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# WORKING PAPER

**Securitising climate change: can the UN  
Security Council reinforce the Paris Agreement  
given its inherent positive and negative  
attributes?**

Ash Murphy



European University Institute

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Research Forum, Glasgow, March 2022

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## **Abstract**

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 UN 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 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.

## **Keywords**

Climate change; UN Security Council; securitisation; securitisation theory.

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### I. Introduction

In 1992 Geoffrey Palmer said in relation to environmental law, 'As things 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. Afterall, the United Nations Framework Convention on Climate Change (UNFCCC) came into existence in 1992, followed by the Kyoto Protocol 1997 and the Paris Agreement 2015. Punctuating these prominent milestones, the Conference of the Party (COP) system, established under the UNFCCC, has paved the way for additional commitments at the international level, such as the Glasgow Climate Pact.<sup>2</sup> It appears the machinery to tackle climate change and introduce relevant rules does now exist.<sup>3</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>4</sup> But the simple existence of this framework and subsequent rules, should not be taken as a greenlight to move on from Palmer's concerns. The fact is emissions have continued to spiral,<sup>5</sup> and those states responsible have continued to obfuscate behind platitudes and

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

<sup>2</sup> Glasgow Climate Pact to the Paris Agreement, (adopted 13<sup>th</sup> November 2021) UN Doc CP26\_auv\_2f\_cover\_decision.

<sup>3</sup> D Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 Review of European, Comparative and International Environmental Law 1.

<sup>4</sup> P Christoff, 'Post-Kyoto? Post-Bush? Towards an Effective Climate Coalition of the Willing' (2006) 82 International Affairs 831; R Clemencon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?' (2016) 25 Journal of Environment and Development 3.

<sup>5</sup> Anonymous, 'Climate Target Update: Home' (Climate Action Tracker, May 2022) <<https://climateactiontracker.org>> accessed 11<sup>th</sup> May 2022.

political rhetoric.<sup>6</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>7</sup> A discussion which began in 2007, advances have been made in terms of the UNSC's interaction with the climate threat.<sup>8</sup> That said, there is significant scope for further progress, chiefly because as things currently stand the UNSC has not activated its most powerful tool, Article 39, 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. To make this argument the paper will first consider the effectiveness of ICL through the Paris Agreement. Second, the parameters and potential of securitisation will be discussed. Third, the peril of the UNSC securitising climate change will be delineated. Finally, the possibility of securitising climate change before the UNSC will be explored, providing a pragmatic but promising pathway to intervention.

## II. The Ineffective Paris Agreement

The Paris Agreement sits at the forefront of international climate law,<sup>9</sup> and is predicated on the principle of 'common but differentiated responsibilities and respective capability, in the light of different national circumstances'.<sup>10</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, Paris should have cast them into leadership roles tackling climate change from the front. Some would argue this type of commitment placed on the developed world would have been an example of neo-liberalism,<sup>11</sup> and maybe neo-colonialism.<sup>12</sup> This is

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<sup>6</sup> A Morton, 'UN Climate Talks: Australia Accused of "Cheating" and Thwarting Global Deal' *The Guardian* (15<sup>th</sup> December 2019) <<https://www.theguardian.com/environment/2019/dec/16/un-climate-talks-australia-accused-of-cheating-and-thwarting-global-deal>> accessed 1<sup>st</sup> January 2020.

<sup>7</sup> S Scott, 'Securitising Climate Change: International Legal Implications and Obstacles' (2008) 21 *Cambridge Review of International Affairs* 603.

<sup>8</sup> F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

<sup>9</sup> For a comprehensive review of ICL see, A Murphy, 'International Climate Law: Recapping, Reviewing, and Exposing State Responses to Climate Change' (2021) 2 *Keele Law Review* 25.

<sup>10</sup> Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12<sup>th</sup> Dec 2015) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 2 (2).

<sup>11</sup> D Hursh, J Henderson, D Greenwood, 'Environmental education in a neoliberal climate' (2015) 21 *Environmental Education Research* 299.

<sup>12</sup> H Bachram, 'Climate Fraud and Carbon Colonialism: The New Trade in Greenhouse Gases' (2004) 15 *Capitalism Nature Socialism* 5; J Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the



a negative interpretation, and leadership, technology sharing, and capacity development are not neo-colonial activities but should be characterised as the actions of responsible states accepting their part in what is now a vital reaction to a global catastrophe. That being said, it is important to note that colonialism was a dark practice with despicable outcomes, meaning it is entirely right and proper for those in developing states and scholars working in the field to be wary of avoiding any actions that have neo-colonial tendencies.<sup>13</sup> Likewise, as was done above, it is important for efforts like this paper to make very clear that the developed world being asked to take on a leadership role is much more about recognising that it has benefitted, and continues to do so, from historic exploitation, which must now be repurposed as leadership and responsibility with resources pumped back into the developing world through regional and local initiatives.<sup>14</sup>

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, Article 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>15</sup> The 2°C objective is unable to have a globally positive impact and will result in serious climatic changes. Under this ambition, by the year 2100: sea levels will rise by 56cm; there will be 23 times the number of annual ocean heat waves causing drastic consequences for marine life; there is an 80% chance of the Arctic becoming ice free in at least one summer; there will be a 37% increase in severe heat waves; 388 million people will be exposed to water scarcity; and the average global crop yield will decrease by 9%.<sup>16</sup> These impacts undermine how much hope we should place in the achievement of the 2°C objective and devalue the vigour that can be attached to the Paris Agreement's ambition. Furthermore, many of these impacts will be felt to varying degrees but are likely to be much worse in the developing world, where there is much less capacity to absorb the effects of climate change.<sup>17</sup> It could be argued that the Paris Agreement reflects an attempt to safeguard the developed while allowing those developing states to suffer the effects of a 2°C increase in temperature.<sup>18</sup> What we have is an example of international law once more being led by the influence of those states able to exert political and economic pressure to realise outcomes favourable to them.<sup>19</sup>

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International Climate Regime from a TWAIL Perspective' (2016) 33 Windsor Yearbook of Access to Justice 129.

<sup>13</sup> J Dehm, 'Carbon colonialism or climate justice? Interrogating the international climate regime from a TWAIL perspective' (2016) 33 Windsor Yearbook of Access Justice 129.

<sup>14</sup> W Jolomba, 'The Collapsing of the Earth's lungs: could a TWAIL understanding of climate change law breath air into the Amazonian crisis?' (2020) Transnational Law Institute Think! Paper 14/2020 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3601760](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3601760)> accessed 26<sup>th</sup> September 2022.

<sup>15</sup> Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12<sup>th</sup> Dec 2015) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 2 (1) (a).

<sup>16</sup> Anonymous 'The Impacts of Climate Change at 1.5C, 2C and Beyond' (Carbon Brief, 2019) <<https://www.carbonbrief.org/the-impacts-of-climate-change-at-1-point-5-2c-and-beyond>> accessed 1<sup>st</sup> December 2019.

<sup>17</sup> S Seneviratne et al., 'The Many Possible Climates from the Paris Agreement's Aim of 1.5°C Warming' (2018) 558 Nature 41.

<sup>18</sup> J Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2016) 33 Windsor Yearbook of Access to Justice 129.

<sup>19</sup> M Sornarajah, 'Power and Justice in International Law' (1997) 1 Singapore Journal of International Comparative Law 28.

To achieve the 2°C ambition the Paris Agreement requests that state parties independently establish and submit Nationally Determined Contribution (NDC) plans to reduce their emissions.<sup>20</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>21</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 easily identified in the NDC plans submitted by several developed states.<sup>22</sup> The EU aims for a 55% reduction in greenhouse gas emissions by 2030,<sup>23</sup> which is an increase of 15% on its previous target.<sup>24</sup> Australia commits to 'reduce greenhouse gas emissions by 26-28 per cent'.<sup>25</sup> Canada offers to 'reduce emissions by 40-45%'.<sup>26</sup> Australia and Canada are highly developed economies with the capacity for greater ambition than these targets reflect, and Canada only recently increased its target from 30%, while Australia has made no such improvement to its original objective.<sup>27</sup> The EU offers a more ambitious target but the manner in which it seeks to achieve it relies on natural land restoration as much as actual reductions. Which is not in itself problematic but evidences an intention to avoid the tough challenges of moving its economy away from fossil fuels at the required rate to stave off climatic breakdown. Moreover, all three use 2005 as the base level to reduce emissions by, lessening further still the aspiration attached to each target. These three signatories have not offered targets that take account of their increased capacities as highly developed economies, and their ambitions will not allow the achievement of the 2°C objective.<sup>28</sup> This level of limited ambition is also reflected in many developing states. Russia pledged to limit 'anthropogenic greenhouse gases...to 70–75%'.<sup>29</sup> Brazil intends to reduce its emissions by 37% before 2025

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<sup>20</sup> Paris Agreement to The United Nations Framework Convention on Climate Change (adopted 12<sup>th</sup> Dec 2015) UN Doc FCCC/CP/2015/L.9/Rev.1, Article 4.

<sup>21</sup> Climate Action Tracker, 'CAT Emissions Gaps' (Countries, June 2019) <<https://climateactiontracker.org/global/cat-emissions-gaps/>> accessed 28<sup>th</sup> August 2019.

<sup>22</sup> These states were selected randomly, but with the intention of reflecting both the developed and developing.

<sup>23</sup> Update of NDC of the European Union and its Member States (Dec 2020).

<sup>24</sup> Intended Nationally Determined Contribution of the EU and its Members States (March 2015), Article 3.

<sup>25</sup> Australia's Intended Nationally Determined Contribution to a New Climate Change Agreement (August 2015), para 3.

<sup>26</sup> Canada's 2021 Nationally Determined Contribution Under the Paris Agreement (July 2021).

<sup>27</sup> Canada's INDC Submission to the UNFCCC (May 2015), para 3.

<sup>28</sup> Anonymous, 'CAT Climate Target Update Tracker' (Climate Action Tracker, February 2022) <<https://climateactiontracker.org/countries/eu/>> accessed 8<sup>th</sup> February 2022.

<sup>29</sup> The Russian Federation, Intended Nationally Determined Contribution (March 2015), Table 1.

and 43% by 2030.<sup>30</sup> Mexico sets an unconditional reduction of 25% and a conditional reduction of up to 40% if international support is provided.<sup>31</sup>

Across the development spectrum the ambition attached to reduction targets indicates that states are not willing to obligate themselves beyond a certain threshold, despite 'widespread adverse impacts and related losses and damages to nature and people'.<sup>32</sup> The relative similarity of all six targets looked at here, may suggest that states are not acting according to their respective capacities but instead intend to reflect some idea of global parity. Indeed, both Mexico and Canada point out their limited contribution to global emissions, indicating a belief they are not overly responsible for the problem.<sup>33</sup> The NDC model of climate regulation although motivated by equitable reasoning, is proving ineffective in the face of persistently rising emissions, by giving states the discretion to avoid taking proportionate action.<sup>34</sup> There are of course positive attributes to the Paris Agreement that have not been discussed here.<sup>35</sup> The cooperation being achieved in some areas is useful, giving merit to the theory of interactional international law, tentatively indicating the Paris Agreement's efficacy could improve.<sup>36</sup> But, as things stand the average global temperature is forecast to increase between 3°C and 5°C by the year 2100, largely because of states not taking the threat seriously enough now. Hence this paper has adopted a singular paradigm, avoiding plurality, in sticking to the certainty of perpetually increasing emissions.<sup>37</sup> Consequently, we cannot continue with the narrative that ICL is a credible response to the threat, and we must look for ways to cultivate more rigorous international commitments before an irreversible tipping point is crossed.<sup>38</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, continuing with the Paris Agreement in isolation is untenable.<sup>39</sup> It is at this point securitisation offers some potential, acting as a possible means

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<sup>30</sup> Federative Republic of Brazil: Intended Nationally Determined Contribution (September 2015), para 5.

<sup>31</sup> Mexico: Gobierno De La Republica: Intended Nationally Determined Contribution (March 2015).

<sup>32</sup> IPCC, 'Climate Change 2022: Impacts, Adaptation and Vulnerability' (2022).

<sup>33</sup> See their respective NDC statements.

<sup>34</sup> Anonymous, 'Daily CO<sub>2</sub>' (CO<sub>2</sub> Earth, Mauna Loa Observatory, August 2019) <<https://www.co2.earth/co2-records>> accessed 18<sup>th</sup> January 2022.

<sup>35</sup> E Toth, F Alyas, 'Six ways that meeting the goals of the Paris Agreement will drive economic growth' (UN Foundation, 2019) <<https://unfoundation.org/blog/post/six-ways-that-meeting-the-goals-of-the-paris-agreement-will-drive-economic-growth/>> accessed 26<sup>th</sup> September 2022; A Michaelowa, et al, 'Evolution of international carbon markets: lessons for the Paris Agreement' (2019) 10 (6) WIREs Climate Change 1.

<sup>36</sup> J Brunnee, S Toope, *An Interactional theory of International Legal Obligation* (1<sup>st</sup> edition, CUP 2013).

<sup>37</sup> Anon, 'Global CO<sub>2</sub> emissions rebounded to their highest level in history in 2021' (International Energy Agency, 8<sup>th</sup> March 2022) <<https://www.iea.org/news/global-co2-emissions-rebounded-to-their-highest-level-in-history-in-2021>> accessed 25<sup>th</sup> September 2022. Anonymous, '2019 Set to Be the 2<sup>nd</sup> or 3<sup>rd</sup> Warmest Year on Record' (WMO, 20<sup>th</sup> December 2019) <<https://public.wmo.int/en/media/news/2019-set-be-2nd-or-3rd-warmest-year-record>> accessed 18<sup>th</sup> January 2022.

<sup>38</sup> T Lenton et al., 'Climate Tipping Points – Too Risky to Bet Against' (2019) 575 Nature 592.

<sup>39</sup> D Spratt, I Dunlop, 'What Lies Beneath' (National Centre for Climate Restoration 2018).

in which to achieve a reset to how we interpret and respond to the climate threat facing ‘all of humanity’.<sup>40</sup> 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. 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 why it is relevant here. Before discussing the benefits of achieving securitisation and delineating 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. Securitisation theory challenges the traditional understandings of security in that it refutes the idea that security issues are naturally or objectively existential. This represents a challenge to the realist perspective on security, decentralising the role of military conflict and opening up the discussion to include an array of new security paradigms, which is precisely what this paper is constructed upon.<sup>41</sup> Securitisation theory claims issues 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. Applying this interpretation means that 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>42</sup>

According to its architects, the process of securitisation is comprised of two-stages. The first is termed the speech act, and involves the presentation of a referent object, something that has a legitimate right to survival, as at risk from an existential threat. A securitising actor carries out the speech act, typically through an oral statement or written submission.<sup>43</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. 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.

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 framing 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 isn’t in actuality

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<sup>40</sup> C Martin, ‘Climate change and global security: framing an existential threat’ (2022) 116 *American Journal of International Law* 247, 252.

<sup>41</sup> J Benton Heath, ‘Making sense of security’ (2022) 116 (2) *American Journal of International Law* 289.

<sup>42</sup> All of this information is taken from, B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1<sup>st</sup> edition, Boulder, Colorado: Lynne Rienner 1998).

<sup>43</sup> President Bush’s speech on the ‘axis of evil’ is an example of a speech act: see B Buzan, O Waever, ‘Macrosecritisation and security constellations: reconsidering scale in securitisation theory’ (2009) 35 *Review of International Studies* 253.

an example of securitisation being achieved. Merely it 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, but it is important to remember in the context of climate change and particularly regarding its presence on the UNSC, although speech acts linking it to security can be identified, securitisation has not yet been achieved because the audience has yet to acknowledge it in a way that would see climate change transition from a political to a security issue. Although this paper views the activation of Article 39 as the definitive signal of full securitisation, it acknowledges the process is underway with some interpreting this as 'partial securitisation'.<sup>44</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 in 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>45</sup> While the remaining members of the UNSC 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 and then accepted by the audience.

Another possibility lies in reflecting the constitutive nature of the UNSC and situating the power dynamic as the means in 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>46</sup> weapons of mass destruction and,<sup>47</sup> in limited circumstances, health.<sup>48</sup> Once they decided to argue that these matters should be securitised and made part of the UNSC's mandate the audience automatically became 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 employ the theory more acutely to the UNSC.

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<sup>44</sup> K Peters, 'Disasters, climate change and securitisation: the United Nations Security Council and the United Kingdom's Security Policy' (2018) 42 *Disasters* 196.

<sup>45</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, F Sindico, 'Climate Change: A Security (Council) Issue?' (2007) 1 (1) *The Carbon and Climate Law Review* 29.

<sup>46</sup> UNSC Res 1368 (12<sup>th</sup> September 2001) UN Doc S/Res/1368.

<sup>47</sup> UNSC Res 1540 (28<sup>th</sup> April 2004) UN Doc S/Res/1540.

<sup>48</sup> UNSC Res 2177 (18<sup>th</sup> September 2014) UN Doc S/Res/2177.

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 'securitization 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>49</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 very slow pace that conventions are brought to life.<sup>50</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 twenty-four hours from the 9/11 attacks to declare terrorism a threat to international peace and security under Article 39.<sup>51</sup> Just sixteen days later a comprehensive response, tantamount to legislation, designed to prevent further attacks was adopted.<sup>52</sup> However, in the context of the 2014 Ebola outbreak there was a significant lead up to intervention through Resolution 2177.<sup>53</sup> However, once a decision to intervene was agreed the subsequent response was rapid from a legislative perspective. 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>54</sup> 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 Article 39 threat, perhaps in part because of the visibility of the harm that is not consistent.<sup>55</sup> Thus, potentially allowing it to be interpreted as less than existential by some actors. Securitisation then, appears to be dependent on circumstances and their subjective interpretation by those involved in the process.<sup>56</sup>

Securitising 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>57</sup>

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<sup>49</sup> B Buzan, O Waever, J de Wilde, *Security: A New Framework for Analysis* (1<sup>st</sup> edition, Boulder, Colorado: Lynne Rienner, 1998) 29.

<sup>50</sup> D Bodansky, *The Art and Craft of International Environmental Law* (1<sup>st</sup> edition, Harvard University Press 2011).

<sup>51</sup> UNSC Res 1368 (12<sup>th</sup> September 2001) UN Doc S/Res/1368.

<sup>52</sup> UNSC Res 1373 (28<sup>th</sup> September 2001) UN Doc S/Res/1373.

<sup>53</sup> UNSC Res 2177 (18<sup>th</sup> September 2014) UN Doc S/Res/2177.

<sup>54</sup> A Kamradt-Scott, 'WHO's to Blame? The World Health Organisation and the 2014 Ebola Outbreak in West Africa' (2016) 37 *Third World Quarterly* 401.

<sup>55</sup> Anon, 'Tracking SARS-CoV-2 variants' (WHO, 2022) <<https://www.who.int/activities/tracking-SARS-CoV-2-variants>> accessed 23<sup>rd</sup> May 2022.

<sup>56</sup> T Balzacq, S Guzzini, 'Introduction: What Kind of Theory – if any – is securitisation?' (2014) 29 (1) *International Relations* 97.

<sup>57</sup> H Stritzel, 'Towards a Theory of Securitisation: Copenhagen and Beyond' (2007) 13 (3) *European Journal of International Relations* 357.

Adopting the premise that the UNSC only securitises something once Article 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. They may even go as far as to authorise the use of force to maintain or restore international peace and security. Of course, the UNSC is in theory limited by the purposes of the UN Charter, but the activation of Article 39 would inevitably come with the agreement that peace and security was threatened, meaning the scope of potential measures would be wide. Thus, securitisating 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. 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>58</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 was addressed through international law, perhaps perceived as a political issue due to the limited scale of past attacks.<sup>59</sup> What the world witnessed on 9/11 was a threat no longer capable of being confined to political dispute, instead it had become about self-defence.<sup>60</sup> Securitisating it through Article 39 was not just an equivalent response but it was a call to galvanise the international community into action, one that was successful.<sup>61</sup>

In the climate change context this is precisely what is required; an emphasis on the 'magnitude and urgency of the threat'.<sup>62</sup> We must alter our interpretative lens, recasting it from a political issue to an existential threat. Securitisation will aid in achieving this ambition and the global security narrative flowing from it could help make climate change 'an urgent priority for all international legal institutions'.<sup>63</sup> This could open the door for more exacting measures that

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<sup>58</sup> F Ciuta, 'Security and the problem of context: a hermeneutical critique of securitisation theory' (2009) 35 *Review of International Studies* 301.

<sup>59</sup> H Kramer, S Yetiv, 'The UN Security Council's Response to Terrorism: Before and after September 11<sup>th</sup> 2001' (2007) 122 (3) *Political Science Quarterly* 409.

<sup>60</sup> C Stahn, 'Terrorist Acts as Armed Attack: The Right to Self-Defence, Article 51 ½ of the UN Charter, and International Terrorism' (2003) 27 (2) *The Fletcher Forum of World Affairs* 35.

<sup>61</sup> C Ward, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council' (2003) 8 *Journal of Conflict and Security Law* 289.

<sup>62</sup> C Martin, 'Climate change and global security: framing an existential threat' (2022) 116 *American Journal of International Law* 247.

<sup>63</sup> C Martin, 'Climate change and global security: framing an existential threat' (2022) 116 *American Journal of International Law* 247, 252.

have so far proven impossible through international law, but are pertinent given the relentless onset of climatic harm across the globe.<sup>64</sup>

#### 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>65</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 of WWII.<sup>66</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>67</sup> Trina Ng highlights that there is a 'glaring incongruity between environmental measures and armed military action'.<sup>68</sup> Yet, because of the manner of its constitution once Article 39 has been activated the UNSC has access to Article 42 responses.<sup>69</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, which is problematic because nothing excludes it from UNSC deliberation.<sup>70</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>71</sup> Research supports this assertion in the climate context, and the US Air Force is able to generate a gigantic amount of greenhouse gas emissions.<sup>72</sup> Conventional military responses like ground interventions also have hugely detrimental environmental impacts.<sup>73</sup> The destruction of land and forests in the achievement of military objectives will negate any potential benefit being sought. The activation of Article 42 comes with grave physical implications for the environment that challenge its validity.

<sup>64</sup> WMO, 'State of the Climate 2018 Shows Accelerating Climate Change Impacts' (WMO, 28<sup>th</sup> March 2019) <<https://public.wmo.int/en/media/press-release/state-of-climate-2018-shows-accelerating-climate-change-impacts>> accessed 5<sup>th</sup> January 2019.

<sup>65</sup> G Kirk, 'The Enforcement of Security' (1946) 55 Yale Law Review 1081.

<sup>66</sup> F Kirgis, 'The Security Council's First Fifty Years' (1995) 89 (3) The American Journal of International Law 506.

<sup>67</sup> L Elliot, 'Imaginative Adaptations: A Possible Environmental Role for the UN Security Council' (2003) 24 Contemporary Security Policy 47.

<sup>68</sup> T Ng, 'Safeguarding Peace and Security in our Warming World: A Role for the Security Council' (2010) 15 Journal of Conflict and Security Law 275, 297.

<sup>69</sup> Nothing in Article 39 limits the UNSC's access to measures involving force via Article 42. Charter of the United Nations (24<sup>th</sup> October 1945) 1 UNTS XVI, Articles 39, 42.

<sup>70</sup> C Voigt, 'Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change' in C Bailliet (ed) *Security: A Multidisciplinary Normative Approach* (1<sup>st</sup> edition, Brill Publishers 2009) 291.

<sup>71</sup> T Ng, 'Safeguarding Peace and Security in our Warming World: A Role for the Security Council' (2010) 15 Journal of Conflict and Security Law 275, 297.

<sup>72</sup> N Crawford, 'Pentagon Fuel Use, Climate Change, and the Costs of War' (2019) Watson Institute of International and Public Affairs 1.

<sup>73</sup> Anonymous, 'Protect Environment From Wars and Conflicts, UN Urges on International Day' (UN, Global Perspective Human Stories, 6<sup>th</sup> November 2017) <<https://news.un.org/en/story/2017/11/570062-protect-environment-wars-and-conflicts-un-urges-international-day>> accessed 25<sup>th</sup> January 2022.



In addition, the use of force has negative implications for state relations.<sup>74</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>75</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 of life is infinitely problematic. The prospect of the UNSC authorising the use of force to implement any environmental mandate should be judged as altogether unsuitable. As Murphy puts it, the 'threat of harm does not hurt enough for the use of force'.<sup>76</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 Article 39, and we must remember that the UNSC is to be taken as it is and not as we wish it to be.

Moving to another UNSC tool, under Article 41 it has access to a broad array of sanctions that could be used to penalise a state for climate change inducing activities.<sup>77</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>78</sup> This type of response represents an obvious enforcement capability of the UNSC,<sup>79</sup> and allows the argument it offers something currently absent from ICL.<sup>80</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

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<sup>74</sup> Voigt points out that environmental law is based heavily on multilateralism. C Voigt, 'Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change' in C Bailliet (ed), *Security: A Multidisciplinary Normative Approach* (1<sup>st</sup> edition, Brill Publishers 2009) 291.

<sup>75</sup> D Brommesson, H Fernros, 'The Feasibility of an Expanded Regime on the Use of Force: The Case of the Responsibility to Protect' (2013) 16 *Journal of International Relations and Development* 138.

<sup>76</sup> M Murphy 'Achieving Economic Security with Swords as Ploughshares: The Modern Use of Force to Combat Environmental Degradation' (1999) 38 *Virginia Journal of International Law* 1181, 1218.

<sup>77</sup> Charter of the United Nations (24<sup>th</sup> October 1945) 1 UNTS XVI, Article 41.

<sup>78</sup> A. Murphy, 'Jair Bolsonaro wants to deforest the Amazon – what powers does the UN have to stop him?' (12<sup>th</sup> July 2019) *The Conversation* <<https://theconversation.com/jair-bolsonaro-wants-to-deforest-the-amazon-what-powers-does-the-un-have-to-stop-him-120154>> accessed 28<sup>th</sup> January 2022.

<sup>79</sup> B Reilly, 'Clear and Present Danger: A Role for the United Nations Security Council in Protecting the Global Environment' (1996) 20 *Melbourne University Law Review* 763.

<sup>80</sup> Szasz argues economic pressures under Article 41 might be effective in regard to the environment. P Szasz, 'Restructuring the International Organizational Framework' in E Weiss (ed) *Environmental Change and International Law* (UN University Press 1992) 360.

inevitable that those subject to sanctions will argue the inequity of the application to them and not to others.<sup>81</sup>

Punitive sanctions will not help to build cooperative responses. They will prompt the entrenchment of positions, as was the case regarding the Democratic People's Republic of Korea that simply absorbed the sanctions and continued its WMDs programme.<sup>82</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. 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 at the point of sanctions this will create geopolitical tensions and arguments based on competitiveness and equity.<sup>83</sup> Such tensions will be further exacerbated if sanctions have a negative impact on human rights,<sup>84</sup> or humanitarian conditions which are already been challenged by climate change.<sup>85</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>86</sup> There might be a slim argument that points to Article 2(7) of the UN Charter as precluding this, but, the reality is, once the legal hurdle of Article 39 has been overcome international peace and security can be maintained or restored according to the discretion of the UNSC.<sup>87</sup> Some argue this will allow the opportunity for mischief in the internal affairs of states.<sup>88</sup> As Benton Heath argues, defining climate change as a security issue 'implicates actors with diverse agendas', and the permanent members hold precisely the power required to exercise these agendas.<sup>89</sup> Moreover, he goes on to argue that security is 'a basis for the creation or extension of legal institutions', which is precisely what

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<sup>81</sup> R Bereketeab, 'The Morality of the U.N. Security Council Sanctions Against Eritrea: Defensibility, Political Objectives, and Consequences' (2013) 56 *African Studies Review* 145.

<sup>82</sup> B Habib, 'The Enforcement Problem in Resolution 2094 and the United Nations Security Council Sanctions Regime: Sanctioning North Korea' (2016) 70 *Australian Journal of International Affairs* 50.

<sup>83</sup> J Boulden, A Charron, 'Evaluating UN Sanctions' (2010) 65 *International Journal* 1.

<sup>84</sup> T Biersteker, 'Targeted Sanctions and Individual Human Rights' (2010) 65 *International Journal* 99.

<sup>85</sup> M Doxey, 'Sanctions Through the Looking Glass' (2000) 55 *International Journal* 207; K-A Elliot, 'Assessing UN Sanctions After the Cold War' (2010) 65 *International Journal* 85.

<sup>86</sup> T Gill, 'Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers Under Chapter VII of the Charter' (1995) 26 *Netherlands Yearbook of International Law* 33.

<sup>87</sup> M Koskeniemi, 'The Police in the Temple Order, Justice and the UN: A Dialectical View' (1995) 6 *EJIL* 325; J Nkala, 'The United Nations, International Law and the Rhodesian Crisis' (1986) 35 *International and Comparative Law Quarterly* 480.

<sup>88</sup> L Malone, 'Green Helmets: A Conceptual Framework for Security Council Authority in Environmental Emergencies' (1996) 17 *Michigan Journal of International Law* 515.

<sup>89</sup> J Benton Heath, 'Making sense of security' (2022) 116 (2) *American Journal of International Law* 289, 292.

concerns the G77 and others if climate change becomes a security matter.<sup>90</sup> It might allow the UNSC's remit to expand exponentially. 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>91</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>92</sup>

It is impossible to rule out the UNSC acting under Articles 41 and 42 of the UN Charter if it intervened in the climate threat. Theoretically there is nothing to prevent this. However, the political nature of the UNSC and the difference of perspective on issues means that there is a check and balance to its operations. The veto power gives the permanent members a means in which to prevent action being taken on contentious matters, and some have argued this gives the veto contemporary utility.<sup>93</sup> Given the difference in perspective of the permanent members on the climate threat, it is unlikely that an extreme intervention activating Articles 41 or 42 would be possible. Consequently, this paper argues that the risk of Articles 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>94</sup> The neoliberal and potentially colonial connotations of such a step may exacerbate rifts among the international community.<sup>95</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>96</sup> Reinforcing a divide between the developed and the developing, shared responsibility may undermine common but differentiated responsibility.<sup>97</sup> Climate change is already subject to division, and so any intervention from the UNSC should be aimed at reducing these tensions, not inflaming them further.<sup>98</sup> 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

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<sup>90</sup> J Benton Heath, 'Making sense of security' (2022) 116 (2) American Journal of International Law 289, 295.

<sup>91</sup> M Glennon, 'Why the Security Council Failed' (2003) 82 Foreign Affairs 16.

<sup>92</sup> T Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'Threat to the Peace' Under Article 39 of the UN Charter* (1<sup>st</sup> edition, Brill Nijhoff 2019).

<sup>93</sup> Ibid.

<sup>94</sup> J Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2016) 33 Windsor Yearbook of Access to Justice 129.

<sup>95</sup> D Hursh, J Henderson, D Greenwood, 'Environmental Education in a Neoliberal Climate' (2015) 21 Environmental Education Research 299.

<sup>96</sup> A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations' (2011) 23 Global Change, Peace and Security 315.

<sup>97</sup> Shared responsibility means all states responding through a top-down target orientated approach.

<sup>98</sup> B Bolin, 'The Kyoto Negotiations on Climate Change: A Science Perspective' (1998) 279 Science 330.

permanent members.<sup>99</sup> Nonetheless, scepticism around such a move from the UNSC remains high, perhaps because of the influence and approach different permanent members might adopt.<sup>100</sup>

The UNSC does not embody an institution of equal nations, instead reflecting the hegemonic power balance of 1945.<sup>101</sup> The permanent members hold a position of great authority. They control the UNSC and steer its agenda, and even have a ‘tendency to use secretive exclusionary deliberations’.<sup>102</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>103</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>104</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>105</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>106</sup> but instances remained where it continued to be employed.<sup>107</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>108</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>109</sup> Although this request has to some extent been ignored, evidenced through the many subsequent debates before the UNSC, it does exhibit

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<sup>99</sup> C Ku, ‘The UN Security Council’s Role in Developing a Responsibility to Respond to the Climate Change Challenge’ in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 162.

<sup>100</sup> S Scott, ‘The Attitude of the P5 Towards a Climate Change Role for the Council’ in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

<sup>101</sup> J Alvarez, ‘Hegemonic International Law Revisited’ (2003) 94 (4) *The American Journal of International Law* 873.

<sup>102</sup> K Conca, ‘Is There a Role for the UN Security Council on Climate Change’ (2019) 61 *Environment: Science and Policy for Sustainable Development* 4, 10.

<sup>103</sup> S Scott, ‘The Attitude of the P5 Towards a Climate Change Role for the Council’ in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1st edition, EE 2018) 209.

<sup>104</sup> Charter of the United Nations (24<sup>th</sup> October 1945) 1 UNTS XVI, Article 27.

<sup>105</sup> In instances of atrocities against humanity the UK and France have said they will never use the veto to block UNSC action. Anonymous, ‘The Veto’ (Security Council Research Report, October 2015) <[www.securitycouncilreport.org](http://www.securitycouncilreport.org)> accessed 30<sup>th</sup> October 2019.

<sup>106</sup> E Luck, *UN Security Council Practise and Promise* (1<sup>st</sup> edition, Routledge 2006).

<sup>107</sup> Draft Resolution (11<sup>th</sup> July 2008) UN Doc S/2008/447, vetoed by Russia and China.

<sup>108</sup> H Bachram, ‘Climate Fraud and Carbon Colonialism: The New Trade in Greenhouse Gases’ (2004) 15 *Capitalism Nature Socialism* 5.

<sup>109</sup> UNSC Verbatim Record (17<sup>th</sup> April 2007) UN Doc S/PV/5663, 13.

how the permanent members are prepared to exercise their power to reflect their own priorities.<sup>110</sup> This is unlikely to change and Russia particularly continues to adopt a recalcitrant attitude towards climate change on the UNSC's agenda.<sup>111</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>112</sup> The common but differentiated responsibility model is designed specifically to generate such spirit.<sup>113</sup> Even though the climate 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>114</sup> It is providing an opportunity for the international community to strengthen and develop relationships to overcome the common endeavours of humanity.<sup>115</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>116</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 Article 39 has been made, the decision to include more frequent reference to it shadows the experience of other subjects now within its remit.<sup>117</sup> To take the next step and recognise climate change as within the scope of Article 39 would be bold, but not unprecedented.<sup>118</sup> A climate change resolution should begin by including a preambular paragraph pronouncing: *the Security Council determines that the threat of climate*

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<sup>110</sup> UNSC Verbatim Record (20<sup>th</sup> July 2011) UN Doc S/PV/6587; UNSC Verbatim Record (30<sup>th</sup> July 2015) UN Doc S/PV/7499; UNSC Verbatim Record (25<sup>th</sup> January 2019) UN Doc S/PV/8451.

<sup>111</sup> UNSC Verbatim Record (25<sup>th</sup> January 2019) UN Doc S/PV/8451.

<sup>112</sup> This was evident in the UNFCCC and is reinforced through the Paris Agreement.

<sup>113</sup> United Nations, *Rio Declaration on Environment and Development* 1992 (14<sup>th</sup> June 1992) 31 ILM 874, Principle 7.

<sup>114</sup> J Brunnee, S Toope, *An Interactional theory of International Legal Obligation* (1<sup>st</sup> edition, CUP 2013).

<sup>115</sup> J Lubchenco, 'Entering the Century of the Environment: A New Social Contract for Science' (1998) 279 Science 491.

<sup>116</sup> C Tinker, 'Environmental Security in the United Nations: Not a Matter for the Security Council' (1992) 59 Tennessee Law Review 787.

<sup>117</sup> Resolution 2349 recognised the 'adverse effects of climate change and ecological changes among other factors on the stability of the region', UNSC Res 2349 (31<sup>st</sup> March 2017) UN Doc S/Res/2349, Operative para 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', UNSC Res 2408 (27<sup>th</sup> March 2018) UN Doc S/Res/2408 and UNSC Presidential Statement 2011/15 (20<sup>th</sup> July 2011) UN Doc S/PRST/2011/15, para 7; Resolution 2423 notes 'the security implications of the adverse effects of climate change', UNSC Res 2423 (28<sup>th</sup> June 2018) UN Doc S/Res/2423, para 68.

<sup>118</sup> Resolution 2177 evolved significantly from its predecessor Resolution 2176, to find the Ebola outbreak as a threat to peace.

*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 actions they believe will abate the harm.<sup>119</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 Article 39 resolutions that do not always mandate specific action from states.<sup>120</sup> Moreover, it would be harder to ignore the plight of suffering states when an Article 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>121</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, or an overthrow of the Paris Agreement, which is theoretically possible but wholly unsuitable.<sup>122</sup> 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 Article 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 Paris and rehousing them in the pinnacle security apparatus of Article 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

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<sup>119</sup> UNSC Res 1373 (28<sup>th</sup> September 2001) UN Doc S/Res/1373; E Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative?' (2004) 28 Fordham International Law Review 542.

<sup>120</sup> Resolution 2177 (18<sup>th</sup> September 2014) UN Doc S/Res/2177.

<sup>121</sup> Planetary Security Initiative, 'Climate change to return to UN Security Council agenda under Dominican Republic presidency' (25<sup>th</sup> January 2019, Climate Diplomacy) <<https://climate-diplomacy.org/magazine/cooperation/climate-change-return-un-security-council-agenda-under-dominican-republic>> accessed 25<sup>th</sup> May 2022.

<sup>122</sup> C Martin, 'Climate change and global security: framing an existential threat' (2022) 116 American Journal of International Law 247.

submit NDCs that are able to match the objectives of Paris. 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>123</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 in 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 precisely this possibility.<sup>124</sup> Yet, as climate impact exacerbates 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>125</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 WHO in the lead up to Resolution 2177 on Ebola.<sup>126</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 6<sup>th</sup> October 2018 the IPCC released a comprehensive report on the threat of climate change.<sup>127</sup> It was able to generate significant global attention, appearing on the front pages of international newspapers.<sup>128</sup> However, it had no means with which to stimulate uptake of its recommendations and is instead reliant on state parties heeding its message through implementation of their discretionary-based Paris commitments. The UNSC could offer the IPCC a forum in which to give its findings an injection of vigour, and the IPCC could offer the UNSC a sound factual base to draw from when populating a climate resolution.

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<sup>123</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. UNSC Res 1540 (28<sup>th</sup> April 2004) UN Doc S/Res/1540.

<sup>124</sup> A Vihma, Y Mulugetta, S Karlsson-Vinkhuyzen, 'Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations' (2011) 23 *Global Change, Peace and Security* 315.

<sup>125</sup> G Wilson, 'Collective Security, "Threats to the Peace", and the Ebola Outbreak' (2015) 6 *Journal of the Philosophy of International Law* 1.

<sup>126</sup> Dr Chan Director General of the WHO, Dr Nabarro Senior United Nations Systems Coordinator for Ebola, and Mr Niamah of Médecins Sans Frontières all provided expert briefings before the UNSC. UNSC Verbatim Record (18<sup>th</sup> September 2014) UN Doc/S/PV/7268.

<sup>127</sup> IPCC Report, 'Global Warming of 1.5 °C: Summary for Policy Makers' (2018).

<sup>128</sup> J Watts, 'We have 12 Years to Limit Climate Change Catastrophe, Warns UN' *The Guardian* (8<sup>th</sup> October 2018) <<https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report>> accessed 11<sup>th</sup> October 2018.

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, and directives such as *calls upon*, *encourages* and *urges* would be required at the start of each paragraph.<sup>129</sup> 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, while not directly interfering with state priorities, thus increasing its chance of avoiding a veto while potentially having a quantifiable impact on state behaviour.

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 UK and France would have to take on a leadership role, capitalising on their progressive stances.<sup>130</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 USA that no internal obligations would be created. The negotiations that took place between the USA and China on the content of Resolution 1540 showcase that they can compromise even when their perspectives differ significantly.<sup>131</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, capitalising on its non-coercive aspects. 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. It is not punitive or hegemonic and must stay this way to avoid the legitimate concerns expressed earlier. Instead, it is based on a need to galvanise an international response to an international security threat, offering a complementary approach to securitise climate change within the meaning of Article 39 that is steeped in pragmatism and promise.

## VI. Conclusion

Climate change is a threat we, as a species, don't 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

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<sup>129</sup> K Abbott, D Snidal, 'Hard and Soft Law in International Governance' (2000) 54 (3) International Organization 421.

<sup>130</sup> S Scott, 'The Attitude of the P5 Towards a Climate Change Role for the Council' in S Scott, C Ku (eds) *Climate Change and the UN Security Council* (1<sup>st</sup> edition, EE 2018) 209.

<sup>131</sup> M Asada, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13 Journal of Conflict and Security Law 303.



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, that have little or no impact on the problem, to claim they are meeting their international climate obligations. 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. Securitising climate change in this way offers a certain promise, one which might allow us to finally comprehend it as the 'biggest threat modern humans have ever faced'.<sup>132</sup>

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<sup>132</sup> D Attenborough, 'Climate Change 'Biggest Threat Modern Humans Have Ever Faced'', World-Renowned Naturalist Tells Security Council, Calls for Greater Global Cooperation' (UNSC Press Release, 2021) <<https://www.un.org/press/en/2021/sc14445.doc.htm>> accessed 28<sup>th</sup> January 2022.