; by failing to act on this the legitimacy of the institution intended to safeguard international peace and security is undermined.

However, art 39 creates enough discretion to shield the UNSC, at least legally, from calls to act, by holding that the 'Security Council shall determine the existence of any threat to the peace'.<sup>97</sup> Nonetheless, although it is exclusively within the gift of the UNSC, this does not prevent critiques of legitimacy being levelled at the Council. Authority and legality are one thing, but morality and legitimacy are quite another.

If the UNSC continues to treat climate change as anything other than the international threat it is, the harm done to its credibility may become irreparable. Conversely, if the UNSC can forge a path towards a response which is able to complement the *Paris Agreement* in the ways advocated later in this paper, there exists the promise of a new unity across the international spectrum. The concentrated influence of the UNSC leading by example could galvanise other states to greater action, albeit by drawing on the hegemonic notion of power that is not visibly progressive or useful for the overall advancement of international relations. Nonetheless, a UNSC acting with poise and unity could provide the type of leadership and authority currently absent from international climate law, meaning there are strong practical and symbolic justifications for securitising climate change before this executive institution.

#### IV THE PERIL OF UNSC INTERVENTION

The following section will address the potential peril and reasons for trepidation concerning the involvement of the UNSC in climate change.<sup>98</sup>

It is important to establish from the outset that these perils exist because we must take the UNSC as we find it, and not as we would wish to find it. Originally designed in response to conventional war, its mandate was informed by the events

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<sup>93</sup> Ibid art 24(2).

<sup>94</sup> When the Dominican Republic took presidency of the UNSC one of the first debates hosted concerned the impact of climate related disasters on international peace and security: see UN SCOR, 74<sup>th</sup> sess, 8451<sup>st</sup> mtg, UN Doc S/PV.8451 (25 January 2019).

<sup>95</sup> Ibid 63.

<sup>96</sup> Under *UN Charter* (n 10) art 25, states agree to carry out the decisions of the UNSC, which can be construed as a sovereignty sacrifice in return for collective security benefits..

<sup>97</sup> Ibid art 39.

<sup>98</sup> See generally Grayson Kirk, 'The Enforcement of Security' (1946) 55(5) *Yale Law Journal* 1081.

of World War II.<sup>99</sup> Its remit was therefore framed in terms linked to conflict and military situations, albeit with the flexibility to evolve. Commentators have subsequently contemplated that involvement in climate change may be through the lens of military intervention.<sup>100</sup> Trina Ng highlights that there is a ‘glaring incongruity between environmental measures and armed military action’.<sup>101</sup> Yet, because of the manner of its constitution, once art 39 has been activated the UNSC has access to art 42 responses.<sup>102</sup> A military-based reaction to climate change is a possibility, leading some to immediately discount the UNSC as a viable response forum, or at least omit force from discussion. Such a view is problematic because nothing excludes it from UNSC deliberation.<sup>103</sup> This paper does not advocate the use of force by any means, but it is prudent to recognise this potential danger as opposed to pretending it does not exist.

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’.<sup>104</sup> Research supports this assertion in the climate context. For example, the US Air Force generates a staggering amount of greenhouse gas emissions.<sup>105</sup> Conventional military responses like ground interventions also have hugely detrimental environmental impacts.<sup>106</sup> The destruction of land and forests in the achievement of military objectives will negate any potential benefit being sought. The activation of art 42 comes with grave physical implications for the environment that challenge its validity.

In addition, the use of force has negative implications for state relations.<sup>107</sup> It means an end to dialogue and cooperation. Environmental challenges, more than any other, bind us together; closing cooperative avenues in the pursuit of unilateral measures of force is detrimental to the humanist ideals of the UN.<sup>108</sup> 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

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<sup>99</sup> Frederic L Kirgis Jr, ‘The Security Council’s First Fifty Years’ (1995) 89(3) *American Journal of International Law* 506, 506.

<sup>100</sup> See, eg, Lorraine Elliot, ‘Imaginative Adaptations: A Possible Environmental Role for the UN Security Council’ (2003) 24(2) *Contemporary Security Policy* 47.

<sup>101</sup> Trina Ng, ‘Safeguarding Peace and Security in our Warming World: A Role for the Security Council’ (2010) 15(2) *Journal of Conflict and Security Law* 275, 297.

<sup>102</sup> Nothing in art 39 limits the UNSC’s access to measures involving force via art 42: see *UN Charter* (n 10) arts 39, 42.

<sup>103</sup> See Christina Voigt, ‘Security in a “Warming World”: Competences of the UN Security Council for Preventing Dangerous Climate Change’ in Cecilia M Bailliet (ed), *Security: A Multidisciplinary Normative Approach* (Brill, 2009) 291.

<sup>104</sup> Ng (n 101) 297.

<sup>105</sup> Neta C Crawford, ‘Pentagon Fuel Use, Climate Change, and the Costs of War’ (Research Paper, Watson Institute of International and Public Affairs, Brown University, 12 June 2019) 4.

<sup>106</sup> See ‘Protect Environment from Wars and Conflicts, UN Urges on International Day’ *UN News* (online at 6 November 2017) <<https://news.un.org/en/story/2017/11/570062-protect-environment-wars-and-conflicts-un-urges-international-day>>, archived at <<https://perma.cc/4NBF-9W4Y>>.

<sup>107</sup> Voigt points out that environmental law is based heavily on multilateralism: Voigt (n 103) 306.

<sup>108</sup> See Douglas Brommesson and Henrik Friberg Fernros, ‘The Feasibility of an Expanded Regime on the Use of Force: The Case of the Responsibility to Protect’ (2013) 16(1) *Journal of International Relations and Development* 138.

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 Michael Murphy puts it, the ‘threat or the harm does not hurt enough for the use of force’.<sup>109</sup> This sentiment should remain central when evaluating UNSC involvement and force should always be removed from consideration, albeit this is an aspiration not reflected through the legalities of securitisation via art 39.

Moving to another UNSC tool, under art 41 it has access to a broad array of sanctions that could be used to penalise a state for climate change inducing activities.<sup>110</sup> 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.<sup>111</sup> This type of response represents an obvious enforcement capability of the UNSC,<sup>112</sup> and allows the argument it offers something currently absent from ICL.<sup>113</sup> 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, but 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.<sup>114</sup>

Punitive sanctions will not help to build cooperative responses. They will prompt the entrenchment of positions, as in the case of Democratic People’s Republic of Korea which simply absorbed the sanctions and continued its WMDs programme.<sup>115</sup> 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.

<sup>109</sup> Michael K Murphy, ‘Achieving Economic Security with Swords as Ploughshares: The Modern Use of Force to Combat Environmental Degradation’ (1999) 39(4) *Virginia Journal of International Law* 1181, 1218.

<sup>110</sup> *UN Charter* (n 10) art 41.

<sup>111</sup> Ash Murphy, ‘Jair Bolsonaro Wants to Deforest the Amazon — What Powers Does the UN Have to Stop Him?’, *The Conversation* (online, 12 July 2019) <<https://theconversation.com/jair-bolsonaro-wants-to-deforest-the-amazon-what-powers-does-the-un-have-to-stop-him-120154>>, archived at <<https://perma.cc/8Z9T-VXUP>>.

<sup>112</sup> See Brendan Reilly, ‘“Clear and Present Danger”: A Role for the United Nations Security Council in Protecting the Global Environment’ (1996) 20(3) *Melbourne University Law Review* 763, 800.

<sup>113</sup> Szasz argues economic pressures under art 41 might be effective in regard to the environment: Paul C Szasz, ‘Restructuring the International Organizational Framework’ in Edith Brown Weiss (ed), *Environmental Change and International Law: New Challenges and Dimensions* (United Nations University Press, 1992) 340, 360 n 61.

<sup>114</sup> See, eg, Redie Bereketab, ‘The Morality of the U.N. Security Council Sanctions Against Eritrea: Defensibility, Political Objectives, and Consequences’ (2013) 56(2) *African Studies Review* 145.

<sup>115</sup> Benjamin Habib, ‘The Enforcement Problem in Resolution 2094 and the United Nations Security Council Sanctions Regime: Sanctioning North Korea’ (2016) 70(1) *Australian Journal of International Affairs* 50, 64.

Infrastructural changes will be costly and difficult to implement and may be more arduous than absorbing sanctions. Moreover, if changes to our economies are not undertaken universally but only in response to sanctions, these changes will create geopolitical tensions and arguments based on competitiveness and equity.<sup>116</sup> Such tensions will be further exacerbated if sanctions have a negative impact on human rights,<sup>117</sup> or humanitarian conditions which are already been challenged by climate change.<sup>118</sup> 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 noticeable advantages of bringing the UNSC into climate change offer some perilous 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.<sup>119</sup> There might be a slim argument that points to art 2(7) of the *UN Charter* as precluding this,<sup>120</sup> but the reality is that once the legal hurdle of art 39 has been overcome, international peace and security can be maintained or restored according to the discretion of the UNSC.<sup>121</sup> Some argue this will allow the opportunity for mischief in the internal affairs of states.<sup>122</sup> Yet, 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.<sup>123</sup> 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 likely be exposed to public scrutiny. 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.<sup>124</sup>

It is impossible to rule out the UNSC acting under arts 41 and 42 of the *UN Charter* if it intervened in the climate threat.<sup>125</sup> Theoretically there is nothing to

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<sup>116</sup> See, eg, Jane Boulden and Andrea Charron, 'Evaluating UN Sanctions: New Ground, New Dilemmas, and Unintended Consequences' (2010) 65(1) *International Journal* 1, 9.

<sup>117</sup> See Thomas J Biersteker, 'Targeted Sanctions and Individual Human Rights' (2010) 65(1) *International Journal* 99.

<sup>118</sup> See, eg, Margaret P Doxey, 'Sanctions Through the Looking Glass: The Spectrum of Goals and Achievements' (2000) 55(2) *International Journal* 207; Kimberly Ann Elliot, 'Assessing UN Sanctions after the Cold War: New and Evolving Standards of Measurement' (2010) 65(1) *International Journal* 85.

<sup>119</sup> See TD 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, 61.

<sup>120</sup> See *UN Charter* (n 10) art 2(7).

<sup>121</sup> Martti Koskenniemi, 'The Police in the Temple Order, Justice and the UN: A Dialectical View' (1995) 6(3) *European Journal of International Law* 325, 327; see also Jericho Nkala, *The United Nations, International Law and the Rhodesian Crisis* (Clarendon Press, 1985).

<sup>122</sup> See, eg, Linda A Malone, "'Green Helmets': A Conceptual Framework for Security Council Authority in Environmental Emergencies' (1996) 17(2) *Michigan Journal of International Law* 515, 525.

<sup>123</sup> See, eg, Michael J Glennon, 'Why the Security Council Failed' (2003) 82(3) *Foreign Affairs* 16.

<sup>124</sup> See generally 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).

<sup>125</sup> *UN Charter* (n 10) arts 41, 42.

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.<sup>126</sup> Given the difference in perspective of the permanent members on the climate threat, it is unlikely that an extreme intervention activating arts 41 or 42 would be possible. Consequently, this paper argues that the risk of arts 41 or 42 appearing in a resolution intended to tackle climate change is minimal.

Tempered intervention 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.<sup>127</sup> The neoliberal and potentially colonial connotations of such a step may exacerbate rifts among the international community.<sup>128</sup> The G77 already represents a collection of states that believe the UNSC is an inappropriate forum for climate change because of the shared responsibility model that might follow.<sup>129</sup> Reinforcing a divide between the developed and the developing, shared responsibility may undermine common but differentiated responsibility.<sup>130</sup> Climate change is already subject to division,<sup>131</sup> and so any intervention from the UNSC should be aimed at reducing these tensions, not inflaming them further. That said, common but differentiated responsibility is failing and so there is perhaps scope to find a balance between these opposing models of responsibility, which the UNSC might be able to do given the developmental balance of the permanent members.<sup>132</sup> Nonetheless, scepticism around such a move from the UNSC remains high, potentially because of the influence and approach different permanent members might adopt.<sup>133</sup>

The UNSC does not embody an institution of equal nations, instead reflecting the hegemonic power balance of 1945.<sup>134</sup> The permanent members hold a position of great authority. They control the UNSC and steer its agenda, and even have a

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<sup>126</sup> See generally Paige (n 124).

<sup>127</sup> See Julia Dehm 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2016) 33(3) *Windsor Yearbook of Access to Justice* 129, 139–41.

<sup>128</sup> See David Hursh, Joseph Henderson and David Greenwood, 'Environmental Education in a Neoliberal Climate' (2015) 21(3) *Environmental Education Research* 299.

<sup>129</sup> Antto Vihma, Yacob Mulugetta and Sylvia Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 through the Prism of Climate Change Negotiations' (2011) 23(3) *Global Change, Peace and Security* 315, 321.

<sup>130</sup> Shared responsibility means all states responding through a top-down target orientated approach.

<sup>131</sup> See Bert Bolin, 'The Kyoto Negotiations on Climate Change: A Science Perspective' (1998) 279 *Science* 330, 331.

<sup>132</sup> See Charlotte Ku, 'The UN Security Council's Role in Developing a Responsibility to Respond to the Climate Change Challenge' in Shirley V Scott and Charlotte Ku (eds) *Climate Change and the UN Security Council* (Edward Elgar Publishing, 2018) 162.

<sup>133</sup> See, eg, Shirley V Scott, 'The Attitude of the P5 towards a Climate Change Role for the Council' in Shirley V Scott and Charlotte Ku (eds) *Climate Change and the UN Security Council* (Edward Elgar Publishing, 2018) 209.

<sup>134</sup> See, eg, José E Alvarez, 'Hegemonic International Law Revisited' (2003) 97(4) *American Journal of International Law* 873.



'tendency to use secretive, exclusionary deliberations'.<sup>135</sup> 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, meaning a quarter of their experience is spent learning how to engage effectively.<sup>136</sup> 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 veto power of the permanent members also means they can protect themselves against unwanted involvement, safeguarding their own interests.<sup>137</sup> 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.<sup>138</sup> 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,<sup>139</sup> but instances remained where it continued to be employed.<sup>140</sup> Also, even if the veto is not used this does not mean the threat of its use is absent, and corridor discussions at the UN no doubt result in resolutions being altered or removed altogether in response to a looming veto. The permanent members find themselves in a position of authority that allows them to assume a hegemonic position over the proceedings of the UNSC, which might lead to some form of neo carbon colonialism.<sup>141</sup>

The history of climate change before the UNSC reflects 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.<sup>142</sup> 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 own priorities.<sup>143</sup> This is unlikely to change and Russia particularly continues to adopt a recalcitrant attitude towards climate change on the UNSC's agenda.<sup>144</sup> Introducing a resolution that is skewed by the perspective of a permanent member or members could cause international disagreement that does more harm than good.

ICL predicates itself on the need to generate cooperative action that all states can partake to solve the problem.<sup>145</sup> The common but differentiated responsibility model is designed specifically to generate such spirit.<sup>146</sup> Even though the climate

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<sup>135</sup> Ken Conca, 'Is There a Role for the UN Security Council on Climate Change?' (2019) 61(1) *Environment: Science and Policy for Sustainable Development* 4, 10.

<sup>136</sup> Scott (n 133) 210, citing Lorraine Sievers and Sam Daws, *The Procedure of the UN Security Council* (Oxford University Press, 4<sup>th</sup> ed, 2014) 125.

<sup>137</sup> *UN Charter* (n 10) art 27.

<sup>138</sup> In instances of atrocity crimes the UK and France have said they will never use the veto to block UNSC action: see Security Council Report, *The Veto* (Research Report No 3, 19 October 2015) 7.

<sup>139</sup> Edward C Luck, *UN Security Council: Practice and Promise* (Routledge, 2006).

<sup>140</sup> UN SCOR, UN Doc S/2008/447 (11 July 2008), which was vetoed by Russia and China.

<sup>141</sup> See Heidi Bachram, 'Climate Fraud and Carbon Colonialism: The New Trade in Greenhouse Gases' (2004) 15(4) *Capitalism Nature Socialism* 5.

<sup>142</sup> UN SCOR, 62<sup>nd</sup> sess, 5663<sup>rd</sup> mtg, UN Doc S/PV.5663 (17 April 2007) 13.

<sup>143</sup> UN SCOR, 66<sup>th</sup> sess, 6587<sup>th</sup> mtg, UN Doc S/PV.6587 (20 July 2011); UN SCOR, 70<sup>th</sup> sess, 7499<sup>th</sup> mtg, UN Doc S/PV.7499 (30 July 2015); UN Doc S/PV.8451 (n 94).

<sup>144</sup> UN Doc S/PV.8451 (n 94) 16.

<sup>145</sup> This was evident in the *UNFCCC* (n 28) and is reinforced through the *Paris Agreement* (n 2).

<sup>146</sup> See *Rio Declaration on Environment and Development*, UN GAOR, UN Doc A/CONF.151/26 (Vol.1) (12 August 1992) Principle 7.

framework is fundamentally inadequate to solve the emissions problem, it does exhibit a positive effort to generate multilateral responses through persistent and cooperative interaction on the problem.<sup>147</sup> It is providing an opportunity for the international community to strengthen and develop relationships to overcome the common endeavours of humanity.<sup>148</sup> Involvement of the UNSC and a destruction of this cooperation in place of a unilateral system would place the efforts of the last 30 years in jeopardy.<sup>149</sup> As such, any intervention must be tailored to ensure that it does not set back international relations but helps to propel them forward.

## V A PROMISING CLIMATE CHANGE INTERVENTION

This section seeks to provide a pathway to intervention that is pragmatic, balanced and restrained, allowing the UNSC to navigate the competing perspectives with regard its engagement of climate change. The UNSC is becoming more practised in handling climate change and, although no substantial link to art 39 has been made, the decision to include more frequent reference to it shadows the experience of other subjects now within its remit.<sup>150</sup> To take the next step and recognise climate change as within the scope of art 39 would be bold, but not unprecedented.<sup>151</sup> A climate change resolution should begin by including a preambular paragraph pronouncing: ‘the Security Council determines that the threat of climate change and its consequences constitutes a threat to international peace and security’. Centralising climate change in this way will reflect the requisite gravitas to draw international attention. It will elevate climate change to the highest security platform, capitalising on the abstract benefits of securitisation and, importantly, opening further options for the UNSC to pursue, without perhaps agitating sceptics because the determination would not be part of the operative paragraphs.

When the permanent members are minded to act against an emerging security threat they use the UNSC as a forum in which to rally the international community behind a set action they believe will abate the harm.<sup>152</sup> From a symbolic angle the UNSC is able to offer a forum that when mobilised correctly offers a tremendous amount of leadership capability, and can result in powerful art 39 resolutions that

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<sup>147</sup> Jutta Brunnée and Stephen J Toope, *Legitimacy and Legality in International Law: An Interactional Account*, (Cambridge University Press, 2010).

<sup>148</sup> Jane Lubchenco, ‘Entering the Century of the Environment: A New Social Contract for Science’ (1998) 279 *Science* 491.

<sup>149</sup> Catherine Tinker, “‘Environmental Security’ in the United Nations: Not a Matter for the Security Council’ (1992) 59(4) *Tennessee Law Review* 787, 800.

<sup>150</sup> *Resolution 2349* recognised the ‘adverse effects of climate change and ecological changes among other factors on the stability of the Region’: SC Res 2349, UN Doc S/RES/2349 (31 March 2017) 7 [26]. *Resolution 2408* provides a 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’: SC Res 2408, UN Doc S/RES/2408 (27 March 2018) 3; UN SCOR, UN Doc S/PRST/2011/15 (20 July 2011) para 7. *Resolution 2423* notes ‘the security implications of the adverse effects of climate change’: SC Res 2423, UN Doc S/RES/2423 (28 June 2018) 17 [68].

<sup>151</sup> *Resolution 2177*, UN Doc S/RES/2177 (n 73) evolved significantly from its predecessor *Resolution 2176* to find the Ebola outbreak as a threat to peace..

<sup>152</sup> *Resolution 1373*, UN Doc S/RES/1373 (n 77); Eric Rosand, ‘The Security Council as “Global Legislator”: Ultra Vires or Ultra Innovative?’ (2004) 28(3) *Fordham International Law Journal* 542.

do not always mandate specific action from states.<sup>153</sup> Moreover, it would be harder to ignore the plight of suffering states when an art 39 resolution exists on climate change. Bringing climate change more firmly onto the agenda of the UNSC could prompt those states that lead the security narrative to heed calls for a more comprehensive response from those most effected.<sup>154</sup>

The UNSC would have the option to introduce new obligations or to reinforce existing ones. A complementary function is preferable, absent the creation of an entirely new climate mandate. Trying to introduce new climate rules would invoke the discomfort of the permanent members that have all stated their support for the *UNFCCC*. Moreover, the activation of art 39 argued above is already aspirational; if a draft resolution contained further far-reaching content, it would 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 the *Paris Agreement* and rehousing them in the pinnacle security apparatus of art 39 could provide an injection of vitality into ICL. This approach would not grant the UNSC a mandate beyond that already agreed through convention, extinguishing some opposition to this move whilst capitalising on the advantages of securitisation.

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°C increase and the NDCs that are proving unable to match this ambition. NDCs are discretion-orientated, but the *Paris Agreement* is built on the intention for them 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 NDCs that are able to match the objectives of the *Paris Agreement*. This was the approach taken by the UNSC in *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.<sup>155</sup> Treading this line would allow a resolution to offer specific support to ICL, providing a tangible benefit to securitising climate change through the UNSC.

It might also be a means through which to blend the opposing models of climate response, namely common and shared responsibility. While common responsibility is a more equitable approach, there can be little doubt that the need for a shared approach is growing. What the UNSC can do is centralise common responsibility, while prompting all states to take greater action which would help to cultivate a shared responsibility model. Of course, the problem with this is those opposing the UNSC's involvement in climate change are fearful of this precise

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<sup>153</sup> *Resolution 2177*, UN Doc S/RES/2177 (n 73).

<sup>154</sup> Planetary Security Initiative, 'Climate Change to Return to UN Security Council Agenda under Dominican Republic Presidency', *Climate Diplomacy* (online, 25 January 2019) <<https://climate-diplomacy.org/magazine/cooperation/climate-change-return-un-security-council-agenda-under-dominican-republic>>, archived at <<https://perma.cc/MWR7-N8DC>>

<sup>155</sup> 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: *Resolution 1540*, UN Doc S/RES/1540 (n 72) 4.

possibility.<sup>156</sup> Yet, as climate impact worsens it becomes harder to ignore the need for a more blended model of climate response and the UNSC might be able to act as the catalyst to achieve this through careful linguistic construction.<sup>157</sup>

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 World Health Organization in the lead up to *Resolution 2177* on Ebola.<sup>158</sup> Bringing the IPCC before the UNSC would not only provide an expert lead for members to follow, but it would also offer a more impacting outlet for IPCC findings. On 6th October 2018, the IPCC released a comprehensive report on the threat of climate change.<sup>159</sup> It was able to generate significant global attention, appearing on the front pages of international newspapers.<sup>160</sup> However, it had no means with which to stimulate uptake of its recommendations and is instead reliant on states party heeding its message through implementation of their discretionary-based *Paris Agreement* 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 a climate resolution.

The linguistic construction of a climate resolution will be crucial to whether the permanent members decide to withhold their veto. Its language would have to reflect soft law,<sup>161</sup> 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 NDCs 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’. A resolution tantamount to these suggestions would be able to complement ICL without stepping beyond the mandate of that already agreed through convention. This would send a powerful message from the UNSC

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<sup>156</sup> Vihma, Mulugetta and Karlsson-Vinkhuyzen (n 129).

<sup>157</sup> See Gary Wilson, ‘Collective Security, “Threats to the Peace”, and the Ebola Outbreak’ (2015) 6(1) *Journal of Philosophy of International Law* 1.

<sup>158</sup> The then-Director-General of the WHO Dr Margaret Chan, Senior United Nations Systems Coordinator for Ebola Dr David Nabarro, and Médecins Sans Frontières representative Jackson Niamah all provided expert briefings before the UNSC: see UN SCOR, 69<sup>th</sup> sess, 7268<sup>th</sup> mtg, UN Doc S/PV.7268 (18 September 2014).

<sup>159</sup> Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (Report, 2018).

<sup>160</sup> See, eg, Jonathan Watts, ‘We Have 12 Years to Limit Climate Change Catastrophe, Warns UN’ *The Guardian* (online, 8 October 2018) <<https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report>>, archived at <<https://perma.cc/TBJ6-DPCU>>.

<sup>161</sup> See generally Kenneth W Abbott and Duncan Snidal, ‘Hard and Soft Law in International Governance’ (2000) 54(3) *International Organization* 421.

while not directly interfering with state priorities, thus increasing its chance of avoiding a veto while potentially having a quantifiable impact on state behaviour.

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 the capacities of all states, in particular those of developing states at the national and local levels.<sup>162</sup> 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.<sup>163</sup> 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 has been called 'the largest body of information about worldwide counterterrorism capacity'.<sup>164</sup> There is no reason why the UNSC cannot repeat this model and introduce a Counter Climate Change Committee charged with the exact same purpose.

However, it is possible such a committee would only be able to reflect the current *UNFCCC* structures.<sup>165</sup> 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.<sup>166</sup> Smaller bodies with a more precise mandate can in certain instances achieve more than over-populated, dispersed institutions trying to balance multiple priorities. A Counter Climate Change Committee could be charged with the discrete task of gathering capacity reports and sharing good practices. It might even have the effect of simplifying some of the overtly complex machinery of international climate law.<sup>167</sup> Again, nothing about 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.

Beyond the inclusion of provisions that intend to support the *Paris Agreement*, the possibility exists that art 41 might be activated to introduce a sanctions regime enforcing compliance with a climate mandate.<sup>168</sup> As discussed earlier in this paper, 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

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<sup>162</sup> Intergovernmental Panel on Climate Change (n 159) 445–510.

<sup>163</sup> Kramer and Yetiv (n 88) 422–3.

<sup>164</sup> David Cortright, 'Can the UN Battle Terrorism Effectively? Security Council Resolutions Have "Mobilized States for a Campaign of Nonmilitary Cooperative Law Enforcement Measures to Combat Global Terrorism"' (1 January 2005) *USA Today* 62.

<sup>165</sup> See generally Alan Boyle, Jacques Hartmann and Annalisa Savaresi, 'The United Nations Security Council's Legislative and Enforcement Powers and Climate Change' in Shirley V Scott and Charlotte Ku (eds), *Climate Change and the UN Security Council* (Edward Elgar Publishing, 2018) 101.

<sup>166</sup> Jayantha Dhanapala, 'The United Nations' Response to 9/11' (2005) 17(1–2) *Terrorism and Political Violence* 17, 19.

<sup>167</sup> See Robert O Keohane and David G Victor, 'The Regime Complex for Climate Change' (2011) 9(1) *Perspectives on Politics* 7.

<sup>168</sup> *UN Charter* (n 10) art 41.

multilateralism. In the climate context it is not clear what sanctions would seek to achieve. To preclude the possibility of sanctions, it is almost certain that any resolution providing a means of enforcement via art 41 would incur a veto from at least one of the permanent members. Therefore, although part of the benefit of art 39 is to allow access to this measure, it must remain an abstract possibility not intended for implementation. It is also pertinent to reinforce that art 42 measures involving the use of force should be completely ruled out. If the UNSC is to challenge climate change and complement the *Paris Agreement*, it must be through the guise of support and development, avoiding punitive measures, whilst capitalising on the security narrative that flows from its constitutional character.

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*. The United Kingdom and France would have to take on a leadership role, capitalising on their progressive stances.<sup>169</sup> The onus would be on them to convince the other permanent members to unite behind the resolution. They would need to compromise on the linguistic choices of the provisions to convince China and the United States that no internal obligations would be created. The negotiations that took place between the US and China on the content of *Resolution 1540* showcase that they can compromise even when their perspectives differ significantly.<sup>170</sup> 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 intervention balances the arguments against involving the UNSC with those that advocate for a climate change resolution. 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 by harnessing the power of securitisation. The model is not punitive or hegemonic and must stay this way to avoid the legitimacy concerns expressed earlier. Instead, it is based on a need to galvanise an international response to an international security threat, offering a complementary approach to securitise climate change within the meaning of art 39 that is steeped in pragmatism and promise. In addition, by taking this pathway the interplay between the concepts of effectiveness and legitimacy within the UNSC is somewhat balanced.

The question of legitimacy is a double-edged sword where climate change and the UNSC is concerned, one that dates all the way back to San Francisco. The drafters of the *UN Charter* were of the mind that the UNSC, and specifically the permanent members, should exercise significant power on the basis that a decision to intervene was for the global good, benefiting the international community.<sup>171</sup> In the contemporary era the subject of universal good for this community of states is questionable and specifically in regard to climate change, there are almost equally

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<sup>169</sup> See Scott (n 133) 218–19.

<sup>170</sup> See Masahiko Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13(3) *Journal of Conflict and Security Law* 303.

<sup>171</sup> David D Caron, 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87(4) *American Journal of International Law* 552.

competing narratives.<sup>172</sup> On the one hand there are states that would argue a failure of the UNSC to intervene in climate change represents a derogation of its duties under arts 24 and 39. Some sub-Saharan African states have made the case that climate related disasters are going to cause population dislocation and instability, which might be construed as underpinning the onset of traditional conflict related threats.<sup>173</sup> Adopting this view, the UNSC must intervene if it is to remain a legitimate force in global security, something it more or less recognised in 1992 when it held the ‘absence of war and military conflicts amongst States does not in itself ensure international peace and security’.<sup>174</sup> Moreover, thinking back to the drafting of the Charter, the powers of the UNSC remained flexible for just this type of threat and so it is more than feasible that to remain effective, relevant and legitimate in the contemporary era, the UNSC must intervene in climate change.<sup>175</sup>

On the other hand, there are those that view climate change as a development matter and any intervention from the UNSC is an overstep of its mandate, lacking the necessary political will to be viewed as credible.<sup>176</sup> The main actors of the G77 view a climate intervention as delegitimising the UNSC.<sup>177</sup> They much prefer to house climate negotiation within the *UNFCCC* and the UN Economic and Social Council, where notably there is a lack of effectiveness but perhaps a wealth of legitimacy. Scott indicates that if intervention of the UNSC in climate change is perceived as illegitimate then this may have ramifications for acquiescence and compliance within the wider UN membership.<sup>178</sup> The last thing the climate response needs is a further breakdown of relations among different groups and a withdrawal of states from the global institutions that facilitate dialogue and cooperation. The legitimacy question is therefore one that must be handled with due care to avoid alienating certain actors who hold varying viewpoints on the securitisation of climate change. These divergent perspectives could impact negatively on the functioning of the UNSC, which can easily become a politically fragile institution.

In the face of the war between Ukraine and Russia this has become acutely pronounced and the UNSC has found itself on the cusp of once more becoming perpetually frozen.<sup>179</sup> Russia views its war as not just against Ukraine but also the

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<sup>172</sup> Martin Binder and Monika Heupel, ‘Contested Legitimacy: The UN Security Council and Climate Change’ in Shirley V Scott and Charlotte Ku (eds), *Climate Change and the UN Security Council* (Edward Elgar Publishing, 2018) 186.

<sup>173</sup> Vihma, Mulugetta and Karlsson-Vinkhuyzen (n 129) 322. For a discussion on the destabilising impacts of climate change, see generally Mark Nevitt, ‘Is Climate Change a Threat to International Peace and Security?’ (2021) 42(3) *Michigan Journal of International Law* 527.

<sup>174</sup> UN SCOR, 3046<sup>th</sup> mtg, UN Doc S/PV.3046 (31 January 1992) 143.

<sup>175</sup> Falkner notes the link between effectiveness and legitimacy in a broad sense, which, although not discussed in his article, is applicable to the UNSC as argued here: Robert Falkner, ‘A Minilateral Solution for Global Climate Change? On Bargaining Efficiency, Club Benefits, and International Legitimacy’ (2016) 14(1) *Perspectives on Politics* 87, 87–8.

<sup>176</sup> Ken Conca, Joe Thwaites and Goueon Lee, ‘Climate change and the UN Security Council: Bully Pulpit or Bull in a China Shop?’ (2017) 17(2) *Global Environmental Politics* 1, 2.

<sup>177</sup> Vihma, Mulugetta and Karlsson-Vinkhuyzen (n 129) 322.

<sup>178</sup> Shirley V Scott, ‘Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate?’ (2008) 9(2) *Melbourne Journal of International Law* 495, 511.

<sup>179</sup> See, eg, ‘Russia Blocks Security Council Action on Ukraine’ *UN News* (online, 26 February 2022) <<https://news.un.org/en/story/2022/02/1112802>>, archived at <<https://perma.cc/BZ4S-NGD4>>.

West and so has closed down rational dialogue with its permanent member colleagues.<sup>180</sup> The power of veto bestowed upon Russia means that the UNSC is in essence unable to adopt any resolutions that are deemed contrary to Russian interests. Even the de-escalation of hostilities would likely incur the wrath of Russian diplomats who are bound by the internal political dialogue of total victory by total war.<sup>181</sup> The concept of collective security as envisioned within the *UN Charter* is therefore once more subject to the political standoff between those possessing the power of veto.<sup>182</sup> If we consider this a reflection of how easily the UNSC can become gridlocked, we must recognise that climate change, a matter that is not universally viewed as one of collective insecurity, is likely to cool down the cooperative attributes of the UNSC.

This is precisely what happened in December 2021 when the UNSC held a debate on the subject of climate security.<sup>183</sup> The draft resolution discussed was intended, as the representative of Ireland and Niger (co-penholders) argued, to allow the ‘Security Council to address climate change with the tools it has within its mandate’.<sup>184</sup> Not overly ambitious, the resolution did not declare that climate change was an art 39 threat to international peace and security.<sup>185</sup> Despite this, it did tentatively make this connection by holding that ‘Small Island Developing States are particularly vulnerable to the adverse effects of climate change ... including the loss of territory caused by the rise of the sea level, [that] may have implications for international peace and security...’.<sup>186</sup>

India voiced opposition to climate change being brought before the UNSC and instead pointed to the *UNFCCC* forum as a more appropriate setting. However, India’s climate efforts within the *UNFCCC* are dubious at best with the Climate Action Tracker recording its aspirations as ‘highly insufficient’, leading to a warming of over 4°C if replicated globally.<sup>187</sup> This means it was likely that India’s motivation at the December 2021 meeting was to preserve a fractured UNSC that does not implement a climate mandate able to induce more stringent obligations, both legally and symbolically. Fortunately for India, Russia took a similar line and vetoed the draft resolution on the basis that they did not want to ‘establish a generic, automatic connection between climate change and international

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<sup>180</sup> See Robert Pszczel, ‘The Consequences of Russia’s Invasion of Ukraine for International Security — NATO and Beyond’, *NATO Review* (Blog Post, 7 July 2022) <<https://www.nato.int/docu/review/articles/2022/07/07/the-consequences-of-russias-invasion-of-ukraine-for-international-security-nato-and-beyond/index.html>>, archived at <<https://perma.cc/Z7JV-PMQA>>.

<sup>181</sup> See Timothy Snyder, Yulia Kazdobina and Olexander Scherba, ‘Is a Peace Deal Possible with Putin? On the Problems of Peacemaking in the Russian War on Ukraine’ (Policy Briefing, PeaceRep, 20 July 2022) <[http://eprints.lse.ac.uk/115689/1/Policy\\_brief\\_is\\_a\\_peace\\_deal\\_possible\\_with\\_Putin.pdf](http://eprints.lse.ac.uk/115689/1/Policy_brief_is_a_peace_deal_possible_with_Putin.pdf)>, archived at <<https://perma.cc/2D7M-4Y4R>>.

<sup>182</sup> Vladimir Papava, ‘The End of the Frozen Cold War? A Comment’ (2009) 3(1) *Caucasian Review of International Affairs* 98.

<sup>183</sup> UN SCOR, 76<sup>th</sup> sess, 8926<sup>th</sup> mtg, UN Doc S/PV.8926 (13 December 2021).

<sup>184</sup> *Ibid* 2.

<sup>185</sup> UN SCOR, UN Doc S/2021/990 (13 December 2021).

<sup>186</sup> *Ibid* 3 para 14.

<sup>187</sup> ‘India’, *Climate Action Tracker* (Web Page, 15 November 2022) <<https://climateactiontracker.org/countries/india/>>, archived at <<https://perma.cc/8DWF-67UN>>.



security'.<sup>188</sup> Russia went even further and pointed to the undemocratic nature of its 'Western colleagues' in trying to further climate security.<sup>189</sup> The division among the international community, and particularly that which exists among the veto wielding permanent members, means much more diplomacy will be required if the UNSC is to thaw on the subject of climate change.

However, it is worth reinforcing that a failure to be effective in the face of a global emergency like climate change will damage the UNSC's legitimacy, meaning some form of intervention is paramount. At a 2015 UNSC meeting, the previous president of Kiribati said with regard to the Pacific Island states, '[we are] on the front line of climate change'.<sup>190</sup> The linguistic connection to traditional conflict is unlikely an accident and intended to convey the link between the UNSC's customary remit and the climate threat. On many island states the 'population is concentrated in the low-elevation coastal zone', defined as 'coastal areas below 10-m elevation',<sup>191</sup> which increases the states' vulnerability to a number of climatic impacts, not least of all super charged hurricanes.<sup>192</sup> The island states are very much of the position that UNSC intervention is required because of their vulnerability in the face of the climate emergency. A failure to recognise this means they could lose faith in the system and consider the UNSC nothing more than the instrument of the powerful. This could have significant 'credibility costs' for the institution's long-term efficacy and even viability.<sup>193</sup> In short, a climate resolution is vital not only for those on the front line but for the UNSC itself, which will continue to come under fire if it remains frozen.

If a climate resolution is to be perceived as legitimate it must be crafted in such a way that is objective, avoiding any suggestion that powerful states are exempt or able to shield themselves from its reach.<sup>194</sup> Any spectre of inequality will undermine its legitimacy and pose risks to the long-term authority of the UNSC. In addition, balance is important and the UNSC should adopt a position that is able to have an affect but avoid being overly ambitious or impacting negatively upon the aspirations of developing states, hence complementing the *Paris Agreement* is the best way forward. Mark Nevitt characterises this type of intervention as walking a 'legitimacy tightrope',<sup>195</sup> and indeed it is a fine line advocated here that is poised between utilising the benefits of the UNSC whilst avoiding its dangers. Employing the climate emergency narrative will frame the contents of a resolution within the idea of necessity, and allow the resolution to draw legitimacy from the

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<sup>188</sup> UN Doc S/PV.8926 (n 183) 3.

<sup>189</sup> Ibid 9.

<sup>190</sup> UN Doc S/PV.7499 (n 143) 29.

<sup>191</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Report, 2022) 2063.

<sup>192</sup> Sarah Gibbens, 'How Warm Oceans Supercharge Deadly Hurricanes', *National Geographic* (Web Page, 6 September 2019) <<https://www.nationalgeographic.co.uk/environment-and-conservation/2019/09/how-warm-oceans-supercharge-deadly-hurricanes>>, archived at <<https://perma.cc/M4PD-AQFE>>.

<sup>193</sup> See Nevitt (n 173) 530.

<sup>194</sup> Conca noted in 2019 that the political interaction of the permanent five makes it difficult to envisage a cooperative UNSC on the subject of climate intervention: Conca (n 135) 9–10. This reality has only heightened in the months following the invasion of Ukraine.

<sup>195</sup> Nevitt (n 173) 566, 575.

traditional mandate of the UNSC to manage global emergencies.<sup>196</sup> In treading this line the UNSC minimises the risk to its credibility whilst having a tangible and much needed impression upon the threat.<sup>197</sup>

## VI CONCLUSION

Climate change is a threat that we, as a species, do not altogether comprehend. The global environmental balance of the Holocene has been a constant throughout our existence. We evolved, thrived, and depended on the conditions that have lasted at least 10,000 years. Trying to imagine what the next iteration of earth's environmental infrastructure will look like, then, is a near impossible task for most of us. It is for this reason that climate change remains within the realm of international law and politics, yet to fully ascend to the security agenda. For if we truly understood what it meant to stand on the brink of a climatic tipping point, we would not continue with the status quo of international climate law.

The ineffectiveness of international climate law since its inception has been downplayed, misrepresented, and ignored. The structure of the *Paris Agreement* is even more dangerous. It allows those that wish to masquerade behind NDCs, which have little or no impact on the problem, to claim they are meeting their international climate obligations. This is reflected in the example of Australia, which shows that states are intentionally avoiding ambitious steps. Some states are 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 temperature increase of less than 2°C.

Instead, we must search for alternative ways to bolster the climate response. To echo Palmer, we must find new ways to stimulate greater international climate action if we are to stave off the advance of this certain threat.<sup>198</sup> We must reset the international stage and open-up the door for more exacting responses that will reduce emissions. We need to act fast and through a new interpretative lens, that will avoid the trappings of political intransigence. Securitising climate change offers a pathway to realise this ambition.

The UNSC offers a forum in which to achieve the securitisation of climate change. It has the capacity to act with haste and introduce complementary rules that could cut to the heart of the issue. Though, it comes with several perilous criticisms that prevent it from being seen as an objectively positive institution. With that in mind this paper has argued for a restrained intervention, which would seek to bolster the international climate efforts by drawing from the obligations already agreed through convention. A resolution with carefully crafted linguistics could help capitalise on the benefits of securitisation without invoking the concerns of those who oppose involving the UNSC.

Moreover, if the UNSC is to maintain any semblance of legitimacy it must overcome the divisions that are preventing a climate response. Failing to comply with its mandate to maintain and preserve international peace and security will

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<sup>196</sup> Lucile Maertens, 'Climatizing the UN Security Council' (2021) 58(4) *International Politics* 640, 647.

<sup>197</sup> However, caution is also warranted when invoking the narrative of emergency: see Jeroen Warner and Ingrid Boas, 'Securitization of Climate Change: How Invoking Global Dangers for Instrumental Ends Can Backfire' (2019) 37(8) *EPC: Politics and Space* 1471.

<sup>198</sup> Palmer (n 1).

only disillusion those states that are suffering the very real insecurity consequences of a changing climate. What climate change offers the UNSC is a chance to bring the international community together and cast many of the archaic vestiges aside in pursuit of genuine collective security. The type of collective security envisioned at the drafting of the *UN Charter* and exactly the type now required to safeguard those Pacific Island states already facing a crisis of climatic insecurity. Securitising climate change before the UNSC offers a certain promise, one which might allow us to finally comprehend it as the ‘biggest threat modern humans have ever faced’.<sup>199</sup>

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<sup>199</sup> United Nations, ‘Climate Change “Biggest Threat Modern Humans Have Ever Faced”, World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation’ (Press Release SC/14445, 23 February 2021).